

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

FORM 10-K

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2021

Or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from to

Commission File Number 001-37503

**B. RILEY FINANCIAL, INC.**

(Exact name of registrant as specified in its charter)

Delaware

(State or Other Jurisdiction of  
Incorporation or Organization)

27-0223495

(I.R.S. Employer  
Identification No.)

11100 Santa Monica Blvd., Suite 800  
Los Angeles, CA

(Address of principal executive offices)

90025

(Zip Code)

(310) 966-1444

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.0001 per share	RILY	Nasdaq Global Market
Depository Shares, each representing a 1/1000th fractional interest in a 6.875% share of Series A Cumulative Perpetual Preferred Stock	RILYP	Nasdaq Global Market
Depository Shares, each representing a 1/1000th fractional interest in a 7.375% share of Series B Cumulative Perpetual Preferred Stock	RILYL	Nasdaq Global Market
6.50% Senior Notes due 2026	RILYN	Nasdaq Global Market
6.375% Senior Notes due 2025	RILYM	Nasdaq Global Market
6.75% Senior Notes due 2024	RILYO	Nasdaq Global Market
6.00% Senior Notes due 2028	RILYT	Nasdaq Global Market
5.50% Senior Notes due 2026	RILYK	Nasdaq Global Market
5.25% Senior Notes due 2028	RILYZ	Nasdaq Global Market
5.00% Senior Notes due 2026	RILYG	Nasdaq Global Market

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes:  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes:  No

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes  No

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

Large accelerated filer

Accelerated filer

Non-accelerated filer   
Emerging growth company

Smaller reporting company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes  No

The aggregate market value of the registrant's common stock held by non-affiliates, based on the closing price of the registrant's common stock as reported on the NASDAQ Global Market on June 30, 2021, the last business day of the registrant's most recently completed second fiscal quarter, was approximately \$1,499.7 million. For purposes of this calculation, it has been assumed that all shares of the registrant's common stock held by directors, executive officers and stockholders beneficially owning ten percent or more of the registrant's common stock are held by affiliates. The treatment of these persons as affiliates for purposes of this calculation is not conclusive as to whether such persons are, in fact, affiliates of the registrant.

As of February 18, 2022, there were 27,771,585 shares of the registrant's common stock, par value \$0.0001 per share, outstanding.

#### **DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the definitive Proxy Statement relating to the registrant's 2022 Annual Meeting of Stockholders are incorporated by reference into Part III of this Annual Report on Form 10-K to the extent stated herein. Such proxy statement will be filed with the Securities and Exchange Commission within 120 days of the registrant's fiscal year ended December 31, 2021.

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**B. RILEY FINANCIAL, INC.**  
**INDEX TO ANNUAL REPORT ON FORM 10-K**  
**FOR THE FISCAL YEAR ENDED DECEMBER 31, 2021**

	<b>Page</b>
<b><u>PART I</u></b>	
Item 1. <a href="#">Business</a>	1
Item 1A. <a href="#">Risk Factors</a>	13
Item 1B. <a href="#">Unresolved Staff Comments</a>	49
Item 2. <a href="#">Properties</a>	49
Item 3. <a href="#">Legal Proceedings</a>	49
Item 4. <a href="#">Mine Safety Disclosures</a>	49
<b><u>PART II</u></b>	
Item 5. <a href="#">Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities</a>	50
Item 6. <a href="#">Reserved</a>	51
Item 7. <a href="#">Management’s Discussion and Analysis of Financial Condition and Results of Operations</a>	51
Item 7A. <a href="#">Quantitative and Qualitative Disclosures About Market Risk</a>	74
Item 8. <a href="#">Financial Statements and Supplementary Data</a>	75
Item 9. <a href="#">Changes in and Disagreements with Accountants on Accounting and Financial Disclosure</a>	75
Item 9A. <a href="#">Controls and Procedures</a>	75
Item 9B. <a href="#">Other Information</a>	75
Item 9C. <a href="#">Disclosure Regarding Foreign Jurisdictions That Prevent Inspections</a>	75
<b><u>PART III</u></b>	
Item 10. <a href="#">Directors, Executive Officers and Corporate Governance</a>	76
Item 11. <a href="#">Executive Compensation</a>	76
Item 12. <a href="#">Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters</a>	76
Item 13. <a href="#">Certain Relationships and Related Transactions, and Director Independence</a>	76
Item 14. <a href="#">Principal Accountant Fees and Services</a>	76
<b><u>PART IV</u></b>	
Item 15. <a href="#">Exhibits and Financial Statement Schedules</a>	77
Item 16. <a href="#">Form 10-K Summary</a>	83
<a href="#">Signatures</a>	84

## PART I

This Annual Report on Form 10-K (this “Annual Report”) contains forward-looking statements regarding our business, financial condition, results of operations and prospects. Words such as “expect,” “anticipate,” “intend,” “plan,” “believe,” “seek,” “may,” “will,” “should,” “could,” “future,” “likely,” “predict,” “project,” “potential,” “continue,” “estimate” and similar expressions are generally intended to identify forward-looking statements but are not exclusive means of identifying forward-looking statements in this Annual Report. You should not place undue reliance on such forward-looking statements, which are based on the information currently available to us and speak only as of the date on which this Annual Report was filed with the Securities and Exchange Commission (the “SEC”). Because these forward-looking statements involve known and unknown risks and uncertainties, there are important factors that could cause actual results, events or developments to differ materially from those expressed or implied by these forward-looking statements, including our plans, objectives, expectations and intentions and other factors discussed in “Part I—Item 1A. Risk Factors” contained in this Annual Report. We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

*Except as otherwise required by the context, references in this Annual Report to “the Company,” “B. Riley,” “B. Riley Financial,” “we,” “us” or “our” refer to the combined business of B. Riley Financial, Inc. and all of its subsidiaries.*

### Item 1. BUSINESS

B. Riley Financial, Inc. (NASDAQ: RILY) (“B. Riley” or the “Company”) is a diversified financial services platform and opportunistically invests in companies or assets with attractive risk-adjusted return profiles to benefit its shareholders. Through its affiliated subsidiaries, B. Riley provides a full suite of investment banking, corporate finance research, sales, and trading, as well as advisory, valuation, and wealth management, services. The Company’s major business lines include:

- B. Riley Securities, a leading, full service investment bank that provides corporate finance, lending, research, securities lending and sales and trading services to corporate, institutional, and high net worth individual clients. It is nationally recognized for its proprietary small and mid-cap equity research. B. Riley Securities was established from the merger of B. Riley & Co, LLC and FBR Capital Markets & Co. in 2017.
- B. Riley Wealth Management, which provides comprehensive wealth management and brokerage services to individuals and families, corporations and non-profit organizations, including qualified retirement plans, trusts, foundations, and endowments. The firm was formerly known as Wunderlich Securities, Inc., which the Company acquired in July 2017.
- National Holdings Corporation (“National”), which provides wealth management, brokerage, insurance brokerage, tax preparation and advisory services, was acquired in February 2021.
- B. Riley Capital Management, which is a Securities and Exchange Commission (“SEC”) registered investment advisor, that includes B. Riley Asset Management, an advisor to and/or manager of certain private funds.
- B. Riley Advisory Services, which provides expert witness, bankruptcy, financial advisory, forensic accounting, valuation and appraisal, and operations management services to companies, financial institutions, and the legal community. B. Riley Advisory Services is primarily comprised of the bankruptcy and restructuring, forensic accounting, litigation support, and appraisal and valuation practices.
- B. Riley Retail Solutions, which is a leading provider of asset disposition, liquidation, and auction solutions to a wide range of retail and industrial clients.

- B. Riley Real Estate, which advises companies, financial institutions, investors, family offices and individuals on real estate projects worldwide. A core focus of B. Riley Real Estate, LLC is the restructuring of lease obligations in both distressed and non-distressed situations, both inside and outside of the bankruptcy process, on behalf of corporate tenants.
- B. Riley Principal Investments, which identifies attractive investment opportunities and seeks to control or influence the operations of our portfolio company investments to deliver financial and operational improvements that will maximize the Company's free cash flow, and therefore, shareholder returns. The team concentrates on opportunities presented by distressed companies or divisions that exhibit challenging market dynamics. Representative transactions include recapitalization, direct equity investment, debt investment, active minority investment and buyouts.
- Communications consist of United Online, Inc. ("UOL" or "United Online"), which was acquired in July 2016, magicJack VocalTec Ltd. ("magicJack"), which was acquired in November 2018, a 40% equity interest in Lingo Management, LLC ("Lingo"), which was acquired in November 2020, and a mobile virtual network operator business ("Marconi Wireless"), which was acquired in October 2021. Upon receipt of certain regulatory approvals, the Company has the right to acquire an additional 40% equity interest in Lingo. The following briefly describes each such business:
  - UOL is a communications company that offers consumer subscription services and products, consisting of Internet access services and devices under the NetZero and Juno brands.
  - magicJack is a Voice over IP ("VoIP") cloud-based technology and services and wireless mobile communications provider.
  - Lingo is a global cloud/UC and managed service provider.
  - Marconi Wireless is a mobile virtual network operator business that provides mobile phone voice, text, and data services and devices.
- BR Brand Holding ("BR Brands"), in which the Company owns a majority interest, provides licensing of certain brand trademarks. BR Brands owns the assets and intellectual property related to licenses of six brands: Catherine Malandrino, English Laundry, Joan Vass, Kensie Girl, Limited Too and Nanette Lepore as well as investments in the Hurley and Justice brands with Bluestar Alliance LLC ("Bluestar"), a brand management company.

We are headquartered in Los Angeles with over 44 offices throughout the United States including New York, Chicago, Boston, Atlanta, Dallas, Memphis, Metro Washington D.C., West Palm Beach, and Boca Raton.

During the fourth quarter of 2020, the Company realigned its segment reporting structure to reflect organizational management changes. Under the new structure, the valuation and appraisal businesses are reported in the Financial Consulting segment and our bankruptcy, financial advisory, forensic accounting, and real estate consulting businesses that were previously reported in the Capital Markets segment are now reported as part of the Financial Consulting segment. In conjunction with the new reporting structure, the Company recast its segment presentation for all periods presented. During the first quarter of 2021, in connection with the acquisition of National on February 25, 2021, the Company further realigned its segment reporting structure to reflect organizational management changes in the Company's wealth management business and created a new Wealth Management segment that was previously reported as part of the Capital Markets segment in 2020. In conjunction with the new reporting structures, the Company recast its segment presentation for all periods presented.

For financial reporting purposes, we classify our businesses into six operating segments: (i) Capital Markets, (ii) Wealth Management, (iii) Auction and Liquidation, (iv) Financial Consulting, (v) Principal Investments – Communications, and (vi) Brands.

Capital Markets Segment. Our Capital Markets segment provides a full array of investment banking, corporate finance, financial advisory, research, securities lending and sales and trading services to corporate, institutional, and individual clients. Our corporate finance and investment banking services include merger and acquisitions as well as restructuring advisory services to public and private companies, initial and secondary public offerings, and institutional private placements. In addition, we trade equity securities as a principal for our account, including investments in funds managed by our subsidiaries. Our Capital Markets segment also includes our asset management businesses that manage various private and public funds for institutional and individual investors.

Wealth Management Segment. Our Wealth Management segment provides wealth management and tax services to corporate and high net worth clients. We offer comprehensive wealth management services for corporate businesses that include investment strategies, executive services, retirement plans, lending & liquidity resources, and settlement solutions. Our wealth management services for individual client services provide investment management, education planning, retirement planning, risk management, trust coordination, lending & liquidity solutions, legacy planning, and wealth transfer. In addition, we supply market insights to provide unbiased guidance to make important financial decisions. Wealth management resources include market views from our investment strategists and B. Riley Securities' proprietary equity research.

Auction and Liquidation Segment. Our Auction and Liquidation segment utilizes our significant industry experience, a scalable network of independent contractors and industry-specific advisors to tailor our services to the specific needs of a multitude of clients, logistical challenges, and distressed circumstances. Our scale and pool of resources allow us to offer our services across North America as well as parts of Europe, Asia, and Australia. Our Auction and Liquidation segment operates through two main divisions, retail store liquidations and wholesale and industrial assets dispositions. Our wholesale and industrial assets dispositions division operates through limited liability companies that are controlled by us.

Financial Consulting Segment. Our Financial Consulting segment provides services to law firms, corporations, financial institutions, lenders, and private equity firms. These services primarily include bankruptcy, financial advisory, forensic accounting, litigation support, operations management consulting, real estate consulting, and valuation and appraisal services. Our Financial Consulting segment operates through limited liability companies that are wholly owned or majority owned by us.

Principal Investments - Communications Segment. Our Principal Investments - Communications segment consists of businesses which have been acquired primarily for attractive investment return characteristics. Currently, this segment includes, among other investments, UOL, through which we provide consumer Internet access, magicJack, through which we provide VoIP communication and related product and subscription services, and Marconi Wireless, through which we provide mobile phone services and devices.

Brands Segment. Our Brands segment consists of our brand investment portfolio that is focused on generating revenue through the licensing of trademarks and is held by BR Brands.

### **Recent Developments**

On January 19, 2022, we acquired FocalPoint Securities, LLC, an independent investment bank based in Los Angeles. The acquisition is expected to significantly expand B. Riley Securities' mergers and acquisitions ("M&A") advisory business and enhance its debt capital markets and financial restructuring capabilities. Founded in 2002, FocalPoint specializes in M&A, private capital advisory, financial restructuring, and special situation transactions. The firm includes approximately 50 investment banking professionals with deep industry specialization in high-growth sectors such as aerospace and defense, industrials, business services, consumer, healthcare, and technology/media/telecom. Our acquisition of FocalPoint builds upon the momentum and proven execution capabilities of both firms and is in line with our stated intent to expand capabilities in M&A advisory and fixed income. This combination provides strategic and financial sponsor clients with access to both firms' proven execution capabilities and a full suite of end-to-end services from a single platform.

On January 30, 2020, the World Health Organization ("WHO") announced a global health emergency because of a new strain of coronavirus (the "COVID-19 outbreak"). In March 2020, the WHO classified the COVID-19 outbreak as a pandemic, based on the rapid increase in exposure globally. During the fourth quarter of 2021, the full impact of the COVID-19 outbreak continued to evolve, with the emergence of variant strains and breakthrough infections becoming prevalent both in the U.S. and worldwide. As the U.S. economy recovers, aided by stimulus packages and fiscal and monetary policies, inflation has been rising at historically high rates, and the Federal Reserve has signaled that it will begin increasing the target federal funds effective rate. The impact of the COVID-19 outbreak and these related matters on our results of operations, financial position and cash flows will depend on future developments, including the duration and spread of the outbreak and related advisories and restrictions and the success of vaccines and natural immunity in controlling the pandemic. These developments and the impact of the COVID-19 outbreak on the financial markets and the overall economy continue to be highly uncertain and cannot be predicted. If the financial markets and/or the overall economy continue to be impacted, our results of operations, financial position and cash flows may be materially adversely affected.

## **B. Riley Securities**

### *Investment Banking and Corporate Finance*

B. Riley Securities' investment banking professionals provide equity and debt capital raising, merger and acquisition, financial advisory and restructuring advisory services to both private and publicly traded companies. Those services include follow-on public offerings, debt and equity private placements, debt refinancing, corporate debt and equity security repurchases, and buy-side and sell-side representation, divestitures/carveouts, leveraged buyouts, management buyouts, strategic alternatives reviews, fairness opinions, valuations, return-of-capital advisory, hostile/activist advisory, and options trading programs.

### *Sales, Trading and Corporate Services*

Our sales and trading professionals distribute B. Riley Securities' proprietary equity research products to our institutional investor clients and high net worth individuals. B. Riley Securities sales and trading also sells the securities of companies in which B. Riley Securities acts as an underwriter and executes equity trades on behalf of clients. We maintain active trading relationships with substantially all major institutional money managers. Our equity and fixed income traders make markets in over 1,000 securities. B. Riley Securities also conducts securities lending activities which involves the borrowing and lending of equity and fixed income securities. Our corporate services include retail orders, block trades, Rule 144 transactions, cashless exercise of options, and corporate equity repurchase programs.

### *Equity Research*

Our equity research is focused on fundamentals-based research. Our research focuses on an in-depth analysis of earnings, cash flow trends, balance sheet strength, industry outlook, and strength of management that involves extensive meetings with key management, competitors, channel partners and customers. We provide research on all sizes of firms; however, our research primarily focuses on small and mid-cap stocks that are under-followed by Wall Street. Our analysts regularly communicate their findings through Research Updates and daily Morning Notes.

Our research department includes research analysts maintaining coverage on a variety of companies in a variety of industry sectors. Our research department annually organizes non-deal road shows for issuers in our targeted industries.

### *Proprietary Trading*

We engage in trading activities for strategic investment purposes (i.e. proprietary trading) utilizing the firm's capital. Proprietary trading activities include investments in public and private stock and debt securities.

B. Riley Securities is reported in our Capital Markets segment for financial reporting purposes.

## **B. Riley Capital Management**

We provide investment management services under B. Riley Capital Management, LLC, which is a registered investment advisor that manages private investment funds, including a fund of funds. All of the funds managed typically invest in both public and private equity and debt. Investors in the various funds include institutional, high net worth, and individual investors. GACP is the general partner of GACP I, L.P. and GACP II, L.P., direct lending funds managed by WhiteHawk Capital Partners, L.P. pursuant to an investment advisory services agreement, that provide senior secured loans and second lien secured loan facilities to middle market public and private U.S. companies.

B. Riley Capital Management is reported in our Capital Markets segment for financial reporting purposes.

## **B. Riley Wealth Management and National**

### *Wealth Management*

B. Riley Wealth Management and National provide comprehensive wealth management and brokerage services to individuals and families, corporations and non-profit organizations, including qualified retirement plans, trusts, foundations and endowments. Our financial advisors provide a broad range of investments and services to our clients, including financial planning services, insurance brokerage, and tax preparation.

B. Riley Wealth Management and National are reported in our Wealth Management segment for financial reporting purposes.

## **B. Riley Advisory Services**

### *Financial Advisory Services*

B. Riley Advisory Services provides consulting services to shareholders, creditors and companies which includes expert witness, bankruptcy, due diligence, financial advisory, forensic accounting, litigation support, and crisis management. These services are primarily composed of the former Glass Ratner business.

The financial advisory services business of B. Riley Advisory Services compliments the restructuring services provided by B. Riley Securities.

The financial advisory services business of B. Riley Advisory Services is reported in our Financial Consulting segment for financial reporting purposes.

### *Valuation and Appraisal*

Our appraisal teams provide independent appraisals to financial institutions, lenders, private equity firms and other providers of capital for estimated liquidation values of assets. These teams include experts specializing in particular industry niches and asset classes. We provide valuation and appraisal services across four general categories:

Consumer and Retail Inventory. Representative types of appraisals and valuations include inventory of specialty apparel retailers, department stores, jewelry retailers, sporting goods retailers, mass and discount merchants, home furnishing retailers and footwear retailers.

Wholesale and Industrial Inventory. Representative types of appraisals and valuations include inventory held by manufacturers or distributors of automotive parts, chemicals, food and beverage products, wine and spirits, building and construction products, industrial products, metals, paper and packaging.

Machinery and Equipment. Representative types of asset appraisals and valuations include a broad range of equipment utilized in manufacturing, construction, transportation and healthcare.

Intangible Assets. Representative types of asset appraisals and valuations include intellectual property, goodwill, brands, logos, trademarks and customer lists.

We provide valuation and appraisal services on a pre-negotiated flat fee basis.

The valuation and appraisal services business of B. Riley Advisory Services described above is reported in our Financial Consulting segment for financial reporting purposes.

### *Operations Management Services*

Our Operations Management Services teams work with companies to fix troubled operations by improving their profitability, cash flow and enterprise value. Focus areas include due diligence, acquisitions, executive management, launch coordination, lean six sigma design and implementation, purchasing and inventory management, and quality systems. These services are reported in our Financial Consulting segment for financial reporting purposes.

## **B. Riley Retail Solutions**

### *Retail Store Liquidations and Wholesale and Industrial Liquidations*

We enable our clients to quickly and efficiently dispose of under-performing assets and generate cash from excess inventory by conducting or assisting in retail store closings, going out of business sales, bankruptcy sales and fixture sales. Financial institution and other capital providers rely on us to maximize recovery rates in distressed asset sales and in retail bankruptcy situations. Additionally, healthy, mature retailers utilize our proven inventory management and strategic disposition solutions, relying on our extensive network of retail professionals, to close unproductive stores and dispose of surplus inventory and fixtures as existing stores are updated.

We often conduct large retail liquidations that entail significant capital requirements through collaborative arrangements with other liquidators. By entering into an agreement with one or more collaborators, we are able to bid on larger engagements that we could not conduct on our own due to the significant capital outlay involved, number of independent contractors required or financial risk associated with the particular engagement. We act as the lead partner in many of the collaborative arrangements that we enter into, meaning that we have primary responsibility for the due diligence, contract negotiation and execution of the engagement.

We design and implement customized disposition programs for our clients seeking to convert excess wholesale and industrial inventory and operational assets into capital. We dispose of a wide array of assets including, among others, equipment related to transportation, heavy mobile construction, energy exploration and services, metal fabrication, food processing, semiconductor fabrication, and distribution services. We manage projects of all sizes and scopes across a variety of asset categories. We believe that our databases of information regarding potential buyers that we have collected from past transactions and engagements, our nationwide name recognition and experience with alternative distribution channels allow us to provide superior wholesale and industrial disposition services.

B. Riley Retail Solutions provides the foregoing services to clients on a guarantee, fee or outright purchase basis.

Guarantee. When providing services on a guarantee basis, we guarantee the client a specific recovery often expressed as a percentage of retail inventory value or wholesale inventory cost or, in the case of machinery or equipment, a set dollar amount. This guarantee is often required to be supported by a letter of credit, a cash deposit or a combination thereof. Cash deposits are typically funded in part with available cash together with short term borrowings under our credit facilities. Often when we provide auction or liquidation services on a guarantee basis, we do so through a collaborative arrangement with other service providers. In this situation, each collaborator agrees to provide a certain percentage of the guaranteed amount to the client through a combination of letters of credit, cash and financing. If we are engaged individually, we receive 100% of the net profit, less debt financing fees, sale related expenses (if any) and any share of the profits due to the client as a result of any profit sharing arrangement entered into based on a pre-negotiated formula. If the engagement was conducted through a collaborative arrangement, the profits or losses are divided among us and our partner or partners as set forth in the agreement governing the collaborative arrangement. If the net sales proceeds after expenses are less than the guarantee, we, together with our partners if the engagement was conducted through a collaborative arrangement, are responsible for the shortfall and will recognize a loss on the engagement.

Fee. When we provide services on a fee basis, clients pay a pre-negotiated flat fee for the services provided, a percentage of asset sales generated or a combination of both.

Outright Purchase. When providing services on an outright purchase basis, we purchase the assets from the client and typically sell them at auction, orderly liquidation, through a third-party broker or, less frequently, as augmented inventory in conjunction with another liquidation that we are conducting. In an outright purchase, we take, together with any collaboration partners, title to the assets and absorb the profit or loss associated with the asset disposition.

The retail store liquidations and wholesale and industrial asset dispositions business of B. Riley Retail Solutions described above is reported in our Auction and Liquidation segment for financial reporting purposes.

## **B. Riley Real Estate**

We work with real estate owners and tenants through all stages of the real estate life cycle. Our real estate advisors advise companies, financial institutions, investors, family offices and individuals on real estate projects worldwide.

### *Acquisitions and Sales*

We engage in a variety of acquisition strategies, including purchasing real estate and mortgages. We provide equity and “rescue” capital and participate in joint ventures.

### *Auctions*

As bankruptcy auction professionals, we represent debtors in lease restructuring and renegotiations and the sale of real property.

### *Financial Advisory Services*

We represent stakeholders in out-of-court restructurings, loan sales, lease renegotiation and restructuring, strategic investing and managing difficult refinancing transactions.

### *Liquidations and Loan Sales*

We execute real estate liquidations and loan sale transactions in various market segments on both the “buy” side and the “sell” side.

### *Principal Investments and Financing*

We maintain strategic relationships with institutional investors and high net worth clients that are seeking real estate investments that are opportunistic, value-added and traditional. Our strategic partners look to us to identify, underwrite, structure and close these principal investment transactions.

B. Riley Real Estate services described above is reported in our Financial Consulting segment for financial reporting purposes.

## **B. Riley Principal Investments**

### *Principal Investments*

B. Riley Principal Investments identifies attractive investment opportunities and seeks to control or influence the operations of our investments to deliver financial and operational improvements to its portfolio companies in order to maximize the Company’s free cash flow, and therefore, shareholder returns. Our team concentrates on opportunities presented by distressed companies or divisions that exhibit challenging market dynamics. Representative transactions include recapitalization, direct equity investment, debt investment, active minority investment and buyouts.

### *Venture Capital*

B. Riley Venture Capital invests in late-stage private growth companies with a path towards public markets. We are not a venture fund; rather, investments are made off-balance sheet and syndicated across our institutional, banking and retail client base.

### *Communications*

As part of our principal investment communications strategy, we acquired UOL in July 2016; we acquired magicJack in November 2018; we acquired a 40% equity interest in Lingo in November 2020; and we acquired Marconi Wireless in October 2021. Upon receipt of certain regulatory approvals, we have the right with the ability to acquire an additional 40% equity interest in Lingo. UOL’s primary pay service is Internet access, offered under the NetZero and Juno brands. Internet access includes dial-up service, mobile broadband and DSL. magicJack is a VoIP cloud-based technology and services and wireless mobile communications provider and the inventor of the magicJack devices. Lingo is a global cloud/UC and managed service provider. Marconi Wireless is a mobile virtual network operator that provides mobile phone voice, text, and data services and devices.

The Principal Investment and Venture Capital businesses described above are reported in our Capital Markets segment and our Communications businesses are reported in our Principal Investments – Communications segment for financial reporting purposes.

## **Brands**

Our brand investment portfolio focuses on generating revenue through the licensing of trademarks. The Company holds a majority ownership interest in BR Brands, which owns the assets and intellectual property related to licenses of six brands: Catherine Malandrino, English Laundry, Joan Vass, Kensie Girl, Limited Too and Nanette Lepore as well as investments in the Hurley and Justice brands with Bluestar. The Company intends to grow licensing revenue from the brand holdings in partnership with Bluestar by leveraging its extensive relationships and strategic partnerships in the retail sector. The Company intends to pursue future acquisitions of consumer brands, intellectual property, trademarks and licenses, and participate in select transactions as an equity owner.

The brand businesses described above are reported in our Brands segment for financial reporting purposes.

## Customers

We serve retail, corporate, capital provider and individual customers across our services lines. The services provided to these customers were under short-term liquidation contracts that generally do not exceed a period of six months. There were no recurring revenues from year-to-year in connection with the services we performed under these contracts.

### *B. Riley Securities*

We are engaged by corporate customers, including publicly held and privately owned companies, to provide investment banking, corporate finance, restructuring advisory, research and sales and trading services. We also provide corporate finance, research, wealth management, and sales and trading services to high net worth individuals. We maintain client relationships with companies in the consumer goods, industrials, energy, financial services, healthcare, real estate, strategy, and technology industries.

### *B. Riley Capital Management*

Investors in the various funds of B. Riley Capital Management include institutional, high net worth, and individual investors.

### *B. Riley Wealth Management and National*

We act as financial wealth management advisors to individuals, families, small businesses, non-profit organizations, and qualified retirement plans. Our investment services are primarily comprised of asset management services to meet the financial plans, financial goals and needs of our customers. We service our customers through a network of 42 branch offices located in 14 states primarily located in the Mid-west and Southern section of the United States.

### *B. Riley Advisory Services*

We provide specialty financial advisory services to companies, shareholders, creditors and investors on complex business problems and critical board level agenda items including transaction advisory and due diligence, fraud investigations, corporate litigation, business valuations, crisis management and bankruptcy. We provide bankruptcy and restructuring services, forensic accounting and litigation support, valuation services, and real estate consulting. Additionally, we are engaged by financial institutions, lenders, private equity firms and other capital providers, as well as professional service providers, to provide valuation and appraisal services. We have extensive experience in the appraisal and valuation of retail and consumer inventories, wholesale and industrial inventories, machinery and equipment, intellectual property and real estate.

### *B. Riley Retail Solutions*

Our retail Auction and Liquidation clients include financially healthy retailers as well as distressed retailers, bankruptcy professionals, financial institution workout groups and a wide range of professional service providers. Some retail segments in which we specialize include apparel, arts and crafts, department stores, discount stores, drug / health and beauty, electronics, footwear, grocery stores, hardware / home improvement, home goods and linens, jewelry, office / party supplies, specialty stores, and sporting goods. We also provide wholesale and industrial auction services and customized disposition programs to a wide range of clients.

### *B. Riley Real Estate*

Our Real Estate clients include real property owners and tenants in a wide variety of sectors and include both healthy and distressed businesses.

### *B. Riley Principal Investments*

B. Riley Principal Investments serves businesses seeking capital investment, including debt or equity financing.

### *United Online*

Our Internet access services are available to customers, which are primarily comprised of individuals, in more than 12,000 cities across the U.S. and Canada. Generally, our Internet access customers also subscribe to value-added features that include antivirus software and enhanced email storage. Our advertising customers primarily include business customers that market products and services over the Internet.

### *magicJack*

magicJack provides complete phone service for home, enterprise and while traveling for retailers, wholesalers or directly to customer over the period associated with the access right period. The Company provides customers with an ability to make and receive telephone calls through their smart phones, add a second phone number to their smart phone and purchase prepaid minutes to place telephone calls through the magicJack device or mobile apps to locations outside of the U.S. and Canada.

### *Marconi Wireless*

Our mobile phone services and products are available to customers, which are primarily comprised of individuals, located throughout the U.S. The Company obtains the mobile services it provides to customers from a major mobile carrier.

### *Brands*

Our brand investment portfolio focuses on generating revenue through the licensing of trademarks. The Company holds a majority ownership interest in BR Brand, which owns the assets and intellectual property related to licenses of six brands: Catherine Malandrino, English Laundry, Joan Vass, Kensie Girl, Limited Too and Nanette Lepore as well as an investment in the Hurley and Justice Brands with Bluestar Alliance LLC (“Bluestar”). The Company intends to grow licensing revenue from the brand holdings in partnership with Bluestar by leveraging its extensive relationships and strategic partnerships in the retail sector. The Company intends to pursue future acquisitions of consumer brands, intellectual property, trademarks and licenses, and participate in select transactions as an equity owner.

## **Competition**

### *B. Riley Securities, B. Riley Capital Management, B. Riley Wealth Management and National, and B. Riley Advisory Services*

We face intense competition for our Capital Markets services. Since the mid-1990s, there has been substantial consolidation among U.S. and global financial institutions. In particular, a number of large commercial banks, insurance companies and other diversified financial services firms have merged with other financial institutions or have established or acquired broker-dealers. During 2008, the failure or near-collapse of a number of very large financial institutions led to the acquisition of several of the most sizeable U.S. investment banking firms, consolidating the financial industry to an even greater extent. Currently, our competitors are other investment banks, bank holding companies, brokerage firms, merchant banks and financial advisory firms. Our focus on our target industries also subjects us to direct competition from a number of specialty securities firms and smaller investment banking boutiques that specialize in providing services to these industries.

The industry trend toward consolidation has significantly increased the capital base and geographic reach of many of our competitors. Our larger and better-capitalized competitors may be better able than we are to respond to changes in the investment banking industry, to recruit and retain skilled professionals, to finance acquisitions, to fund internal growth and to compete for market share generally. Many of these firms have the ability to offer a wider range of products than we do, including loans, deposit-taking and insurance, in addition to brokerage, asset management and investment banking services, all of which may enhance their competitive position relative to us. These firms also have the ability to support investment banking and securities products with commercial banking, insurance and other financial services revenues in an effort to gain market share, which could result in downward pricing pressure in our businesses. In particular, the trend in the equity underwriting business toward multiple book runners and co-managers has increased the competitive pressure in the investment banking industry and has placed downward pressure on average transaction fees.

As we seek to expand our asset management business, we face competition in the pursuit of investors for our investment funds, in the identification and completion of investments in attractive portfolio companies or securities, and in the recruitment and retention of skilled asset management professionals.

### *Other Business Lines*

We also face intense competition in our other service areas. While some competitors are unique to specific service offerings, some competitors cross multiple service offerings. A number of companies provide services or products to the Retail Solutions and real estate markets, and existing and potential clients can, or will be able to, choose from a variety of qualified service providers. Some of our competitors may even be able to offer discounts or other preferred pricing arrangements. In a cost-sensitive environment, such arrangements may prevent us from acquiring new clients or new engagements with existing clients. Some of our competitors may be able to negotiate secure alliances with clients and affiliates on more favorable terms, devote greater resources to marketing and promotional campaigns or to the development of technology systems than us. In addition, new technologies and the expansion of existing technologies with respect to the online auction business may increase the competitive pressures on us. We must also compete for the services of skilled professionals. There can be no assurance that we will be able to compete successfully against current or future competitors, and competitive pressures we face could harm our business, operating results and financial condition.

We face competition for our retail services from traditional liquidators as well as Internet-based liquidators such as overstock.com and eBay. Our wholesale and industrial services competitors include traditional auctioneers and fixed site auction houses that may specialize in particular industries or geographic regions as well as other large, prestigious or well-recognized auctioneers. We also face competition and pricing pressure from the internal remarketing groups of our clients and potential clients and from companies that may choose to liquidate or auction assets and/or excess inventory without assistance from service providers like us. We face competition for our Retail Solutions businesses from large accounting, consulting and other professional service firms as well as other valuation, financial consulting and advisory firms. We face competition for our Real Estate Services from large real estate brokerage and advisory firms.

### *United Online*

The U.S. market for Internet and broadband services is highly competitive. We compete with numerous providers of broadband services, as well as other dial-up Internet access providers. Our principal competitors for broadband services include, among others, local exchange carriers, wireless and satellite service providers, cable service providers, and broadband resellers. These competitors include established providers such as AT&T, Verizon, Sprint and T-Mobile. Our principal dial-up Internet access competitors include established online service and content providers, such as AOL and MSN, and independent national Internet service providers, such as EarthLink. We believe the primary competitive factors in the Internet access industry are speed, price, coverage area, ease of use, scope of services, quality of service, and features. Our dial-up Internet access services do not compete favorably with broadband services with respect to certain of these factors, including, but not limited to, speed.

### *magicJack and Marconi Wireless*

The principal competitors for our products and services include the traditional telephone service providers, such as AT&T, Inc., CenturyLink, Inc. and Verizon Communications Inc., which provide telephone service using the public switched telephone network. Certain of these traditional providers have also added, or are planning to add, broadband telephone services to their existing telephone and broadband offerings. We also face, or expect to face, competition from cable companies, such as Cablevision Systems Corp., Charter Communications, Inc., Comcast Corporation, Cox Communications, Inc. and Time Warner Cable (a division of Time Warner Inc.), which offer broadband telephone services to their existing cable television and broadband offerings. Further, wireless providers, including AT&T Mobility, Inc., Sprint Corporation, T-Mobile USA Inc., and Verizon Wireless, Inc. offer services that some customers may prefer over wireline-based service. In the future, as wireless companies offer more minutes at lower prices, their services may become more attractive to customers as a replacement for broadband or wireline-based phone service.

We face competition on magicJack device sales from Apple, Samsung, Motorola and other manufacturers of smart phones, tablets and other handheld wireless devices. Also, we compete against established alternative voice communication providers, such as Vonage, Google Voice, Ooma, and Skype, which is another non-interconnected voice provider, and may face competition from other large, well-capitalized Internet companies. In addition, we compete with independent broadband telephone service providers.

## *Brands*

Our brand investment portfolio competes with companies that own other brands and trademarks, as these companies could enter into similar licensing arrangements with retailers and wholesalers in the United States and internationally. These arrangements could be with our existing retail and wholesale partners, thereby competing with us for consumer attention and limited floor or rack space in the same stores in which our branded products are sold and vying with us for the time and resources of the retailers and wholesale licensees that manufacture and distribute our products. These companies may be able to respond more quickly to changes in retailer, wholesaler and consumer preferences and devote greater resources to brand acquisition, development and marketing. We may not be able to compete effectively against these companies.

## **Regulation**

As a participant in the financial services industry, we are subject to complex and extensive regulation of most aspects of our business by U.S. federal and state regulatory agencies, self-regulatory organizations and securities exchanges. The laws, rules and regulations comprising the regulatory framework are constantly changing, as are the interpretation and enforcement of existing laws, rules and regulations. The effect of any such changes cannot be predicted and may direct the manner of our operations and affect our profitability.

Our broker-dealer subsidiaries are subject to regulations governing every aspect of the securities business, including the execution of securities transactions; capital requirements; record-keeping and reporting procedures; relationships with customers, including the handling of cash and margin accounts; the experience of and training requirements for certain employees; and business interactions with firms that are not members of regulatory bodies.

Our broker-dealer subsidiaries are registered with the SEC and are members of FINRA. FINRA is a self-regulatory body composed of members such as our broker-dealer subsidiaries that have agreed to abide by the rules and regulations of FINRA. FINRA may expel, fine and otherwise discipline member firms and their employees. Our broker-dealer subsidiaries are licensed as broker-dealers in all 50 states in the U.S., requiring us to comply with the laws, rules and regulations of each such state. Each state may revoke the license to conduct securities business, fine and otherwise discipline broker-dealers and their employees. We are also registered with NASDAQ and must comply with its applicable rules.

Our broker-dealer subsidiaries are also subject to the SEC's Uniform Net Capital Rule, Rule 15c3-1, which may limit our ability to make withdrawals of capital from our broker-dealer subsidiaries. The Uniform Net Capital Rule sets the minimum level of net capital a broker-dealer must maintain and also requires that a portion of its assets be relatively liquid. In addition, our broker-dealer subsidiaries are subject to certain notification requirements related to withdrawals of excess net capital.

We are also subject to the USA PATRIOT Act of 2001 (the Patriot Act), which imposes obligations regarding the prevention and detection of money-laundering activities, including the establishment of customer due diligence and customer verification, and other compliance policies and procedures. The conduct of research analysts is also the subject of rule-making by the SEC, FINRA and the federal government through the Sarbanes-Oxley Act. These regulations require certain disclosures by, and restrict the activities of, research analysts and broker-dealers, among others. Failure to comply with these requirements may result in monetary, regulatory and, in the case of the USA Patriot Act, criminal penalties.

Our asset management subsidiaries, B. Riley Capital Management, LLC and B. Riley Wealth Management, are SEC-registered investment advisers, and accordingly subject to regulation by the SEC. Requirements under the Investment Advisors Act of 1940 include record-keeping, advertising and operating requirements, and prohibitions on fraudulent activities.

We are subject to federal and state consumer protection laws, including regulations prohibiting unfair and deceptive trade practices. In addition, numerous states and municipalities regulate the conduct of auctions and the liability of auctioneers. We and/or our auctioneers are licensed or bonded in the following states where we conduct, or have conducted, retail, wholesale or industrial asset auctions: California, Florida, Georgia, Illinois, Massachusetts, Ohio, South Carolina, Texas, Virginia and Washington. In addition, we are licensed or obtain permits in cities and/or counties where we conduct auctions, as required. If we conduct an auction in a state where we are not licensed or where reciprocity laws do not exist, we will work with an auctioneer of record in such state. We and/or our real estate professionals are licensed in Illinois, California, Florida and Georgia. When we conduct real estate activities that require licensure in a state where we are not licensed or where reciprocity laws do not exist, we will work with a broker of record in such state.

UOL is subject to a number of international, federal, state, and local laws and regulations, including, without limitation, those relating to taxation, bulk email or "spam," advertising, user privacy and data protection, consumer protection, antitrust, export, and unclaimed property. In addition, proposed laws and regulations relating to some or all of the foregoing, as well as to other areas affecting our businesses, are continuously debated and considered for adoption in the U.S. and other countries, and such laws and regulations could be adopted in the future. For additional information, see "Risk Factors," which appears in Item 1A of this Annual Report on Form 10-K.

magicJack provides broadband telephone services using VoIP technology as well as resells mobile services. In the United States, the Federal Communications Commission (“FCC” or the “Commission”) has asserted limited statutory jurisdiction and regulatory authority over the operations and offerings of providers of broadband telephone services, such as magicJack that offer non-interconnected VoIP services. The scope of the FCC regulations applicable to magicJack’s broadband telephone operations and resold mobile services may change. Some of magicJack’s operations are also subject to regulation by state public utility commissions.

## **Human Capital**

As of December 31, 2021, we had 1,406 full time employees who comprise a diverse team, including seasoned experts in our various lines of business. Since our inception, our human capital focus has been to gather top talent, with the expertise to lead in every sector, creating a group of collaborative, innovative and independent thinkers who adopt a unique approach to serving our clients and customers. Management appreciates, and never takes for granted, that without the expertise and dedication of our talented professionals, our firm would cease to exist. In that regard, we are dedicated to our people above all else. We have made a commitment to provide the direction, support and resources needed for our team members to succeed both professionally and personally.

An entrepreneurial spirit is the epitome of the B. Riley culture. We thrive in a collaborative environment and our culture is one that empowers the individual to grow and succeed through mentorship and that celebrates successes. We work to attract talent that will mesh with our entrepreneurial, collaborative, and fast-passed environment. Junior staff members have a unique opportunity to learn at a rapid pace from accessible leaders who are all recognized experts across several practices and sectors.

In 2019, we launched our Ambassador program to help build intra and inter-organizational relationships, facilitate collaborative knowledge sharing, and to identify and support emerging leaders. Each of our major functional groups hand-pick rising stars to serve as the “face” of that group. Ambassadors are selected based on their demonstration that they are highly motivated for growth at the firm. This leadership development program is one example of how we work to provide development opportunities to our employees and expand their networks within the B. Riley platform.

We strive to attract a diverse group of candidates within our firm and support the expansion of diversity within the industries in which we operate. By participating in targeted job fairs and similar events we seek out diverse talent to recruit to our firm. We partner with a nonprofit foundation to develop industry education programs that support developing diverse leaders as they prepare to embark upon their careers, and we look forward to expanding our efforts.

We offer competitive compensation and benefits to support our employees’ wellbeing and reward strong performance. Our pay for performance compensation philosophy is designed to reward employees for achievement and to align employee interests with the firm’s long-term growth. Our benefits program includes healthcare, wellness initiatives, retirement offerings, paid time off and flexible leave arrangements. We also offer all employees access to our employee assistance program, and support flexible employment arrangements, such as remote work that empower individuals to pursue a work/life balance model that provides personal flexibility while supporting high level of productivity and client service.

Workplace health and safety is a vital aspect of running our business. We believe that safety must always be an integral part of any function or service performed, and the protection of our employees, visitors and event attendees is our utmost priority. We have a business continuity plan in place that allow us to respond to threats to our health and safety, while ensuring that we can continue to provide quality service to our clients and shareholders at all times. During the COVID-19 pandemic that began in early 2020, we adopted a work-from-home policy for our professionals designed to safeguard our employees’ health and safety without a disruption to client service, which has, periodically, required personnel to work from home during acute phases of the pandemic, and has otherwise permitted a voluntary return to the office based on local conditions. We continuously monitor the evolution of the COVID-19 pandemic as it affects our personnel.

## **Available Information**

We were incorporated in Delaware in May 2009. We maintain a website at [www.brileyfin.com](http://www.brileyfin.com). The information on our website is not a part of, or incorporated in, this Annual Report. We file annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, proxy and information statements, among other reports and filings, with the SEC, and make available, free of charge, on or through our website, such reports and filings and amendments thereto filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. The public may obtain copies of these reports and filings and any amendments thereto at the SEC’s Internet site, [www.sec.gov](http://www.sec.gov). Our Board has adopted a Code of Business Conduct and Ethics that applies to all of our directors, officers and employees. The Code of Business Conduct and Ethics is available for review on our website at <http://ir.brileyfin.com/corporate-governance>. Each of our directors, employees and officers, including our Chief Executive Officer, Chief Financial Officer and Chief Accounting Officer, and all of our other principal executive officers, are required to comply with the Code of Business Conduct and Ethics. Any changes to or waiver of our Code of Business Conduct and Ethics for senior financial officers, executive officers or Directors will be posted on that website.

## Item 1A. Risk Factors.

Given the nature of our operations and services we provide, and as described in more detail below, a wide range of factors could materially affect our operations and profitability. The risks and uncertainties described below are not the only risks and uncertainties facing us. Additional risks and uncertainties not presently known or that are currently considered to be immaterial may also materially and adversely affect our business operations or stock price.

### Summary Risk Factors

Some of the factors that could materially and adversely affect our business, financial condition, results of operations and cash flows include, but are not limited to, the following:

- Our revenues and results of operations are volatile and difficult to predict.
- Conditions in the financial markets and general economic conditions, including the ongoing COVID-19 pandemic, have impacted and may continue to impact our ability to generate business and revenues, which may cause significant fluctuations in our stock price.
- Climate change could have a material negative impact on us and our customers and counterparties.
- Our exposure to legal liability is significant and could lead to substantial damages.
- Financial services firms have been subject to increased scrutiny over the last several years, increasing the risk of financial liability and reputational harm resulting from adverse regulatory actions.
- Our failure to maintain effective internal control over financial reporting in accordance with Section 404 of the Sarbanes-Oxley Act could have a material adverse effect on our financial condition, results of operations and business and the price of our common stock and other securities.
- We may enter into new lines of business, make strategic investments or acquisitions or enter into joint ventures, each of which may result in additional risks and uncertainties for our business.
- Our corporate finance and strategic advisory engagements are singular in nature and do not generally provide for subsequent engagements.
- We have made and may make principal investments in relatively high-risk, illiquid assets that often have significantly leveraged capital structures, and we may fail to realize any profits from these activities for a considerable period of time or lose some or all of the principal amount we invest in these activities.
- We are exposed to credit risk from a variety of our activities, including loans, lines of credit, guarantees and backstop commitments, and we may not be able to fully realize the value of the collateral securing certain of our loans.
- We may incur losses as a result of “guarantee” based engagements that we enter into in connection with our auction and liquidation solutions business.
- We depend on financial institutions as primary clients for our financial consulting business. Consequently, the loss of any financial institutions as clients may have an adverse impact on our business.
- The asset management business is intensely competitive.
- Poor investment performance may decrease assets under management and reduce revenues from and the profitability of our asset management business.
- Our communications businesses compete against large companies, many of whom have significantly more financial and marketing resources, and our business will suffer if we are unable to compete successfully.
- Dial-up and DSL pay accounts may decline faster than expected and adversely impact our business.
- The failure of our licensees to sell products that generate royalties to us, to pay us royalties pursuant to their license agreements with us, or to renew these agreements could negatively affect our results of operations and financial condition.

- We operate in highly competitive industries. Some of our competitors may have certain competitive advantages, which may cause us to be unable to effectively compete with or gain market share from our competitors.
- Security breaches and other disruptions could compromise our information and expose us to liability, which would cause our business and reputation to suffer.
- Anti-takeover provisions under our charter documents and Delaware law could delay or prevent a change of control and could also limit the market price of our stock.
- Because of their significant stock ownership, some of our existing stockholders will be able to exert control over us and our significant corporate decisions.
- Our common stock price may fluctuate substantially, and your investment could suffer a decline in value.
- We may not pay dividends regularly or at all in the future.
- Our level of indebtedness, and restrictions under such indebtedness, could adversely affect our operations and liquidity.

### **Risks Related to Global and Economic Conditions**

#### ***Our revenues and results of operations are volatile and difficult to predict.***

Our revenues and results of operations fluctuate significantly from quarter to quarter, due to a number of factors. These factors include, but are not limited to, the following:

- Our ability to attract new clients and obtain additional business from our existing client base;
- The number, size and timing of mergers and acquisition transactions, capital raising transactions and other strategic advisory services where we act as an adviser on our Auction and Liquidation and investment banking engagements;
- The extent to which we acquire assets for resale, or guarantee a minimum return thereon, and our ability to resell those assets at favorable prices;
- Variability in the mix of revenues from the Auction and Liquidation and Financial Consulting businesses;
- The rate of decline we experience from our dial-up and DSL Internet access pay accounts in our UOL business as customers continue to migrate to broadband access which provides faster Internet connection and download speeds offered by our competitors;
- The rate of growth of new service areas;
- The types of fees we charge clients, or other financial arrangements we enter into with clients; and
- Changes in general economic and market conditions, including the effects of the ongoing COVID-19 pandemic, or an outbreak of another highly infectious or contagious disease.

We have limited or no control over some of the factors set forth above and, as a result, may be unable to forecast our revenues accurately. For example, our investment banking revenues are typically earned upon the successful completion of a transaction, the timing of which is uncertain and beyond our control. A client's acquisition transaction may be delayed or terminated because of a failure to agree upon final terms with the counterparty, failure to obtain necessary regulatory consents or board or stockholder approvals, failure to secure necessary financing, adverse market conditions or unexpected financial or other problems in the business of a client or a counterparty. If the parties fail to complete a transaction on which we are advising or an offering in which we are participating, we will earn little or no revenue from the contemplated transaction.

We rely on projections of revenues in developing our operating plans for the future and will base our expectations regarding expenses on these projections and plans. If we inaccurately forecast revenues and/or earnings, or fail to accurately project expenses, we may be unable to adjust our spending in a timely manner to compensate for these inaccuracies and, as a result, may suffer operating losses and such losses could have a negative impact on our financial condition and results of operations. If, for any reason, we fail to meet company, investor or analyst projections of revenue, growth or earnings, the market price of the common stock could decline and you may lose all or part of your investment.

*Conditions in the financial markets and general economic conditions, including the ongoing COVID-19 pandemic, have impacted and may continue to impact our ability to generate business and revenues, which may cause significant fluctuations in our stock price.*

- Our opportunity to act as underwriter or placement agent could be adversely affected by a reduction in the number and size of capital raising transactions or by competing sources of equity.
- The number and size of mergers and acquisitions transactions or other strategic advisory services where we act as adviser could be adversely affected by continued uncertainties in valuations related to asset quality and creditworthiness, volatility in the equity markets, and diminished access to financing.
- Market volatility could lead to a decline in the volume of transactions that we execute for our customers and, therefore, to a decline in the revenue we receive from commissions and spreads.
- We may experience losses in securities trading activities, or as a result of write-downs in the value of securities that we own, as a result of deteriorations in the businesses or creditworthiness of the issuers of such securities.
- We may experience losses or write downs in the realizable value of our proprietary investments due to the inability of companies we invest in to repay their borrowings.
- Our access to liquidity and the capital markets could be limited, preventing us from making proprietary investments and restricting our sales and trading businesses.
- We may incur unexpected costs or losses as a result of the bankruptcy or other failure of companies for which we have performed investment banking services to honor ongoing obligations such as indemnification or expense reimbursement agreements.
- Sudden sharp declines in market values of securities can result in illiquid markets and the failure of counterparties to perform their obligations, which could make it difficult for us to sell securities, hedge securities positions, and invest funds under management.
- As an introducing broker to clearing firms, we are responsible to the clearing firm and could be held liable for the defaults of our customers, including losses incurred as the result of a customer's failure to meet a margin call. When we allow customers to purchase securities on margin, we are subject to risks inherent in extending credit. This risk increases when a market is rapidly declining and the value of the collateral held falls below the amount of a customer's indebtedness. If a customer's account is liquidated as the result of a margin call, we are liable to our clearing firm for any deficiency.
- Competition in our investment banking, sales, and trading businesses could intensify as a result of the increasing pressures on financial services companies and larger firms competing for transactions and business that historically would have been too small for them to consider.
- Market volatility could result in lower prices for securities, which may result in reduced management fees calculated as a percentage of assets under management.
- Market declines could increase claims and litigation, including arbitration claims from customers.
- Our industry could face increased regulation as a result of legislative or regulatory initiatives. Compliance with such regulation may increase our costs and limit our ability to pursue business opportunities.
- Government intervention may not succeed in improving the financial and credit markets and may have negative consequences for our business.

It is difficult to predict how long the current financial market and economic conditions related to the ongoing COVID-19 pandemic will continue, whether they will further deteriorate and if they do, which of our business lines will be adversely affected. We are currently being impacted by the ongoing COVID-19 pandemic, including with respect to the above-described risks. While we are continuing to monitor the spread of COVID-19 and related risks, the rapid development and fluidity of situation precludes any prediction as to its ultimate impact on us. However, if the spread continues, such impact could grow and our business, financial condition, results of operations and cash flows could be materially adversely affected.

***Global economic and political uncertainty, including as a result of COVID-19 pandemic, could adversely affect our revenue and results of operations.***

As a result of the international nature of our business, we are subject to the risks arising from adverse changes in global economic and political conditions. Uncertainty about the effects of current and future economic and political conditions, including acts of war, aggression or terrorism, on us, our customers, suppliers and partners makes it difficult for us to forecast operating results and to make decisions about future investments. Deterioration in economic conditions in any of the countries in which we do business could result in reductions in sales of our products and services and could cause slower or impaired collections on accounts receivable, which may adversely impact our liquidity and financial condition.

The ongoing COVID-19 pandemic has caused severe disruptions in the U.S. and global economies, which has impacted the business, activities, and operations of our customers, as well as our business and operations. Through 2021, the U.S. and other economies have been impacted by supply chain disruptions, labor shortages and high inflation, and in late 2021 the Federal Reserve signaled that it will likely begin increasing the target range for the federal funds rate in response to the increasing inflation. While many of the restrictions on commercial activity and public gatherings and events that characterized the earlier stages of the pandemic have been lifted or are winding down, there can be no assurances that there will not be additional quarantines, business shutdowns, and reduction in business activity and financial transactions as a result of a resurgence in the virus or new variants. The return of unfavorable economic conditions may also make it more difficult for us to access the capital markets, use the capital markets for our clients or otherwise obtain additional financing.

The continuation of the COVID-19 pandemic, or a significant outbreak of another contagious disease or other severe public health crisis, could negatively impact the availability of key personnel necessary to conduct our business, and the business and operations of our third-party service providers who perform critical services for our business. Pandemics, epidemics, future highly infectious or contagious diseases, or other severe public health crisis could cause a material adverse effect on our business, financial condition, results of operations and cash flow. Among the factors outside our control that are likely to affect the impact the COVID-19 pandemic will ultimately have on our business are:

- the pandemic's course and severity;
- the direct and indirect results of the pandemic, such as recessionary economic trends, including with respect to employment, wages and benefits and commercial activity;
- political, legal and regulatory actions and policies in response to the pandemic, including the effects of restrictions on commerce or other public activities, moratoria and other suspensions of evictions or rent and related obligations;
- the timing, magnitude and effect of any continued or additional public spending, directly or through subsidies, or the winding-down of the same, and the resultant direct and indirect effects on commercial activity and incentives of employers and individuals to resume or increase employment, wages and benefits and commercial activity;
- the timing and availability of direct and indirect governmental support for various financial assets, and possible related distortions in market values and liquidity for such assets whose markets have or are assumed to have government support versus possibly similar assets that do not;
- the likely longer-term effects of increased government spending on inflation and the interest rate environment and borrowing costs for non-governmental parties;
- the ability of our employees and our third-party vendors to work effectively during the course of the pandemic;
- potential longer-term shifts toward telecommuting and telecommerce; and
- geographic variation in the severity and duration of the COVID-19 pandemic, including in states such as New York and California where high percentages of our clients, customers and personnel are located.

***We focus principally on certain sectors of the economy in our investment banking operations, and deterioration in the business environment in these sectors or a decline in the market for securities of companies within these sectors could harm our business.***

Volatility in the business environment in the industries in which our clients operate or in the market for securities of companies within these industries could adversely affect our financial results and the market value of our common stock. The business environment for companies in some of these industries has been subject to high levels of volatility in recent years, and our financial results have consequently been subject to significant variations from year to year. For example, the consumer goods and services sectors are subject to consumer spending trends, which have been volatile, to mall traffic trends, which have been down, to the availability of credit, and to broader trends such as the rise of Internet retailers. The consumer goods and services sector was severely impacted by the ongoing COVID-19 pandemic, which has resulted in mandatory store closures of uncertain duration due to social distancing measures, stay-at-home work restrictions and the closing of non-essential businesses imposed to control the pandemic. Emerging markets have driven the growth of certain consumer companies but emerging market economies are fragile, subject to wide swings in GDP, and subject to changes in foreign currencies. The technology industry has been volatile, driven by evolving technology trends, by technological obsolescence, by enterprise spending, and by changes in the capital spending trends of major corporations and government agencies around the world.

Our investment banking operations focus on various sectors of the economy, and we also depend significantly on private company transactions for sources of revenues and potential business opportunities. Most of these private company clients are initially funded and controlled by private equity firms. To the extent that the pace of these private company transactions slows or the average transaction size declines due to a decrease in private equity financings, difficult market conditions in our target industries or other factors, our business and results of operations may be harmed.

Underwriting and other corporate finance transactions, strategic advisory engagements and related sales and trading activities in our target industries represent a significant portion of our investment banking business. This concentration of activity in our target industries exposes us to the risk of declines in revenues in the event of downturns in these industries, such as those due to rising inflation and interest rates.

***Our businesses may be adversely affected by the disruptions in the credit markets, such as those due to the COVID-19 pandemic and its effects, including reduced access to credit and liquidity and higher costs of obtaining credit.***

In the event existing internal and external financial resources do not satisfy our needs, we would have to seek additional outside financing. The availability of outside financing will depend on a variety of factors, such as our financial condition and results of operations, the availability of acceptable collateral, market conditions, the general availability of credit, the volume of trading activities, and the overall availability of credit to the financial services industry, all of which may be negatively impacted due to the effects of the COVID-19 pandemic, which may include increased inflation and rising interest rates.

Widening credit spreads, as well as significant declines in the availability of credit, could adversely affect our ability to borrow on an unsecured basis. Disruptions in the credit markets could make it more difficult and more expensive to obtain funding for our businesses. If our available funding is limited or we are forced to fund our operations at a higher cost, these conditions may require us to curtail our business activities and increase our cost of funding, both of which could reduce our profitability, particularly in our businesses that involve investing and taking principal positions.

Liquidity, or ready access to funds, is essential to financial services firms, including ours. Failures of financial institutions have often been attributable in large part to insufficient liquidity. Liquidity is of particular importance to our sales and trading business, and perceived liquidity issues may affect the willingness of our clients and counterparties to engage in sales and trading transactions with us. Our liquidity could be impaired due to circumstances that we may be unable to control, such as a general market disruption or an operational problem that affects our sales and trading clients, third parties, or us. Further, our ability to sell assets may be impaired if other market participants are seeking to sell similar assets at the same time.

Our clients engaging us with respect to mergers and acquisitions often rely on access to the secured and unsecured credit markets to finance their transactions. The lack of available credit and the increased cost of credit could adversely affect the size, volume and timing of our clients' merger and acquisition transactions-particularly large transactions-and adversely affect our investment banking business and revenues.

***Climate change could have a material negative impact on us and our customers and counterparties, and our efforts to address concerns relating to climate change could result in damage to our reputation.***

Our business, as well as the operations and activities of our customers and counterparties, could be negatively impacted by climate change. Climate change presents both immediate and long-term risks to us and our customers and these risks are expected to increase over time. Climate change may cause extreme weather events that disrupt operations at one or more of our primary locations, which may negatively affect our ability to service and interact with our clients, adversely affect the value of our investments, and reduce the availability of insurance. Climate change and the transition to a less carbon-dependent economy may also have a negative impact on the operations or financial condition of our clients and counterparties, which may decrease revenues from those clients and counterparties and increase the credit risk associated with loans and other credit exposures to those clients and counterparties. In addition, climate change may impact the broader economy, including through disruptions to supply chains.

Climate change also exposes us to transition risks associated with the transition to a less carbon-dependent economy. Transition risks may result from changes in policies; laws and regulations; technologies; and/or market preferences to address climate change. Such changes could materially, negatively impact our business, results of operations, financial condition and/or our reputation, in addition to having a similar impact on our customers and counterparties.

For example, our reputation and client relationships may be damaged as a result of our involvement, or our clients' involvement, in certain industries or projects associated with causing or exacerbating climate change, as well as any decisions we make to continue to conduct or change our activities in response to considerations relating to climate change.

New regulations or guidance relating to climate change, as well as the perspectives of regulators, stockholders, employees and other stakeholders regarding climate change, may affect whether and on what terms and conditions we engage in certain activities or offer certain products. The risks associated with, and the perspective of regulators, shareholders, employees and other stakeholders regarding, climate change are continuing to evolve rapidly, which can make it difficult to assess the ultimate impact on us of climate change-related risks and uncertainties, and we expect that climate change-related risks will increase over time.

## **Risks Related to Legal Liability, Risk Management, Finance and Accounting**

### ***Our exposure to legal liability is significant, and could lead to substantial damages.***

We face significant legal risks in our businesses. These risks include potential liability under securities laws and regulations in connection with our capital markets, asset management and other businesses. The volume and amount of damages claimed in litigation, arbitrations, regulatory enforcement actions and other adversarial proceedings against financial services firms have increased in recent years. We also are subject to claims from disputes with our employees and our former employees under various circumstances. Risks associated with legal liability often are difficult to assess or quantify and their existence and magnitude can remain unknown for significant periods of time, making the amount of legal reserves related to these legal liabilities difficult to determine and subject to future revision. Legal or regulatory matters involving our directors, officers or employees in their individual capacities also may create exposure for us because we may be obligated or may choose to indemnify the affected individuals against liabilities and expenses they incur in connection with such matters to the extent permitted under applicable law. In addition, like other financial services companies, we may face the possibility of employee fraud or misconduct. The precautions we take to prevent and detect this activity may not be effective in all cases and there can be no assurance that we will be able to deter or prevent fraud or misconduct. Exposures from and expenses incurred related to any of the foregoing actions or proceedings could have a negative impact on our results of operations and financial condition. In addition, future results of operations could be adversely affected if reserves relating to these legal liabilities are required to be increased or legal proceedings are resolved in excess of established reserves.

### ***We may incur losses as a result of ineffective risk management processes and strategies.***

We seek to monitor and control our risk exposure through operational and compliance reporting systems, internal controls, management review processes and other mechanisms. Our investing and trading processes seek to balance our ability to profit from investment and trading positions with our exposure to potential losses. While we employ limits, hedging transactions, and other risk mitigation techniques, those techniques and the judgments that accompany their application cannot anticipate economic and financial outcomes or the specifics and timing of such outcomes. Thus, we may, in the course of our investment and trading activities, incur losses, which may be significant.

In addition, we are investing our own capital in our funds and funds of funds as well as principal investing activities, and limitations on our ability to withdraw some or all of our investments in these funds or liquidate our investment positions, whether for legal, reputational, illiquidity or other reasons, may make it more difficult for us to control the risk exposures relating to these investments.

### ***Our risk management policies and procedures may leave us exposed to unidentified or unanticipated risks.***

Our risk management strategies and techniques may not be fully effective in mitigating our risk exposure in all market environments or against all types of risk. We seek to manage, monitor and control our operational, legal and regulatory risk through operational and compliance reporting systems, internal controls, management review processes and other mechanisms; however, there can be no assurance that our procedures will be fully effective. Further, our risk management methods may not effectively predict future risk exposures, which could be significantly greater than the historical measures indicate. In addition, some of our risk management methods are based on an evaluation of information regarding markets, clients and other matters that are based on assumptions that may no longer be accurate. A failure to adequately manage our growth, or to effectively manage our risk, could materially and adversely affect our business and financial condition.

We are exposed to the risk that third parties that owe us money, securities or other assets will not perform their obligations. These parties may default on their obligations to us due to bankruptcy, lack of liquidity, operational failure, and breach of contract or other reasons. We are also subject to the risk that our rights against third parties may not be enforceable in all circumstances. As an introducing broker, we could be held responsible for the defaults or misconduct of our customers. These may present credit concerns, and default risks may arise from events or circumstances that are difficult to detect, foresee or reasonably guard against. In addition, concerns about, or a default by, one institution could lead to significant liquidity problems, losses or defaults by other institutions, which in turn could adversely affect us. If any of the variety of instruments, processes and strategies we utilize to manage our exposure to various types of risk are not effective, we may incur losses.

***Our failure to deal appropriately with conflicts of interest could damage our reputation and adversely affect our business.***

As we have expanded the number and scope of our businesses, we increasingly confront potential conflicts of interest relating to our and our funds' and clients' investment and other activities. Certain of our funds have overlapping investment objectives, including funds which have different fee structures, and potential conflicts may arise with respect to our decisions regarding how to allocate investment opportunities among ourselves and those funds. For example, a decision to acquire material non-public information about a company while pursuing an investment opportunity for a particular fund gives rise to a potential conflict of interest when it results in our having to restrict the ability of the Company or other funds to take any action.

In addition, there may be conflicts of interest regarding investment decisions for funds in which our officers, directors and employees, who have made and may continue to make significant personal investments in a variety of funds, are personally invested. Similarly, conflicts of interest may exist or develop regarding decisions about the allocation of specific investment opportunities between the Company and the funds.

We also have potential conflicts of interest with our investment banking and institutional clients including situations where our services to a particular client or our own proprietary or fund investments or interests conflict or are perceived to conflict with a client. It is possible that potential or perceived conflicts could give rise to investor or client dissatisfaction or litigation or regulatory enforcement actions. Appropriately dealing with conflicts of interest is complex and difficult and our reputation could be damaged if we fail, or appear to fail, to deal appropriately with one or more potential or actual conflicts of interest. Regulatory scrutiny of, or litigation in connection with, conflicts of interest would have a material adverse effect on our reputation, which would materially adversely affect our business in a number of ways, including as a result of redemptions by our investors from our hedge funds, an inability to raise additional funds and a reluctance of counterparties to do business with us.

***Financial services firms have been subject to increased scrutiny over the last several years, increasing the risk of financial liability and reputational harm resulting from adverse regulatory actions.***

Firms in the financial services industry have been operating in a difficult regulatory environment which we expect will become even more stringent in light of recent well-publicized failures of regulators to detect and prevent fraud. The industry has experienced increased scrutiny from a variety of regulators, including the SEC, the NYSE, FINRA and state attorneys general. Penalties and fines sought by regulatory authorities have increased substantially over the last several years. This regulatory and enforcement environment has created uncertainty with respect to a number of transactions that had historically been entered into by financial services firms and that were generally believed to be permissible and appropriate. We may be adversely affected by changes in the interpretation or enforcement of existing laws and rules by these governmental authorities and self-regulatory organizations. Each of the regulatory bodies with jurisdiction over us has regulatory powers dealing with many aspects of financial services, including, but not limited to, the authority to fine us and to grant, cancel, restrict or otherwise impose conditions on the right to carry on particular businesses. For example, a failure to comply with the obligations imposed by the Exchange Act on broker-dealers and the Investment Advisers Act of 1940 on investment advisers, including record-keeping, advertising and operating requirements, disclosure obligations and prohibitions on fraudulent activities, or by the Investment Company Act of 1940, could result in investigations, sanctions and reputational damage. We also may be adversely affected as a result of new or revised legislation or regulations imposed by the SEC, other U.S. or foreign governmental regulatory authorities or FINRA or other self-regulatory organizations that supervise the financial markets. Substantial legal liability or significant regulatory action against us could have adverse financial effects on us or cause reputational harm to us, which could harm our business prospects.

In addition, financial services firms are subject to numerous conflicts of interests or perceived conflicts. The SEC and other federal and state regulators have increased their scrutiny of potential conflicts of interest. We have adopted various policies, controls and procedures to address or limit actual or perceived conflicts and regularly review and update our policies, controls and procedures. However, appropriately addressing conflicts of interest is complex and difficult and our reputation could be damaged if we fail, or appear to fail, to appropriately address conflicts of interest. Our policies and procedures to address or limit actual or perceived conflicts may also result in increased costs and additional operational personnel. Failure to adhere to these policies and procedures may result in regulatory sanctions or litigation against us. For example, the research operations of investment banks have been and remain the subject of heightened regulatory scrutiny which has led to increased restrictions on the interaction between equity research analysts and investment banking professionals at securities firms. Several securities firms in the U.S. reached a global settlement in 2003 and 2004 with certain federal and state securities regulators and self-regulatory organizations to resolve investigations into the alleged conflicts of interest of research analysts, which resulted in rules that have imposed additional costs and limitations on the conduct of our business.

Asset management businesses have experienced a number of highly publicized regulatory inquiries which have resulted in increased scrutiny within the industry and new rules and regulations for mutual funds, investment advisors and broker-dealers. Our subsidiary, B. Riley Capital Management, LLC, is registered as an investment advisor with the SEC and regulatory scrutiny and rulemaking initiatives may result in an increase in operational and compliance costs or the assessment of significant fines or penalties against our asset management business, and may otherwise limit our ability to engage in certain activities. In addition, the SEC staff has conducted studies with respect to soft dollar practices in the brokerage and asset management industries and proposed interpretive guidance regarding the scope of permitted brokerage and research services in connection with soft dollar practices. The SEC staff has indicated that it is considering additional rulemaking in this and other areas, and we cannot predict the effect that additional rulemaking may have on our asset management or brokerage business or whether it will be adverse to us. In addition, Congress is currently considering imposing new requirements on entities that securitize assets, which could affect our credit activities. It is impossible to determine the extent of the impact of any new laws, regulations or initiatives that may be proposed, or whether any of the proposals will become law. Compliance with any new laws or regulations could make compliance more difficult and expensive and affect the manner in which we conduct business.

***Financial reforms and related regulations may negatively affect our business activities, financial position and profitability.***

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) instituted a wide range of reforms that have impacted and will continue to impact financial services firms and continues to require significant rule-making. In addition, the legislation mandates multiple studies, which could result in additional legislative or regulatory action. The legislation and regulation of financial institutions, both domestically and internationally, include calls to increase capital and liquidity requirements; limit the size and types of the activities permitted; and increase taxes on some institutions. FINRA’s oversight over broker-dealers and investment advisors may be expanded, and new regulations on having investment banking and securities analyst functions in the same firm may be created. Certain of the provisions of the Dodd-Frank Act remain subject to further rule making procedures and studies. As a result, we cannot assess the full impact of all of these legislative and regulatory changes on our business at the present time. However, these legislative and regulatory changes could affect our revenue, limit our ability to pursue business opportunities, impact the value of assets that we hold, require us to change certain of our business practices, impose additional costs on us, or otherwise adversely affect our businesses. If we do not comply with current or future legislation and regulations that apply to our operations, we may be subject to fines, penalties or material restrictions on our businesses in the jurisdiction where the violation occurred. Accordingly, such legislation or regulation could have an adverse effect on our business, results of operations, cash flows or financial condition.

***If we cannot meet our future capital requirements, we may be unable to develop and enhance our services, take advantage of business opportunities and respond to competitive pressures.***

We may need to raise additional funds in the future to grow our business internally, invest in new businesses, expand through acquisitions, enhance our current services or respond to changes in our target markets. If we raise additional capital through the sale of equity or equity derivative securities, the issuance of these securities could result in dilution to our existing stockholders. If additional funds are raised through the issuance of debt securities, the terms of that debt could impose additional restrictions on our operations or harm our financial condition. Additional financing may be unavailable on acceptable terms.

***Our ability to use net loss carryovers to reduce our taxable income may be limited.***

As a result of the common stock offering that was completed on June 5, 2014, the Company had a more than 50% ownership shift in accordance with Section 382 of the Internal Revenue Code of 1986, as amended (the “Code”). Accordingly, the Company may be limited to the amount of net operating loss that may be utilized in future taxable years depending on the Company’s actual taxable income. As a result of the acquisition of UOL on July 1, 2016, the historical net operating losses of UOL are limited to offset income we generate post acquisition. As of December 31, 2019, the Company believes that the net operating loss that existed as of the more than 50% ownership shift will be utilized in future tax periods before the loss carryforwards expire and it is more-likely-than-not that future taxable earnings will be sufficient to realize its deferred tax assets and has not provided an allowance. However, to the extent that the Company is unable to utilize such net operating loss, it may have a material adverse effect on our financial condition and results of operations.

***The tax benefits, grants and other incentives available to us require us to continue to meet various conditions and may be terminated, repaid or reduced in the future, which could increase our costs and taxes.***

The Israeli government currently provides major tax and capital investment incentives to domestic companies, as well as grant and loan programs relating to research and development and marketing and export activities. In recent years, the Israeli Government has reduced the benefits available under these programs and the Israeli Governmental authorities have indicated that the government may in the future further reduce, seek repayment or eliminate the benefits of those programs. magicJack currently takes advantage of these programs. There is no assurance that we will continue to meet the conditions of such benefits and programs or that such benefits and programs would continue to be available to us in the future. If we fail to meet the conditions of such benefits and programs or if they are terminated or further reduced, it could have an adverse effect on our business, operating results and financial condition.

***Changes in tax laws or regulations, or to interpretations of existing tax laws or regulations, to which we are subject could adversely affect our financial condition and cash flows.***

We are subject to taxation in the United States and in some foreign jurisdictions. Our financial condition and cash flows are impacted by tax policy implemented at each of the federal, state, local and international levels. We cannot predict whether any changes to tax laws or regulations, or to interpretations of existing tax laws or regulations, will be implemented in the future or whether any such changes would have a material adverse effect on our financial condition and cash flows. However, future changes to tax laws or regulations, or to interpretations of existing tax laws or regulations, could increase our tax burden or otherwise adversely affect our financial condition and cash flows.

***Our failure to maintain effective internal control over financial reporting in accordance with Section 404 of the Sarbanes-Oxley Act could have a material adverse effect on our financial condition, results of operations and business and the price of our common stock and other securities.***

The Sarbanes-Oxley Act and the related rules require our management to conduct an annual assessment of the effectiveness of our internal control over financial reporting and require a report by our independent registered public accounting firm addressing our internal control over financial reporting. To comply with Section 404 of the Sarbanes-Oxley Act, we are required to document formal policies, processes and practices related to financial reporting that are necessary to comply with Section 404. Such policies, processes and practices are important to ensure the identification of key financial reporting risks, assessment of their potential impact and linkage of those risks to specific areas and activities within our organization.

If we fail for any reason to comply with the requirements of Section 404 in a timely manner, our independent registered public accounting firm may, at that time, issue an adverse report regarding the effectiveness of our internal control over financial reporting. Matters impacting our internal controls may cause us to be unable to report our financial information on a timely basis and thereby subject us to adverse regulatory consequences, including sanctions by the SEC or violations of applicable stock exchange listing rules. There could also be a negative reaction in the financial markets due to a loss of investor confidence in us and the reliability of our financial statements. Any such event could adversely affect our financial condition, results of operations and business, and result in a decline in the price of our common stock and other securities.

***We may suffer losses if our reputation is harmed.***

Our ability to attract and retain customers and employees may be diminished to the extent our reputation is damaged. If we fail, or are perceived to fail, to address various issues that may give rise to reputational risk, we could harm our business prospects. These issues include, but are not limited to, appropriately dealing with market dynamics, potential conflicts of interest, legal and regulatory requirements, ethical issues, customer privacy, record-keeping, sales and trading practices, and the proper identification of the legal, reputational, credit, liquidity and market risks inherent in our products and services. Failure to appropriately address these issues could give rise to loss of existing or future business, financial loss, and legal or regulatory liability, including complaints, claims and enforcement proceedings against us, which could, in turn, subject us to fines, judgments and other penalties. In addition, our Capital Markets operations depend to a large extent on our relationships with our clients and reputation for integrity and high-caliber professional services to attract and retain clients. As a result, if a client is not satisfied with our services, it may be more damaging in our business than in other businesses.

***Misconduct by our employees or by the employees of our business partners could harm us and is difficult to detect and prevent.***

There have been a number of highly publicized cases involving fraud or other misconduct by employees in the financial services industry in recent years, and we run the risk that employee misconduct could occur at our firm. For example, misconduct could involve the improper use or disclosure of confidential information, which could result in regulatory sanctions and serious reputational or financial harm. It is not always possible to deter misconduct and the precautions we take to detect and prevent this activity may not be effective in all cases. Our ability to detect and prevent misconduct by entities with which we do business may be even more limited. We may suffer reputational harm for any misconduct by our employees or those entities with which we do business.

***We may enter into new lines of business, make strategic investments or acquisitions or enter into joint ventures, each of which may result in additional risks and uncertainties for our business.***

We may enter into new lines of business, make future strategic investments or acquisitions and enter into joint ventures. As we have in the past, and subject to market conditions, we may grow our business by increasing assets under management in existing investment strategies, pursue new investment strategies, which may be similar or complementary to our existing strategies or be wholly new initiatives, or enter into strategic relationships, or joint ventures. In addition, opportunities may arise to acquire or invest in other businesses that are related or unrelated to our current businesses.

To the extent we make strategic investments or acquisitions, enter into strategic relationships or joint ventures or enter into new lines of business, we will face numerous risks and uncertainties, including risks associated with the required investment of capital and other resources and with combining or integrating operational and management systems and controls and managing potential conflicts. Entry into certain lines of business may subject us to new laws and regulations with which we are not familiar, or from which we are currently exempt, and may lead to increased litigation and regulatory risk. If a new business generates insufficient revenues, or produces investment losses, or if we are unable to efficiently manage our expanded operations, our results of operations will be adversely affected, and our reputation and business may be harmed. In the case of joint ventures, we are subject to additional risks and uncertainties in that we may be dependent upon, and subject to liability, losses or reputational damage relating to, systems, controls and personnel that are not under our control.

**Risks Related to Our Capital Markets Activities**

***Our corporate finance and strategic advisory engagements are singular in nature and do not generally provide for subsequent engagements.***

Our investment banking clients generally retain us on a short-term, engagement-by-engagement basis in connection with specific corporate finance, merger and acquisition transactions (often as an advisor in company sale transactions) and other strategic advisory services, rather than on a recurring basis under long-term contracts. As these transactions are typically singular in nature and our engagements with these clients may not recur, we must seek new engagements when our current engagements are successfully completed or are terminated. As a result, high activity levels in any period are not necessarily indicative of continued high levels of activity in any subsequent period. If we are unable to generate a substantial number of new engagements that generate fees from new or existing clients, our business, results of operations and financial condition could be adversely affected.

***Our Capital Markets operations are highly dependent on communications, information and other systems and third parties, and any systems failures could significantly disrupt our capital markets business.***

Our data and transaction processing, custody, financial, accounting and other technology and operating systems are essential to our capital markets operations. A system malfunction (due to hardware failure, capacity overload, security incident, data corruption, etc.) or mistake made relating to the processing of transactions could result in financial loss, liability to clients, regulatory intervention, reputational damage and constraints on our ability to grow. We outsource a substantial portion of our critical data processing activities, including trade processing and back office data processing. We also contract with third parties for market data and other services. In the event that any of these service providers fails to adequately perform such services or the relationship between that service provider and us is terminated, we may experience a significant disruption in our operations, including our ability to timely and accurately process transactions or maintain complete and accurate records of those transactions.

Adapting or developing our technology systems to meet new regulatory requirements, client needs, expansion and industry demands also is critical for our business. Introduction of new technologies present new challenges on a regular basis. We have an ongoing need to upgrade and improve our various technology systems, including our data and transaction processing, financial, accounting, risk management and trading systems. This need could present operational issues or require significant capital spending. It also may require us to make additional investments in technology systems and may require us to reevaluate the current value and/or expected useful lives of our technology systems, which could negatively impact our results of operations.

Secure processing, storage and transmission of confidential and other information in our internal and outsourced computer systems and networks also is critically important to our business. We take protective measures and endeavor to modify them as circumstances warrant. However, our computer systems and software are subject to unauthorized access, computer viruses or other malicious code, inadvertent, erroneous or intercepted transmission of information (including by e-mail), and other events that have had an information security impact. If one or more of such events occur, this potentially could jeopardize our or our clients' or counterparties' confidential and other information processed and stored in, and transmitted through, our computer systems and networks, or otherwise cause interruptions or malfunctions in our, our clients', our counterparties' or third parties' operations. We may be required to expend significant additional resources to modify our protective measures or to investigate and remediate vulnerabilities or other exposures, and we may be subject to litigation and financial losses that are either not insured against or not fully covered through any insurance maintained by us.

A disruption in the infrastructure that supports our business due to fire, natural disaster, health emergency (for example, the ongoing COVID-19 pandemic), power or communication failure, act of terrorism or war may affect our ability to service and interact with our clients. If we are not able to implement contingency plans effectively, any such disruption could harm our results of operations. Due to the ongoing COVID-19 pandemic, many businesses, including ours, have shifted largely to telecommuting. While we continue to evaluate the situation and invest in our technological infrastructure, the duration and effects of this shift are uncertain, but could make our operations more vulnerable.

***The growth of electronic trading and the introduction of new technology in the markets in which our market-making business operates may adversely affect this business and may increase competition.***

The continued growth of electronic trading and the introduction of new technologies is changing our market-making business and presenting new challenges. Securities, futures and options transactions are increasingly occurring electronically, through alternative trading systems. We expect that the trend toward alternative trading systems will continue to accelerate. This acceleration could further increase program trading, increase the speed of transactions and decrease our ability to participate in transactions as principal, which would reduce the profitability of our market-making business. Some of these alternative trading systems compete with our market-making business and with our algorithmic trading platform, and we may experience continued competitive pressures in these and other areas. Significant resources have been invested in the development of our electronic trading systems, which includes our at-the-market business, but there is no assurance that the revenues generated by these systems will yield an adequate return on the investment, particularly given the increased program trading and increased percentage of stocks trading off of the historically manual trading markets.

***Pricing and other competitive pressures may impair the revenues of our sales and trading business.***

We derive a significant portion of our revenues for our investment banking operations from our sales and trading business. There has been intense price competition and trading volume reduction in this business in recent years. In particular, the ability to execute trades electronically and through alternative trading systems has increased the downward pressure on per share trading commissions and spreads. We expect these trends toward alternative trading systems and downward pricing pressure in the business to continue. We experience competitive pressures in these and other areas in the future as some of our competitors seek to obtain market share by competing on the basis of price or by using their own capital to facilitate client trading activities. In addition, we face pressure from our larger competitors, many of whom are better able to offer a broader range of complementary products and services to clients in order to win their trading business. These larger competitors may also be better able to respond to changes in the research, brokerage and investment banking industries, to compete for skilled professionals, to finance acquisitions, to fund internal growth and to compete for market share generally. As we are committed to maintaining and improving our comprehensive research coverage in our target sectors to support our sales and trading business, we may be required to make substantial investments in our research capabilities to remain competitive. If we are unable to compete effectively in these areas, the revenues of our sales and trading business may decline, and our business, results of operations and financial condition may be harmed.

Some of our large institutional sales and trading clients in terms of brokerage revenues have entered into arrangements with us and other investment banking firms under which they separate payments for research products or services from trading commissions for sales and trading services, and pay for research directly in cash, instead of compensating the research providers through trading commissions (referred to as "soft dollar" practices). In addition, we have entered into certain commission sharing arrangements in which institutional clients execute trades with a limited number of brokers and instruct those brokers to allocate a portion of the commission directly to us or other broker-dealers for research or to an independent research provider. If more of such arrangements are reached between our clients and us, or if similar practices are adopted by more firms in the investment banking industry, we expect that would increase the competitive pressures on trading commissions and spreads and reduce the value our clients place on high quality research. Conversely, if we are unable to make similar arrangements with other investment managers that insist on separating trading commissions from research products, volumes and trading commissions in our sales and trading business also would likely decrease.

***Larger and more frequent capital commitments in our trading and underwriting businesses increase the potential for significant losses.***

Certain financial services firms make larger and more frequent commitments of capital in many of their activities. For example, in order to win business, some investment banks increasingly commit to purchase large blocks of stock from publicly traded issuers or significant stockholders, instead of the more traditional marketed underwriting process in which marketing is typically completed before an investment bank commits to purchase securities for resale. We have participated in this activity and expect to continue to do so and, as a result, we are subject to increased risk. Conversely, if we do not have sufficient regulatory capital to so participate, our business may suffer. Furthermore, we may suffer losses as a result of the positions taken in these transactions even when economic and market conditions are generally favorable for others in the industry.

We may increasingly commit our own capital as part of our trading business to facilitate client sales and trading activities. The number and size of these transactions may adversely affect our results of operations in a given period. We may also incur significant losses from our sales and trading activities due to market fluctuations and volatility in our results of operations. To the extent that we own assets, i.e., have long positions, in any of those markets, a downturn in the value of those assets or in those markets could result in losses. Conversely, to the extent that we have sold assets we do not own, i.e., have short positions, in any of those markets, an upturn in those markets could expose us to potentially large losses as we attempt to cover our short positions by acquiring assets in a rising market.

***Our underwriting and market making activities may place our capital at risk.***

We may incur losses and be subject to reputational harm to the extent that, for any reason, we are unable to sell securities we purchased as an underwriter at the anticipated price levels. As an underwriter, we also are subject to heightened standards regarding liability for material misstatements or omissions in prospectuses and other offering documents relating to offerings we underwrite. Further, even though underwriting agreements with issuing companies typically include a right to indemnification in favor of the underwriter for these offerings to cover potential liability from any material misstatements or omissions, indemnification may be unavailable or insufficient in certain circumstances, for example if the issuing company has become insolvent. As a market maker, we may own large positions in specific securities, and these undiversified holdings concentrate the risk of market fluctuations and may result in greater losses than would be the case if our holdings were more diversified.

***We are subject to net capital and other regulatory capital requirements; failure to comply with these rules would significantly harm our business.***

Our broker-dealer subsidiaries are subject to the net capital requirements of the SEC, FINRA, and various self-regulatory organizations of which they are members. These requirements typically specify the minimum level of net capital a broker-dealer must maintain and also mandate that a significant part of its assets be kept in relatively liquid form. Failure to maintain the required net capital may subject a firm to limitation of its activities, including suspension or revocation of its registration by the SEC and suspension or expulsion by FINRA and other regulatory bodies, and ultimately may require its liquidation. Failure to comply with the net capital rules could have material and adverse consequences, such as:

- limiting our operations that require intensive use of capital, such as underwriting or trading activities; or
- restricting us from withdrawing capital from our subsidiaries when our broker-dealer subsidiaries have more than the minimum amount of required capital. This, in turn, could limit our ability to implement our business and growth strategies, pay interest on and repay the principal of our debt and/or repurchase our shares.

In addition, a change in the net capital rules or the imposition of new rules affecting the scope, coverage, calculation, or amount of net capital requirements, or a significant operating loss or any large charge against net capital, could have similar adverse effects.

Furthermore, our broker-dealer subsidiaries are subject to laws that authorize regulatory bodies to block or reduce the flow of funds from it to B. Riley Financial, Inc. As a holding company, B. Riley Financial, Inc. depends on dividends, distributions and other payments from its subsidiaries to fund dividend payments, if any, and to fund all payments on its obligations, including debt obligations. As a result, regulatory actions could impede access to funds that B. Riley Financial, Inc. needs to make payments on obligations, including debt obligations, or dividend payments. In addition, because B. Riley Financial, Inc. holds equity interests in the firm's subsidiaries, its rights as an equity holder to the assets of these subsidiaries may not materialize, if at all, until the claims of the creditors of these subsidiaries are first satisfied.

## **Risks Related to our Principal Investments Activities**

***We have made and may make principal investments in relatively high-risk, illiquid assets that often have significantly leveraged capital structures, and we may fail to realize any profits from these activities for a considerable period of time or lose some or all of the principal amount we invest in these activities.***

From time to time, we use our capital, including on a leveraged basis, in proprietary investments in both private company and public company securities that may be illiquid and volatile. The equity securities of a privately-held entity in which we make a proprietary investment are likely to be restricted as to resale and are otherwise typically highly illiquid. In the case of fund or similar investments, our investments may be illiquid until such investment vehicles are liquidated. We expect that there will be restrictions on our ability to resell the securities that we acquire for a period of up to one year after we acquire those securities. Thereafter, a public market sale may be subject to volume limitations or dependent upon securing a registration statement for an initial and potentially secondary public offering of the securities. We may make principal investments that are significant relative to the overall capitalization of the investee company and resales of significant amounts of these securities might be subject to significant limitations and adversely affect the market and the sales price for the securities in which we invest. In addition, our Principal Investments may involve entities or businesses with capital structures that have significant leverage. The large amount of borrowing in the leveraged capital structure increases the risk of losses due to factors such as rising inflation, interest rates, downturns in the economy or deteriorations in the condition of the investment or its industry. In the event of defaults under borrowings, the assets being financed would be at risk of foreclosure, and we could lose our entire investment.

Even if we make an appropriate investment decision based on the intrinsic value of an enterprise, we cannot assure you that general market conditions will not cause the market value of our investments to decline. For example, a further increase in inflation, interest rates, a general decline in the stock markets, such as the recent declines in the stock markets due to the anticipated rising interest rate environment, or other market and industry conditions adverse to companies of the type in which we invest and intend to invest could result in a decline in the value of our investments or a total loss of our investment.

In addition, some of these investments are, or may in the future be, in industries or sectors which are unstable, in distress or undergoing some uncertainty. Further, the companies in which we invest may rely on new or developing technologies or novel business models, or concentrate on markets which are or may be disproportionately impacted by pressures in the financial services and/or mortgage and real estate sectors, have not yet developed and which may never develop sufficiently to support successful operations, or their existing business operations may deteriorate or may not expand or perform as projected. Such investments may be subject to rapid changes in value caused by sudden company-specific or industry-wide developments. Contributing capital to these investments is risky, and we may lose some or all of the principal amount of our investments. There are no regularly quoted market prices for a number of the investments that we make. The value of our investments is determined using fair value methodologies described in valuation policies, which may consider, among other things, the nature of the investment, the expected cash flows from the investment, bid or ask prices provided by third parties for the investment and the trading price of recent sales of securities (in the case of publicly-traded securities), restrictions on transfer and other recognized valuation methodologies. The methodologies we use in valuing individual investments are based on estimates and assumptions specific to the particular investments. Therefore, the value of our investments does not necessarily reflect the prices that would actually be obtained by us when such investments are sold. Realizations, if any, at values significantly lower than the values at which investments have been reflected on our balance sheet would result in losses of potential incentive income and Principal Investments.

***We are exposed to credit risk from a variety of our activities, including loans, lines of credit, guarantees and backstop commitments, and we may not be able to fully realize the value of the collateral securing certain of our loans.***

We are generally exposed to the risk that third parties that owe us money, securities or other assets will fail to meet their obligations to us due to numerous causes, including bankruptcy, lack of liquidity, or operational failure, among others. Additionally, when we guarantee or backstop the obligations of third parties, we are exposed to the risk that our guarantee or backstop may be called by the holder following a default by the primary obligor, which could cause us to incur significant losses, and, when our obligations are secured, expose us to the risk that the holder may seek to foreclose on collateral pledged by us.

We incur credit risk through loans, lines of credit, guarantees and backstop commitments issued to or on behalf of businesses and individuals, and other loans collateralized by a variety of assets, including securities. Our credit risk and credit losses can increase if our loans or investments are concentrated among borrowers or issuers engaged in the same or similar activities, industries, or geographies, or to borrowers or issuers who as a group may be uniquely or disproportionately affected by economic or market conditions. The deterioration of an individually large exposure, for example due to natural disasters, health emergencies or pandemics (like the ongoing COVID-19 pandemic), acts of terrorism or war, severe weather events or other adverse economic events, could lead to additional loan loss provisions and/or charges-offs, or credit impairment of our investments, and subsequently have a material impact on our net income and regulatory capital.

The amount and duration of our credit exposures have been increasing over the past year, as have the breadth and size of the entities to which we have credit exposures.

We permit our clients to purchase securities on margin. During periods of steep declines in securities prices, the value of the collateral securing client margin loans may fall below the amount of the purchaser's indebtedness. If clients are unable to provide additional collateral for these margin loans, we may incur losses on those margin transactions. This may cause us to incur additional expenses defending or pursuing claims or litigation related to counterparty or client defaults.

Although a substantial amount of our loans to counterparties are protected by holding security interests in the assets or equity interests of the borrower, we may not be able to fully realize the value of the collateral securing our loans due to one or more of the following factors:

- Our loans may be unsecured, therefore our liens on the collateral, if any, are subordinated to those of the senior secured debt of the borrower, if any. As a result, we may not be able to control remedies with respect to the collateral.
- The collateral may not be valuable enough to satisfy all of the obligations under our secured loan, particularly after giving effect to the repayment of secured debt of the borrower that ranks senior to our loan.
- Bankruptcy laws may limit our ability to realize value from the collateral and may delay the realization process.
- Our rights in the collateral may be adversely affected by the failure to perfect security interests in the collateral.
- The need to obtain regulatory and contractual consents could impair or impede how effectively the collateral would be liquidated and could affect the value received.
- Some or all of the collateral may be illiquid and may have no readily ascertainable market value. The liquidity and value of the collateral could be impaired as a result of changing economic conditions, competition, and other factors, including the availability of suitable buyers.

***We may experience write downs of our investments and other losses related to the valuation of our investments and volatile and illiquid market conditions.***

In our proprietary investment activities, our concentrated holdings, illiquidity and market volatility may make it difficult to value certain of our investment securities. Subsequent valuations, in light of factors then prevailing, may result in significant changes in the values of these securities in future periods. In addition, at the time of any sales and settlements of these securities, the price we ultimately realize will depend on the demand and liquidity in the market at that time and may be materially lower than their current fair value. Any of these factors could require us to take write downs in the value of our investment and securities portfolio, which may have an adverse effect on our results of operations in future periods.

#### **Risks Related to our Auction and Liquidation Activities**

***We may incur losses as a result of "guarantee" based engagements that we enter into in connection with our auction and liquidation solutions business.***

In many instances, in order to secure an engagement, we are required to bid for that engagement by guaranteeing to the client a minimum amount that such client will receive from the sale of inventory or assets. Our bid is based on a variety of factors, including: our experience, expertise, perceived value added by engagement, valuation of the inventory or assets and the prices we believe potential buyers would be willing to pay for such inventory or assets. An inaccurate estimate of any of the above or inaccurate valuation of the assets or inventory could result in us submitting a bid that exceeds the realizable proceeds from any engagement. If the liquidation proceeds, net of direct operating expenses, are less than the amount we guaranteed in our bid, we will incur a loss. Therefore, in the event that the proceeds, net of direct operating expenses, from an engagement are less than the bid, the value of the assets or inventory decline in value prior to the disposition or liquidation, or the assets are overvalued for any reason, we may suffer a loss and our financial condition and results of operations could be adversely affected.

***Losses due to any auction or liquidation engagement may cause us to become unable to make payments due to our creditors and may cause us to default on our debt obligations.***

We have three engagement structures for our auction and liquidation services: (i) a “fee” based structure under which we are compensated for our role in an engagement on a commission basis, (ii) purchase on an outright basis (and take title to) the assets or inventory of the client, and (iii) “guarantee” to the client that a certain amount will be realized by the client upon the sale of the assets or inventory based on contractually defined terms in the auction or liquidation contract. We bear the risk of loss under the purchase and guarantee structures of auction and liquidation contracts. If the amount realized from the sale or disposition of assets, net of direct operating expenses, does not equal or exceed the purchase price (in purchase transaction), we will recognize a loss on the engagement, or should the amount realized, net of direct operating expenses, not equal or exceed the “guarantee,” we are still required to pay the guaranteed amount to the client.

***We could incur losses in connection with outright purchase transactions in which we engage as part of our auction and liquidation solutions business.***

When we conduct an asset disposition or liquidation on an outright purchase basis, we purchase from the client the assets or inventory to be sold or liquidated and therefore, we hold title to any assets or inventory that we are not able to sell. In other situations, we may acquire assets from our clients if we believe that we can identify a potential buyer and sell the assets at a premium to the price paid. We store these unsold or acquired assets and inventory until they can be sold or, alternatively, transported to the site of a liquidation of comparable assets or inventory that we are conducting. If we are forced to sell these assets for less than we paid, or are required to transport and store assets multiple times, the related expenses could have a material adverse effect on our results of operations.

***We could be forced to mark down the value of certain assets acquired in connection with outright purchase transactions.***

In most instances, inventory is reported on the balance sheet at its historical cost; however, according to U.S. Generally Accepted Accounting Principles, inventory whose historical cost exceeds its market value should be valued conservatively, which dictates a lower value should apply. Accordingly, should the replacement cost (due to technological obsolescence or otherwise), or the net realizable value of any inventory we hold be less than the cost paid to acquire such inventory (purchase price), we will be required to “mark down” the value of such inventory held. If the value of any inventory held on our balance sheet is required to be written down, such write down could have a material adverse effect on our financial position and results of operations.

***We frequently use borrowings under credit facilities in connection with our guaranty engagements, in which we guarantee a minimum recovery to the client, and outright purchase transactions.***

In engagements where we operate on a guaranty or purchase basis, we are typically required to make an upfront payment to the client. If the upfront payment is less than 100% of the guarantee or the purchase price in a “purchase” transaction, we may be required to make successive cash payments until the guarantee is met or we may issue a letter of credit in favor of the client. Depending on the size and structure of the engagement, we may borrow under our credit facilities and may be required to issue a letter of credit in favor of the client for these additional amounts. If we lose any availability under our credit facilities, are unable to borrow under credit facilities and/or issue letters of credit in favor of clients, or borrow under credit facilities and/or issue letters of credit on commercially reasonable terms, we may be unable to pursue large liquidation and disposition engagements, engage in multiple concurrent engagements, pursue new engagements or expand our operations. We are required to obtain approval from the lenders under our existing credit facilities prior to making any borrowings thereunder in connection with a particular engagement. Any inability to borrow under our credit facilities, or enter into one or more other credit facilities on commercially reasonable terms may have a material adverse effect on our financial condition, results of operations and growth.

***Defaults under our credit agreements could have an adverse impact on our ability to finance potential engagements.***

The terms of our credit agreements contain a number of events of default. Should we default under any of our credit agreements in the future, lenders may take any or all remedial actions set forth in such credit agreement, including, but not limited to, accelerating payment and/or charging us a default rate of interest on all outstanding amounts, refusing to make any further advances or issue letters of credit, or terminating the line of credit. As a result of our reliance on lines of credit and letters of credit, any default under a credit agreement, or remedial actions pursued by lenders following any default under a credit agreement, may require us to immediately repay all outstanding amounts, which may preclude us from pursuing new liquidation and disposition engagements and may increase our cost of capital, each of which may have a material adverse effect on our financial condition and results of operations.

### **Risks Related to Our Financial Consulting Activities**

*We depend on financial institutions as primary clients for our financial consulting business. Consequently, the loss of any financial institutions as clients may have an adverse impact on our business.*

A majority of the revenue from our financial consulting business is derived from engagements by financial institutions. As a result, any loss of financial institutions as clients of our valuation and advisory services, whether due to changing preferences in service providers, failures of financial institutions or mergers and consolidations within the finance industry, could significantly reduce the number of existing, repeat and potential clients, thereby adversely affecting our revenues. In addition, any larger financial institutions that result from mergers or consolidations in the financial services industry could have greater leverage in negotiating terms of engagements with us, or could decide to internally perform some or all of the financial consulting services which we currently provide to one of the constituent institutions involved in the merger or consolidation or which we could provide in the future. Any of these developments could have a material adverse effect on our financial consulting business.

*We may face liability or harm to our reputation as a result of a claim that we provided an inaccurate appraisal or valuation and our insurance coverage may not be sufficient to cover the liability.*

We could face liability in connection with a claim by a client that we provided an inaccurate appraisal or valuation on which the client relied. Any claim of this type, whether with or without merit, could result in costly litigation, which could divert management's attention and company resources and harm our reputation. Furthermore, if we are found to be liable, we may be required to pay damages. While our appraisals and valuations are typically provided only for the benefit of our clients, if a third party relies on an appraisal or valuation and suffers harm as a result, we may become subject to a legal claim, even if the claim is without merit. We carry insurance for liability resulting from errors or omissions in connection with our appraisals and valuations; however, the coverage may not be sufficient if we are found to be liable in connection with a claim by a client or third party.

### **Risks Related to our Asset Management Business**

*The asset management business is intensely competitive.*

Over the past several years, the size and number of asset management funds, including hedge funds and mutual funds, has continued to increase. If this trend continues, it is possible that it will become increasingly difficult for our funds to raise capital. More significantly, the allocation of increasing amounts of capital to alternative investment strategies by institutional and individual investors leads to a reduction in the size and duration of pricing inefficiencies. Many alternative investment strategies seek to exploit these inefficiencies and, in certain industries, this drives prices for investments higher, in either case increasing the difficulty of achieving targeted returns. In addition, when inflation or interest rates rise or there is a prolonged bear market in equities, the attractiveness of our funds relative to investments in other investment products could decrease. Competition is based on a variety of factors, including:

- investment performance;
- investor perception of the drive, focus and alignment of interest of an investment manager;
- quality of service provided to and duration of relationship with investors;
- business reputation; and
- level of fees and expenses charged for services.

We compete in the asset management business with a large number of investment management firms, private equity fund sponsors, hedge fund sponsors and other financial institutions. A number of factors serve to increase our competitive risks, as follows:

- investors may develop concerns that we will allow a fund to grow to the detriment of its performance;
- some of our competitors have greater capital, lower targeted returns or greater sector or investment strategy specific expertise than we do, which creates competitive disadvantages with respect to investment opportunities;

- some of our competitors may perceive risk differently than we do which could allow them either to outbid us for investments in particular sectors or, generally, to consider a wider variety of investments;
- there are relatively few barriers to entry impeding new asset management firms, and the successful efforts of new entrants into our various lines of business, including former “star” portfolio managers at large diversified financial institutions as well as such institutions themselves, will continue to result in increased competition; and
- other industry participants in the asset management business continuously seek to recruit our best and brightest investment professionals away from us.

These and other factors could reduce our earnings and revenues and adversely affect our business. In addition, if we are forced to compete with other alternative asset managers on the basis of price, we may not be able to maintain our current base management and incentive fee structures. We have historically competed primarily on the performance of our funds, and not on the level of our fees relative to those of our competitors. However, there is a risk that fees in the alternative investment management industry will decline, without regard to the historical performance of a manager, including our managers. Fee reductions on our existing or future funds, without corresponding decreases in our cost structure, would adversely affect our revenues and distributable earnings.

***Poor investment performance may decrease assets under management and reduce revenues from and the profitability of our asset management business.***

Revenues from our asset management business are primarily derived from asset management fees. Asset management fees are generally comprised of management and incentive fees. Management fees are typically based on assets under management, and incentive fees are earned on a quarterly or annual basis only if the return on our managed accounts exceeds a certain threshold return, or “highwater mark,” for each investor. We will not earn incentive fee income during a particular period, even when a fund had positive returns in that period, if we do not generate cumulative performance that surpasses a highwater mark. If a fund experiences losses, we will not earn incentive fees with regard to investors in that fund until its returns exceed the relevant highwater mark.

In addition, investment performance is one of the most important factors in retaining existing investors and competing for new asset management business. Investment performance may be poor as a result of the current or future difficult market or economic conditions, including changes in interest rates, with increases anticipated in 2022, or inflation, which has been an ongoing concern during 2021 and into 2022, acts of war, aggression or terrorism, widespread outbreaks of disease, such as the ongoing COVID-19 pandemic, or political uncertainty, our investment style, the particular investments that we make, and other factors. Poor investment performance may result in a decline in our revenues and income by causing (i) the net asset value of the assets under our management to decrease, which would result in lower management fees to us, (ii) lower investment returns, resulting in a reduction of incentive fee income to us, and (iii) investor redemptions, which would result in lower fees to us because we would have fewer assets under management.

To the extent our future investment performance is perceived to be poor in either relative or absolute terms, the revenues and profitability of our asset management business will likely be reduced and our ability to grow existing funds and raise new funds in the future will likely be impaired.

***The historical returns of our funds may not be indicative of the future results of our funds.***

The historical returns of our funds should not be considered indicative of the future results that should be expected from such funds or from any future funds we may raise. Our rates of returns reflect unrealized gains, as of the applicable measurement date, which may never be realized due to changes in market and other conditions not in our control that may adversely affect the ultimate value realized from the investments in a fund. The returns of our funds may have also benefited from investment opportunities and general market conditions that may not repeat themselves, and there can be no assurance that our current or future funds will be able to avail themselves of profitable investment opportunities. Furthermore, the historical and potential future returns of the funds we manage also may not necessarily bear any relationship to potential returns on our common stock.

***We are subject to risks in using custodians.***

Our asset management subsidiary and its managed funds depend on the services of custodians to settle and report securities transactions. In the event of the insolvency of a custodian, our funds might not be able to recover equivalent assets in whole or in part as they will rank among the custodian's unsecured creditors in relation to assets which the custodian borrows, lends or otherwise uses. In addition, cash held by our funds with the custodian will not be segregated from the custodian's own cash, and the funds will therefore rank as unsecured creditors in relation thereto.

***We manage debt investments that involve significant risks and potential additional liabilities.***

GACP I, L.P. and GACP II, L.P., both direct lending funds of which our wholly owned subsidiary GACP is the general partner, and which are managed by WhiteHawk Capital Partners, L.P. pursuant to an investment advisory services agreement, may invest in secured debt issued by companies that have or may incur additional debt that is senior to the secured debt owned by the fund. In the event of insolvency, liquidation, dissolution, reorganization or bankruptcy of any such company, the owners of senior secured debt (i.e., the owners of first priority liens) generally will be entitled to receive proceeds from any realization of the secured collateral until they have been reimbursed. At such time, the owners of junior secured debt (including, in certain circumstances, the fund) will be entitled to receive proceeds from the realization of the collateral securing such debt. There can be no assurances that the proceeds, if any, from the sale of such collateral would be sufficient to satisfy the loan obligations secured by subordinate debt instruments. To the extent that the fund owns secured debt that is junior to other secured debt, the fund may lose the value of its entire investment in such secured debt.

In addition, the fund may invest in loans that are secured by a second lien on assets. Second lien loans have been a developed market for a relatively short period of time, and there is limited historical data on the performance of second lien loans in adverse economic circumstances. In addition, second lien loan products are subject to intercreditor arrangements with the holders of first lien indebtedness, pursuant to which the second lien holders have waived many of the rights of a secured creditor, and some rights of unsecured creditors, including rights in bankruptcy, which can materially affect recoveries. While there is broad market acceptance of some second lien intercreditor terms, no clear market standard has developed for certain other material intercreditor terms for second lien loan products. This variation in key intercreditor terms may result in dissimilar recoveries across otherwise similarly situated second lien loans in insolvency or distressed situations. While uncertainty of recovery in an insolvency or distressed situation is inherent in all debt instruments, second lien loan products carry more risks than certain other debt products.

**Risks Related to Our Communications Businesses**

***We compete against large companies, many of whom have significantly more financial and marketing resources, and our business will suffer if we are unable to compete successfully.***

We compete with numerous providers of broadband, mobile broadband and DSL services, as well as other dial-up Internet access providers, many of whom are large and have significantly more financial and marketing resources. Our principal competitors include, among others, local exchange carriers, wireless and satellite service providers, and cable service providers. These competitors include established providers such as AT&T, Verizon, Sprint, and T-Mobile. UOL's principal dial-up Internet access competitors include established online service and content providers, such as AOL and MSN, and independent national Internet service providers, such as EarthLink and its PeoplePC subsidiary. Dial-up Internet access services do not compete favorably with broadband services with respect to connection speed and do not have a significant, if any, price advantage over certain broadband services. In addition, there are a number of mobile virtual network operators, some of which focus on pricing as their main selling point. Certain portions of the U.S., primarily rural areas, currently have limited or no access to broadband services. However, the U.S. government has indicated its intention to facilitate the provision of broadband services to such areas. Such expansion of the availability of broadband services will increase the competition for Internet access subscribers in such areas and will likely adversely affect the UOL business. In addition to competition from broadband, mobile broadband, and DSL providers, competition among dial-up Internet access service providers is intense and neither UOL's pricing nor the features of UOL's services provide us with a significant competitive advantage, if any, over certain of UOL's dial-up Internet access competitors. We expect that competition, particularly with respect to price, for broadband, mobile broadband, and DSL services, as well as dial-up Internet access services, will continue and may materially and adversely impact our business, financial condition, results of operations, and cash flows.

***Dial-up and DSL pay accounts may decline faster than expected and adversely impact our business.***

A significant portion of UOL's revenues and profits come from dial-up Internet and DSL access services and related services and advertising revenues. UOL's dial-up and DSL Internet access pay accounts and revenues have been declining and are expected to continue to decline due to the continued maturation of the market for dial-up and DSL Internet access, competitive pressures in the industry and limited sales efforts. Consumers continue to migrate to broadband access, primarily due to the faster connection and download speeds provided by broadband access. Advanced applications such as online gaming, music downloads and videos require greater bandwidth for optimal performance, which adds to the demand for broadband access. The pricing for basic broadband services has been declining as well, making it a more viable option for consumers. In addition, the popularity of accessing the Internet through tablets and mobile devices has been growing and may accelerate the migration of consumers away from dial-up Internet access. The number of dial-up Internet access pay accounts has been adversely impacted by both a decrease in the number of new pay accounts signing up for UOL's services, as well as the impact of subscribers canceling their accounts, which we refer to as "churn." Churn has increased from time to time and may increase in the future. If we experience a higher than expected level of churn, it will make it more difficult for us to increase or maintain the number of pay accounts, which could adversely affect our business, financial condition, results of operations, and cash flows.

We expect UOL's dial-up and DSL Internet access pay accounts to continue to decline. As a result, related services revenues and the profitability of this segment may decline. The rate of decline in these revenues may continue to accelerate.

We may not be able to consistently make a high level of expense reductions in the future. Continued declines in revenues relating to the UOL business, particularly if such declines accelerate, will materially and adversely impact the profitability of this business.

***Failure to maintain advertising revenues from UOL, including as a result of failing to increase or maintain the number of subscribers for UOL's services, could have a negative impact on advertising profitability.***

Advertising revenues are a key component of revenues and profitability from UOL. UOL's services currently generate advertising revenues from search placements, display advertisements and online market research associated with Internet access and email services. Factors that have caused, or may cause in the future, UOL's advertising revenues to fluctuate include, without limitation, changes in the number of visitors to UOL's websites, active accounts or consumers purchasing our services and products, the effect of, changes to, or terminations of key advertising relationships, changes to UOL's websites and advertising inventory, changes in applicable laws, regulations or business practices, including those related to behavioral or targeted advertising, user privacy, and taxation, changes in business models, changes in the online advertising market, changes in the economy, advertisers' budgeting and buying patterns, competition, and changes in usage of UOL's services. Decreases in UOL's advertising revenues are likely to adversely impact our profitability. Further, our successful operation and management of UOL, including the ability to generate advertising revenues for UOL's services, will depend in part upon our ability to increase or maintain the number of subscribers for UOL's services. A decline in the number of subscribers using UOL's services could result in decreased advertising revenues, and decreases in advertising revenues would adversely impact our profitability. The failure to increase or maintain the number of subscribers for UOL's services could have a material adverse effect on advertising revenues and our profitability.

***Interruption or failure of the network, information systems or other technologies essential to our communications businesses could impair our ability to serve our customers, which could damage our reputation and harm our operating results.***

Our successful operation of our communications businesses depends on our ability to provide reliable service. Many of our products and services are supported by data centers, central offices and network infrastructure maintained and operated by third-party service providers which are vulnerable to damage or interruption from fires, earthquakes, hurricanes, tornados, floods and other natural disasters, terrorist attacks, power loss, capacity limitations, telecommunications failures, software and hardware defects or malfunctions, break ins, sabotage and vandalism, human error and other disruptions that are beyond our control. Some of the systems serving our communications businesses are not fully redundant, and our disaster recovery or business continuity planning may not be adequate. Our communications businesses could also experience interruptions due to cable damage, theft of equipment, power outages, inclement weather and service failures of third-party service providers. The occurrence of any disruption or system failure or other significant disruption to business continuity may result in a loss of business, increase expenses, damage to reputation for providing reliable service, subject us to additional regulatory scrutiny or expose us to litigation and possible financial losses, any of which could adversely affect our business, results of operations and cash flows.

***If there are events or circumstances affecting the reliability or security of the Internet, access to the websites related to the communications businesses and/or the ability to safeguard confidential information could be impaired causing a negative effect on the financial results of our business operations.***

Our website infrastructure may be vulnerable to computer viruses, hacking or similar disruptive problems caused by customers, other Internet users, other connected Internet sites, and the interconnecting telecommunications networks. Such problems caused by third-parties could lead to interruptions, delays or cessation of service to our customers. Inappropriate use of the Internet by third-parties could also potentially jeopardize the security of confidential information stored in our computer system, which may deter individuals from becoming customers. There can be no assurance that any such measures would not be circumvented in future. Dealing with problems caused by computer viruses or other inappropriate uses or security breaches may require interruptions, delays or cessation of service to customers, which could have a material adverse effect on our business, financial condition and results of operations.

***Our marketing efforts for our communications businesses may not be successful or may become more expensive, either of which could increase our costs and adversely impact our business, financial condition, results of operations, and cash flows.***

We rely on relationships with a wide variety of third parties, including Internet search providers such as Google, social networking platforms such as Facebook, Internet advertising networks, co-registration partners, retailers, distributors, television advertising agencies, and direct marketers, to source new customers and to promote or distribute our services and products. In addition, in connection with the launch of new services or products for our communications businesses, we may spend a significant amount of resources on marketing. With any of our brands, services, and products, if our marketing activities are inefficient or unsuccessful, if important third-party relationships or marketing strategies, such as Internet search engine marketing and search engine optimization, become more expensive or unavailable, or are suspended, modified, or terminated, for any reason, if there is an increase in the proportion of consumers visiting our websites or purchasing our services and products by way of marketing channels with higher marketing costs as compared to channels that have lower or no associated marketing costs, or if our marketing efforts do not result in our services and products being prominently ranked in Internet search listings, our business, financial condition, results of operations, and cash flows could be materially and adversely impacted.

***Our communications businesses are dependent on the availability of telecommunications services and compatibility with third-party systems and products.***

Our communications businesses substantially depend on the availability, capacity, affordability, reliability, and security of telecommunications networks operated by third parties. Only a limited number of telecommunications providers offer the network and data services we currently require for our services, and we purchase most of our telecommunications services from a few providers. Some of our telecommunications services are provided pursuant to short-term agreements that the providers can terminate or elect not to renew. In addition, some telecommunications providers may cease to offer network services for certain less populated areas, which would reduce the number of providers from which we may purchase services and may entirely eliminate our ability to purchase services for certain areas.

Currently, our mobile broadband service of our UOL business is entirely dependent upon services acquired from one service provider, and the devices required by the provider can be used for only such provider's service. If we are unable to maintain, renew or obtain a new agreement with the telecommunications provider on acceptable terms, or the provider discontinues its services, our business, financial condition, results of operations, and cash flows could be materially and adversely affected.

Our dial-up Internet access services of our UOL business also rely on their compatibility with other third-party systems, products and features, including operating systems. Incompatibility with third-party systems and products could adversely affect our ability to deliver our services or a user's ability to access our services and could also adversely impact the distribution channels for our services. Our dial-up Internet access services are dependent on dial-up modems and an increasing number of computer manufacturers, including certain manufacturers with whom we have distribution relationships, do not pre-load their new computers with dial-up modems, requiring the user to separately acquire a modem to access our services. We cannot assure you that, as the dial-up Internet access market declines and new technologies emerge, we will be able to continue to effectively distribute and deliver our services.

***Government regulations could adversely affect our business or force us to change our business practices.***

The services we provide are subject to varying degrees of international, federal, state and local laws and regulation, including, without limitation, those relating to taxation, bulk email or “spam,” advertising (including, without limitation, targeted or behavioral advertising), user privacy and data protection, consumer protection, antitrust, export, and unclaimed property. Compliance with such laws and regulations, which in many instances are unclear or unsettled, is complex. New laws and regulations, such as those being considered or recently enacted by certain states, the federal government, or international authorities related to automatic-renewal practices, spam, user privacy, targeted or behavioral advertising, and taxation, could impact our revenues or certain of our business practices or those of our advertisers. Moreover, distribution partners or customers may require us, or we may otherwise deem it necessary or advisable, to alter our products to address actual or anticipated changes in the regulatory environment. Our inability to alter our products to address these requirements and any regulatory changes could have a material adverse effect on our business, financial condition, and operating results.

The current regulatory environment for broadband telephone services is developing and therefore uncertain. The United States and other countries have begun to assert regulatory authority over broadband telephone service and are continuing to evaluate how broadband telephone service will be regulated in the future. Both the application of existing rules to us and our competitors and the effects of future regulatory developments are uncertain. Future legislative, judicial or other regulatory actions could have a negative effect on our business, which may involve significant compliance costs and require that we restructure our service offerings, exit certain markets, or increase our prices to recover our regulatory costs, any of which could cause our services to be less attractive to customers.

Regulatory and governmental agencies may determine that we should be subject to rules applicable to certain broadband telephone service providers or seek to impose new or increased fees, taxes, and administrative burdens on broadband telephone service providers. We also may change our product and service offerings in a manner that subjects us to greater regulation and taxation. We are faced, and may continue to face, difficulty collecting such charges from our customers and/or carriers, and collecting such charges may cause us to incur legal fees. We may be unsuccessful in collecting all of the regulatory fees owed to us. The imposition of any such additional regulatory fees, charges, taxes and regulations on VoIP communications services could materially increase our costs and may limit or eliminate our competitive pricing advantages.

We offer our magicJack products and services in other countries, and therefore could also be subject to regulatory risks in each such foreign jurisdiction, including the risk that regulations in some jurisdictions will prohibit us from providing our services cost-effectively or at all, which could limit our growth. Currently, there are several countries where regulations prohibit us from offering service. In addition, because customers can use our services almost anywhere that a broadband Internet connection is available, including countries where providing broadband telephone service is illegal, the governments of those countries may attempt to assert jurisdiction over us. Violations of these laws and regulations could result in fines, criminal sanctions against us, our officers or our employees, and prohibitions on the conduct of our business. Any such violations could include prohibitions on our ability to offer our products and services in one or more countries, could delay or prevent potential acquisitions, expose us to significant liability and regulation and could also materially damage our reputation, our brand, our international expansion efforts, our ability to attract and retain employees, our business and our operating results. Our success depends, in part, on our ability to anticipate these risks and manage these difficulties.

Broadband Internet access is currently classified by the FCC as an “information service.” While this classification means that broadband Internet access services are not subject to Universal Service Fund (“USF”) contributions, Congress or the FCC may expand the USF contribution obligations to include broadband Internet access services. If broadband Internet access providers become subject to USF contribution obligations, it would likely raise the effective cost of our services to customers, which could adversely affect customer satisfaction and have an adverse impact on our revenues and profitability.

We are faced, and may continue to face, difficulty collecting regulatory charges from our customers and/or carriers and collecting such charges may cause us to incur legal fees. We may be unsuccessful in collecting all the regulatory fees owed to us. The imposition of any such additional regulatory fees, charges, taxes and regulations on our services could materially increase our costs and may limit or eliminate our competitive pricing advantages.

Failure to remit regulatory fees, charges and taxes mandated by federal and state regulations; failure to maintain proper state tariffs and certifications; failure to comply with federal, state or local laws and regulations; failure to obtain and maintain required licenses, franchises and permits; imposition of burdensome license, franchise or permit requirements for us to operate in public rights-of-way; and imposition of new burdensome or adverse regulatory requirements could limit the types of services we provide or the terms on which we provide these services.

We cannot predict the outcome of any ongoing legislative initiatives or administrative or judicial proceedings or their potential impact upon the communications and information technology industries generally or upon our communications businesses specifically. Any changes in the laws and regulations applicable to our communications businesses, the enactment of any additional laws or regulations, or the failure to comply with, or increased enforcement activity by regulators of, such laws and regulations, could significantly impact our services and products, our costs, or the manner in which we or our advertisers conduct business, all of which could adversely impact our business, financial condition, results of operations, and cash flows and cause our business to suffer.

The FCC and some states require us to obtain prior approval of certain major merger and acquisition transactions, such as the acquisition of control of another telecommunications carrier. Delays in obtaining such approvals could affect our ability to close proposed transactions in a timely manner and could increase our costs and increase the risk of non-consummation of some transactions.

***The market in which our communications businesses participate is highly competitive and if we do not compete effectively, our operating results may be harmed by loss of market share and revenues.***

The communications industry is highly competitive. We face intense competition from traditional telephone companies, wireless companies, cable companies and alternative voice communication providers and manufacturers of communication devices.

Competitors for our products and services include telecommunications carriers, such as AT&T, Inc., Lumen and Verizon, which provide telephone service using the public switched telephone network, as well as broadband telephone services. We also face competition from cable companies, such as Cablevision, Charter, Comcast, and Cox Communications, which offer broadband telephone services to their existing cable television and broadband customers. Further, wireless providers, including AT&T, T-Mobile, and Verizon Wireless offer services that some customers may prefer over wireline-based broadband voice service.

We face competition on magicJack device sales from Apple, Samsung and other manufacturers of smart phones, tablets and other handheld wireless devices. Also, we compete against established alternative voice communication providers, such as Vonage, Google Voice, Ooma, and Skype, some of which are part of established, well-capitalized technology companies. In addition, we compete with independent broadband telephone service providers.

Increased competition may result in our competitors using aggressive business tactics, including providing financial incentives to customers, selling their products or services at a discount or loss, offering products or services similar to our products and services on a bundled basis at a discounted rate or no charge, announcing competing products or services combined with aggressive marketing efforts, and asserting intellectual property rights or claims, irrespective of their validity.

***We may be unsuccessful in protecting our proprietary rights or may have to defend ourselves against claims of infringement, which could impair or significantly affect our business.***

Our means of protecting our proprietary rights may not be adequate and our competitors may independently develop technology that is similar ours. Legal protections afford only limited protection for our technology. The laws of many countries do not protect our proprietary rights to as great an extent as do the laws of the United States. Despite our efforts to protect our proprietary rights, unauthorized parties have in the past attempted, and may in the future attempt, to copy aspects of our products or to obtain and use information that it regards as proprietary. Third parties may also design around our proprietary rights, which may render our protected products less valuable if the design around is favorably received in the marketplace. In addition, if any our products or the technology underlying our products is covered by third-party patents or other intellectual property rights, we could be subject to various legal actions.

We cannot assure you that our products do not infringe intellectual property rights held by others or that they will not in the future. Third parties may assert infringement, misappropriation, or breach of license claims against us from time to time. Such claims could cause us to incur substantial liabilities and to suspend or permanently cease the use of critical technologies or processes or the production or sale of major products. Litigation may be necessary to enforce our intellectual property rights, to protect our trade secrets, to determine the validity and scope of the proprietary rights of others, or to defend against claims of infringement or invalidity, misappropriation, or other claims. Any such litigation could result in substantial costs and diversion of our resources, which in turn could materially adversely affect our business and financial condition. Moreover, any settlement of or adverse judgment resulting from such litigation could require us to obtain a license to continue to use the technology that is the subject of the claim, or otherwise restrict or prohibit our use of the technology. Any required licenses may not be available to us on acceptable terms, if at all. If we attempt to design around the technology at issue or to find another provider of suitable alternative technology to permit it to continue offering applicable software or product solutions, our continued supply of software or product solutions could be disrupted or our introduction of new or enhanced software or products could be significantly delayed.

***Increases in credit card processing fees and high chargeback costs would increase our operating expenses and adversely affect our results of operations, and an adverse change in, or the termination of, our relationship with any major credit card company would have a severe, negative impact on our business.***

A significant number of our communications customers purchase its products through our websites and pay for our communications products and services using credit or debit cards. The major credit card companies or the issuing banks may increase the fees that they charge for transactions using their cards. An increase in those fees would require us to either increase the prices we charge for our products, or suffer a negative impact on our profitability, either of which could adversely affect our business, financial condition and results of operations.

We have potential liability for chargebacks associated with the transactions we process, or that are processed on our behalf by merchants selling our products. If a customer returns his or her products at any time, or claims that our product was purchased fraudulently, the returned product is “charged back” to magicJack or its bank, as applicable. If we or our sponsoring banks are unable to collect the chargeback from the merchant’s account, or, if the merchant refuses or is financially unable, due to bankruptcy or other reasons, to reimburse the merchant’s bank for the chargeback, we bear the loss for the amount of the refund paid.

We are vulnerable to credit card fraud, as we sell communications products and services directly to customers through our website. Card fraud occurs when a customer uses a stolen card (or a stolen card number in a card-not-present-transaction) to purchase merchandise or services. In a traditional card-present transaction, if the merchant swipes the card, receives authorization for the transaction from the card issuing bank and verifies the signature on the back of the card against the paper receipt signed by the customer, the card issuing bank remains liable for any loss. In a fraudulent card-not-present transaction, even if the merchant or we receive authorization for the transaction, we or the merchant are liable for any loss arising from the transaction. Because sales made directly from our websites are card-not-present transactions, we are more vulnerable to customer fraud. We are also subject to acts of consumer fraud by customers that purchase our products and services and subsequently claim that such purchases were not made.

In addition, as a result of high chargeback rates or other reasons beyond our control, the credit card companies or issuing bank may terminate their relationship with us, and there are no assurances that it will be able to enter into a new credit card processing agreement on similar terms, if at all. Upon a termination, if our credit card processor does not assist it in transitioning its business to another credit card processor, or if we were not able to obtain a new credit card processor, the negative impact on the liquidity of our communications businesses likely would be significant. The credit card processor may also prohibit us from billing discounts annually or for any other reason. Any increases in the credit card fees paid by our communications businesses could adversely affect our results of operations, particularly if we elect not to raise our service rates to offset the increase. The termination of our ability to process payments on any major credit or debit card, due to high chargebacks or otherwise, would significantly impair our ability to operate our business.

***Flaws in our technology and systems could cause delays or interruptions of service, damage our reputation, cause us to lose customers and limit our growth.***

Our communications services could be disrupted by problems with our technology and systems, such as malfunctions in our software or other facilities and overloading of our servers. Our customers could experience interruptions in the future as a result of these types of problems. Interruptions could in the future cause us to lose customers, which could adversely affect our revenue and profitability. In addition, because our systems and our customers’ ability to use our services are Internet-dependent, our services may be subject to “hacker attacks” from the Internet, which could have a significant impact on our systems and services. If service interruptions adversely affect the perceived reliability of our service, it may have difficulty attracting and retaining customers and our brand reputation and growth may suffer.

***We depend on overseas manufacturers, and for certain magicJack products, third-party suppliers, and our reputation and results of operations would be harmed if these manufacturers or suppliers fail to meet magicJack’s requirements.***

The manufacture of the magicJack devices is conducted by a manufacturing company in China, and certain parts are produced in Taiwan and Hong Kong. These manufacturers supply substantially all of the raw materials and provide all facilities and labor required to manufacture our products. If these companies were to terminate their arrangements with us or fail to provide the required capacity and quality on a timely basis, either due to actions of the manufacturers; earthquakes, typhoons, tsunamis, fires, floods, or other natural disasters; or the actions of their respective governments, we would be unable to manufacture our products until replacement contract manufacturing services could be obtained. To qualify a new contract manufacturer, familiarize it with the magicJack products, quality standards and other requirements, and commence volume production is a costly and time-consuming process. We cannot assure you that we would be able to establish alternative manufacturing relationships on acceptable terms or in a timely manner that would not cause disruptions in our supply. Any interruption in the manufacture of our products would be likely to result in delays in shipment, lost sales and revenue and damage to our reputation in the market, all of which would harm our business and results of operations. In addition, while the magicJack contract obligations with its contract manufacturer in China is denominated in U.S. dollars, changes in currency exchange rates could impact our suppliers and increase our prices.

***We rely on independent retailers to sell the magicJack devices, and disruption to these channels would harm our business.***

Because we sell a significant amount of the magicJack devices, other devices and certain services to independent retailers, we are subject to many risks, including risks related to their inventory levels and support for magicJack's products. In particular, magicJack's retailers maintain significant levels of our products in their inventories. If retailers attempt to reduce their levels of inventory or if they do not maintain sufficient levels to meet customer demand, our sales could be negatively impacted.

The retailers who sell magicJack products also sell products offered by its competitors. If these competitors offer the retailers more favorable terms, those retailers may de-emphasize or decline to carry magicJack's products. In the future, we may not be able to retain or attract a sufficient number of qualified retailers. If we are unable to maintain successful relationships with retailers or to expand our distribution channels, our business will suffer.

To continue this method of sales, we will have to allocate resources to train vendors, systems integrators and business partners as to the use of our products, resulting in additional costs and additional time until sales by such vendors, systems integrators and business partners are made feasible. Our business depends to a certain extent upon the success of such channels and the broad market acceptance of our products. To the extent that our channels are unsuccessful in selling our products, our revenues and operating results will be adversely affected.

If magicJack fails to maintain relationships with these channels, fails to develop new channels, fails to effectively manage, train, or provide incentives to existing channels or if these channels are not successful in their sales efforts, sales of magicJack's products may decrease and our operating results would suffer. The independent retailers we rely on were impacted by the acute phase of the COVID-19 pandemic, which resulted in mandatory store closures due to social distancing measures imposed to control the pandemic and they may be limited in their ability to sell magicJack devices to customers should such measures return during additional waves of the pandemic.

***The success of our business relies on customers' continued and unimpeded access to broadband service. Providers of broadband services may be able to block our services or charge their customers more for also using our services, which could adversely affect our revenue and growth.***

Our customers must have broadband access to the Internet in order to use our service. Providers of broadband access, some of whom are also competing providers of broadband voice services, may take measures that affect their customers' ability to use our service, such as degrading the quality of the data packets they transmit over their lines, giving those packets low priority, giving other packets higher priority than ours, blocking our packets entirely or attempting to charge their customers more for also using our services.

In December 2017, the FCC rescinded rules that, among other things, prohibited broadband Internet access providers from blocking, throttling, or otherwise degrading the quality of data packets, or attempting to extract additional fees from edge service providers.

In October 2019, the D.C. Circuit largely upheld the FCC decision. Although some states, most notably California, have adopted prohibitions similar to those rescinded by the FCC, if broadband providers block, throttle or otherwise degrade the quality of our data packets or attempt to extract additional fees from us or our customers, it could adversely impact our business.

***Server failures or system breaches could cause delays or adversely affect our service quality, which may cause us to lose customers and revenue.***

In operating our servers, we may be unable to connect and manage a large number of customers or a large quantity of traffic at high speeds. Any failure or perceived failure to achieve or maintain high-speed data transmission could significantly reduce demand for our magicJack services and adversely affect our operating results. In addition, computer viruses, break-ins, human error, natural disasters and other problems may disrupt our servers. The system security and stability measures we implement may be circumvented in the future or otherwise fail to prevent the disruption of our services. The costs and resources required to eliminate computer viruses and other security problems may result in interruptions, delays or cessation of services to our customers, which could decrease demand, decrease our revenue and slow our planned expansion.

***Hardware and software failures, delays in the operation of our computer and communications systems or the failure to implement system enhancements may harm our business.***

Our success depends on the efficient and uninterrupted operation of our software and communications systems. A failure of our servers could impede the delivery of services, customer orders and day-to-day management of our business and could result in the corruption or loss of data. Despite any precautions we may take, damage from fire, floods, hurricanes, power loss, telecommunications failures, computer viruses, break-ins and similar events at our various facilities could result in interruptions in the flow of data to our servers and from our servers to our customers. In addition, any failure by our computer environment to provide our required telephone communications capacity could result in interruptions in our service. Additionally, significant delays in the planned delivery of system enhancements and improvements, or inadequate performance of the systems once they are completed, could damage our reputation and harm our business. Finally, long-term disruptions in infrastructure caused by events such as natural disasters, the outbreak of war, the escalation of hostilities, and acts of terrorism (particularly involving cities in which it has offices) could adversely affect our business. Although we maintain general liability insurance, including coverage for errors and omissions, this coverage may be inadequate, or may not be available in the future on reasonable terms, or at all. We cannot assure you that this policy will cover any claim against us for loss of data or other indirect or consequential damages and defending a lawsuit, regardless of its merit, could be costly and divert management's attention. In addition to potential liability, if we experience interruptions in our ability to supply our services, our reputation could be harmed and we could lose customers.

***Our communications businesses are subject to privacy and online security risks, including security breaches, and we could be liable for such breaches of security. If we are unable to protect the privacy of our customers using our services, or information obtained from our customers in connection with their use or payment of our services, in violation of privacy or security laws or expectations, we could be subject to significant liability and damage to our reputation.***

Our systems and processes that are designed to protect customer information and prevent fraudulent transactions, data loss and other security breaches, may not be sufficient to prevent fraudulent transactions, data loss and other security breaches. Failure to prevent or mitigate such breaches may adversely affect our operating results.

The websites of our communications businesses serve as online sales portals. We currently obtain and retain personal information about our website users in connection with such purchases. In addition, we obtain personal information about our customers as part of their registration to use our products and services. Federal, state and foreign governments have enacted or may enact laws or regulations regarding the collection and use of personal information. Additionally, magicJack customers may believe that using our services to make and receive telephone calls using their broadband connection could result in a reduction of their privacy, as compared to traditional wireline carriers.

Our business involves the storage and transmission of users' proprietary information, and security breaches could expose us to a risk of loss or misuse of this information, litigation, and potential liability. An increasing number of websites, including several other communications companies, have recently disclosed breaches of their security, some of which have involved sophisticated and highly targeted attacks on portions of their sites. Because the techniques used to obtain unauthorized access, disable or degrade service, or sabotage systems, change frequently and often are not recognized until launched against a target, we may be unable to anticipate these techniques or to implement adequate preventative measures. If an actual or perceived breach of our security occurs, the market perception of the effectiveness of our security measures could be harmed and we could lose users. A party that is able to circumvent our security measures could misappropriate our or our users' proprietary information, cause interruption in our operations, damage our computers or those of our users, or otherwise damage our reputation and business. Any compromise of our security could result in a violation of applicable privacy and other laws, significant legal and financial exposure, damage to our reputation, and a loss of confidence in our security measures, which could harm our business.

Currently, a significant number of our users authorize it to bill their credit card accounts directly for all transaction fees charged by us. We rely on encryption and authentication technology licensed from third parties to provide the security and authentication to effectively secure transmission of confidential information, including customer credit card numbers. Advances in computer capabilities, new discoveries in the field of cryptography or other developments may result in the technology used by us to protect transaction data being breached or compromised. Non-technical means, for example, actions by a suborned employee, can also result in a data breach.

Possession and use of personal information in conducting our business subjects it to legislative and regulatory burdens that could require notification of data breach, restrict our use of personal information and hinder our ability to acquire new customers or market to existing customers. We may incur expenses to comply with privacy and security standards and protocols imposed by law, regulation, industry standards or contractual obligations.

Under payment card rules and our contracts with our card processors, if there is a breach of payment card information that we store, we could be liable to the payment card issuing banks for their cost of issuing new cards and related expenses. In addition, if we fail to follow payment card industry security standards, even if there is no compromise of customer information, we could incur significant fines or lose our ability to give customers the option of using payment cards to fund their payments or pay their fees. If we were unable to accept payment cards, our business would be seriously damaged.

Our servers are also vulnerable to computer viruses, physical or electronic break-ins, and similar disruptions. We may need to expend significant resources to protect against security breaches or to address problems caused by breaches. These issues are likely to become more difficult as we expand the number of places where we operate. Security breaches, including any breach by us or by parties with which we have commercial relationships that result in the unauthorized release of our users' personal information, could damage our reputation and expose us to a risk of loss or litigation and liability. Our insurance policies carry coverage limits that may not be adequate to reimburse it for losses caused by security breaches.

Our users, as well as those of other prominent communications companies, have been and will continue to be targeted by parties using fraudulent "spoof" and "phishing" emails to misappropriate passwords, credit card numbers, or other personal information or to introduce viruses or other malware through "trojan horse" programs to our users' computers. These emails appear to be legitimate emails sent by our communications businesses, but direct recipients to fake websites operated by the sender of the email or request that the recipient send a password or other confidential information via email or download a program. Despite our efforts to mitigate "spoof" and "phishing" emails through product improvements and user education, "spoof" and "phishing" remain a serious problem that may damage our brands, discourage use of our websites, and increase our costs.

Our security measures may not prevent security breaches. We may need to expend resources to protect against security breaches or to address problems caused by breaches. If unauthorized third parties were able to penetrate our security and gain access to, or otherwise misappropriate, our customers' personal information or be able to access their telephone calls, it could harm our reputation and, therefore, our business and we could be subject to liability. Such liability could include claims for misuse of personal information or unauthorized use of credit cards. These claims could result in litigation, our involvement in which, regardless of the outcome, could require us to expend significant financial resources. Internet privacy is a rapidly changing area and we may be subject to future requirements and legislation that are costly to implement and negatively impact our results.

#### **Risks Related to Our Brand Portfolio**

***The failure of our licensees to sell products that generate royalties to us, to pay us royalties pursuant to their license agreements with us, or to renew these agreements could negatively affect our results of operations and financial condition.***

Our revenues are dependent on royalty payments made to us under our license agreements. Although some of our license agreements guarantee a minimum royalty payment to us each year, the failure of our licensees to satisfy these or the other obligations under their agreements with us, their decision to not renew their agreements with us or their inability to grow or maintain their sales of products bearing our brands or their businesses generally could cause our revenues to decline. These events or circumstances could occur for a variety of reasons, many of which are outside our control, including business and operational risks that impact our licensees' ability to make payments and sell products generally, such as obtaining and maintaining desirable store locations and consumer acceptance and presence; retaining key personnel, including the specific individuals who work on sales and marketing for products bearing our brands; and liquidity and capital resources risks.

The consumer goods and services sector was severely impacted by the ongoing COVID-19 pandemic, which resulted in mandatory store closures of uncertain duration due to social distancing measures imposed to control the pandemic and our licensees may continue to have difficulty selling their merchandise and meeting their financial obligations to us as the sector evolves following the acute phase of the pandemic.

The failure by any of our key licensees or the concurrent failure by several licensees to meet their financial obligations to us or to renew their respective license agreements with us could materially and adversely impact our results of operations and our financial condition.

***Our brand investment portfolio is subject to intense competition.***

We hold a majority interest in a brand investment portfolio that is focused on generating revenue through the licensing of trademarks. Therefore, our degree of success is dependent on the strength of our brands, consumer acceptance of our brands and our licensees' ability to design, manufacture and sell products bearing our brands, all of which is dependent on the ability of us and our licensees responding to ever-changing consumer demands. We cannot control the level of consumer acceptance of our brands and changing preferences and trends may lead customers to purchase other products. Further, we cannot control the level of resources that our licensees commit to supporting our brands, and our licensees may choose to support products bearing other brands to the detriment of our brands because our agreements generally do not prevent them from licensing or selling other products, including products bearing competing brands.

In addition, we compete with companies that own other brands and trademarks, as these companies could enter into similar licensing arrangements with retailers and wholesalers in the United States and internationally. These arrangements could be with our existing retail and wholesale partners, thereby competing with us for consumer attention and limited floor or rack space in the same stores in which our branded products are sold, and vying with us for the time and resources of the retailers and wholesale licensees that manufacture and distribute our products. These companies may be able to respond more quickly to changes in retailer, wholesaler and consumer preferences and devote greater resources to brand acquisition, development and marketing. We may not be able to compete effectively against these companies.

If we or our brands are unable to compete successfully against current and future competitors, we may be unable to sustain or increase demand for products bearing our brands, which could have a material adverse effect on our reputation, prospects, performance and financial condition.

**Risks Related to Competition**

***We operate in highly competitive industries. Some of our competitors may have certain competitive advantages, which may cause us to be unable to effectively compete with or gain market share from our competitors.***

We face competition with respect to all of our service areas. The level of competition depends on the particular service area and, in the case of our asset and liquidation services, the category of assets being liquidated or appraised. We compete with other companies and investment banks to help clients with their corporate finance and capital needs. In addition, we compete with companies and online services in the bidding for assets and inventory to be liquidated. The demand for online solutions continues to grow and our online competitors include other e-commerce providers, auction websites such as eBay, as well as government agencies and traditional liquidators and auctioneers that have created websites to further enhance their product offerings and more efficiently liquidate assets. We expect the market to become even more competitive as the demand for such services continues to increase and traditional and online liquidators and auctioneers continue to develop online and offline services for disposition, redeployment and remarketing of wholesale surplus and salvage assets. In addition, manufacturers, retailers and government agencies may decide to create their own websites to sell their own surplus assets and inventory and those of third parties.

We also compete with other providers of valuation and advisory services. Competitive pressures within the Financial Consulting and other Advisory Services and real estate services markets, including a decrease in the number of engagements and/or a decrease in the fees which can be charged for these services, could affect revenues from our Financial Consulting and other Advisory Services and real estate services as well as our ability to engage new or repeat clients. We believe that given the relatively low barriers to entry in the Financial Consulting and other Advisory Services and real estate services markets, these markets may become more competitive as the demand for such services increases.

Some of our competitors may be able to devote greater financial resources to marketing and promotional campaigns, secure merchandise from sellers on more favorable terms, adopt more aggressive pricing or inventory availability policies and devote more resources to website and systems development than we are able to do. Any inability on our part to effectively compete could have a material adverse effect on our financial condition, growth potential and results of operations.

We compete with specialized investment banks to provide financial and investment banking services to small and middle-market companies. Middle-market investment banks provide access to capital and strategic advice to small and middle-market companies in our target industries. We compete with those investment banks on the basis of a number of factors, including client relationships, reputation, the abilities of our professionals, transaction execution, innovation, price, market focus and the relative quality of our products and services. We have experienced intense competition over obtaining advisory mandates in recent years, and we may experience pricing pressures in our investment banking business in the future as some of our competitors seek to obtain increased market share by reducing fees. Competition in the middle-market may further intensify if larger Wall Street investment banks expand their focus to this sector of the market. Increased competition could reduce our market share from investment banking services and our ability to generate fees at historical levels.

We also face increased competition due to a trend toward consolidation. In recent years, there has been substantial consolidation and convergence among companies in the financial services industry. This trend was amplified in connection with the unprecedented disruption and volatility in the financial markets during the past several years, and, as a result, a number of financial services companies have merged, been acquired or have fundamentally changed their respective business models. Many of these firms may have the ability to support investment banking, including financial advisory services, with commercial banking, insurance and other financial services in an effort to gain market share, which could result in pricing pressure in our businesses.

UOL competes with numerous providers of broadband, mobile broadband and DSL services, as well as other dial-up Internet access providers, many of whom are large and have significantly more financial and marketing resources. The principal competitors for UOL's mobile broadband and DSL services include, among others, local exchange carriers, wireless and satellite service providers, and cable service providers.

magicJack competes with the traditional telephone service providers, which provide telephone service using the public switched telephone network. Certain of these traditional providers have also added, or are planning to add, broadband telephone services to their existing telephone and broadband offerings. We also face, or expect to face, competition from cable companies, which offer broadband telephone services to their existing cable television and broadband offerings. Further, wireless providers offer services that some customers may prefer over wireline-based service. In the future, as wireless companies offer more minutes at lower prices, their services may become more attractive to customers as a replacement for broadband or wireline-based phone service. We face competition on magicJack device sales from manufacturers of smart phones, tablets and other handheld wireless devices. Also, we compete against established alternative voice communication providers, and may face competition from other large, well-capitalized Internet companies. In addition, we compete with independent broadband telephone service providers.

Our brand investment portfolio competes with companies that own other brands and trademarks, as these companies could enter into similar licensing arrangements with retailers and wholesalers in the United States and internationally. These arrangements could be with our existing retail and wholesale partners, thereby competing with us for consumer attention and limited floor or rack space in the same stores in which our branded products are sold, and vying with us for the time and resources of the retailers and wholesale licensees that manufacture and distribute our products. These companies may be able to respond more quickly to changes in retailer, wholesaler and consumer preferences and devote greater resources to brand acquisition, development and marketing.

***If we are unable to attract and retain qualified personnel, we may not be able to compete successfully in our industry.***

Our future success depends to a significant degree upon the continued contributions of senior management and the ability to attract and retain other highly qualified management personnel. We face competition for management from other companies and organizations; therefore, we may not be able to retain our existing personnel or fill new positions or vacancies created by expansion or turnover at existing compensation levels. Although we have entered into employment agreements with key members of the senior management team, there can be no assurances such key individuals will remain with us. The loss of any of our executive officers or other key management personnel would disrupt our operations and divert the time and attention of our remaining officers and management personnel which could have an adverse effect on our results of operations and potential for growth.

We also face competition for highly skilled employees with experience in the industries in which we operate, and some of which requires a unique knowledge base. We may be unable to recruit or retain existing technical, sales and client support personnel that are critical to our ability to execute our business plan, with such difficulties exacerbated by the labor shortages that arose during the COVID-19 pandemic and persist throughout the economy. Additionally, the ongoing COVID-19 pandemic could affect the availability of our key personnel.

## **Risks Related to Data Security**

***Security breaches and other disruptions could compromise our information and expose us to liability, which would cause our business and reputation to suffer.***

In the ordinary course of our business, we collect and store sensitive data, including intellectual property, our proprietary business information and that of our customers, clients and business partners, and personally identifiable information of our employees, in our servers and on our networks. The secure processing, maintenance and transmission of this information is critical to our operations and business strategy. Despite our security measures, our information technology and infrastructure is vulnerable to attacks by hackers or breach due to employee error, malfeasance or other disruptions. Any such breach could compromise our networks and the information stored there could be accessed, publicly disclosed, lost or stolen. Any such access, disclosure or other loss of information could result in legal claims or proceedings, liability under laws that protect the privacy of personal information, and regulatory penalties. In addition, such a breach could disrupt our operations and the services we provide to our clients, damage our reputation, and cause a loss of confidence in our services, which could adversely affect our business and our financial condition.

***Significant disruptions of information technology systems, breaches of data security, or unauthorized disclosures of sensitive data or personally identifiable information could adversely affect our business, and could subject us to liability or reputational damage.***

Our business is increasingly dependent on critical, complex, and interdependent information technology (“IT”) systems, including Internet-based systems, some of which are managed or hosted by third parties, to support business processes as well as internal and external communications. The size and complexity of our IT systems make us vulnerable to, and we have experienced, IT system breakdowns, malicious intrusion, and computer viruses, which may result in the impairment of our ability to operate our business effectively.

In addition, our systems and the systems of our third-party providers and collaborators are potentially vulnerable to data security breaches which may expose sensitive data to unauthorized persons or to the public. Such data security breaches could lead to the loss of confidential information, trade secrets or other intellectual property, or could lead to the public exposure of personal information (including personally identifiable information) of our employees, customers, business partners, and others. In addition, the increased use of social media by our employees and contractors could result in inadvertent disclosure of sensitive data or personal information, including but not limited to, confidential information, trade secrets and other intellectual property.

Any such disruption or security breach, as well as any action by us or our employees or contractors that might be inconsistent with the rapidly evolving data privacy and security laws and regulations applicable within the United States and elsewhere where we conduct business, could result in enforcement actions by U.S. states, the U.S. Federal government or foreign governments, liability or sanctions under data privacy laws that protect personally identifiable information, regulatory penalties, other legal proceedings such as but not limited to private litigation, the incurrence of significant remediation costs, disruptions to our development programs, business operations and collaborations, diversion of management efforts and damage to our reputation, which could harm our business and operations. Because of the rapidly moving nature of technology and the increasing sophistication of cybersecurity threats, our measures to prevent, respond to and minimize such risks may be unsuccessful.

In addition, the European Parliament and the Council of the European Union adopted a comprehensive general data privacy regulation (“GDPR”) in 2016 that took effect in May 2018 and governs the collection and use of personal data in the European Union. The GDPR, which is wide-ranging in scope, will impose several requirements relating to the consent of the individuals to whom the personal data relates, the information provided to the individuals, the security and confidentiality of the personal data, data breach notification and the use of third party processors in connection with the processing of the personal data. The GDPR also imposes strict rules on the transfer of personal data out of the European Union to the United States, enhances enforcement authority and imposes large penalties for noncompliance, including the potential for fines of up to €20 million or 4% of the annual global revenues of the infringer, whichever is greater. In addition, the California Consumer Privacy Act effective since January 1, 2020 applies to for-profit businesses that conduct business in California and meet certain revenue or data collection thresholds. The CCPA established new requirements regarding handling of person data to entities serving or employing California residents, and gave consumers the right to request disclosure of information collected about them, and whether that information has been sold or shared with others, the right to request deletion of personal information (subject to certain exceptions), the right to opt out of the sale of the consumer’s personal information, and the right not to be discriminated against for exercising these rights. Such rights will be expanded under the California Privacy Rights Act (“CPRA”) once it goes into effect on January 1, 2023. In addition, similar laws have and may be adopted by other states where the Company does business. The impact of the CCPA and other state privacy laws on the Company’s business is yet to be determined.

During the initial phase of the COVID-19 pandemic, most of our personnel shifted to working remotely and many personnel continue to work remotely. Additional waves of the pandemic have, and may continue to, cause us to require periods of remote work for certain personnel or locations. We cannot predict the duration of these disruptions or the durability of the more general trend toward remote work. While we have made substantial investments on our information security infrastructure, this shift has could put stress on our information security infrastructure and increase the risk of a data breach and could require us to make further investments in our cybersecurity program.

## **Risks Related to our Securities and Ownership**

***Anti-takeover provisions under our charter documents and Delaware law could delay or prevent a change of control and could also limit the market price of our stock.***

Our amended and restated certificate of incorporation and our bylaws, as amended, contain provisions that could delay or prevent a change of control of our company or changes in our board of directors that our stockholders might consider favorable. Our amended and restated certificate of incorporation provides that our board of directors will be authorized to issue from time to time, without further stockholder approval, up to 1,000,000 shares of preferred stock in one or more series and to fix or alter the designations, preferences, rights and any qualifications, limitations or restrictions of the shares of each series, including the dividend rights, dividend rates, conversion rights, voting rights, rights of redemption, including sinking fund provisions, redemption price or prices, liquidation preferences and the number of shares constituting any series or designations of any series. Such shares of preferred stock could have preferences over our common stock with respect to dividends and liquidation rights. We may issue additional preferred stock in ways which may delay, defer or prevent a change of control of our company without further action by our stockholders. Such shares of preferred stock may be issued with voting rights that may adversely affect the voting power of the holders of our common stock by increasing the number of outstanding shares having voting rights, and by the creation of class or series voting rights.

We are also governed by the provisions of Section 203 of the Delaware General Corporate Law, which may prohibit certain business combinations with stockholders owning 15% or more of our outstanding voting stock. The foregoing and other provisions in our amended and restated certificate of incorporation, our bylaws, as amended, and Delaware law could make it more difficult for stockholders or potential acquirers to obtain control of our board of directors or initiate actions that are opposed by the then-current board of directors, including delaying or impeding a merger, tender offer, or proxy contest or other change of control transaction involving our company. Any delay or prevention of a change of control transaction or changes in our board of directors could prevent the consummation of a transaction in which our stockholders could receive a substantial premium over the then current market price for their shares.

***Because of their significant stock ownership, some of our existing stockholders will be able to exert control over us and our significant corporate decisions.***

Our executive officers, directors and their affiliates own or control, in the aggregate, approximately 27.1% of our outstanding common stock as of December 31, 2021. In particular, our Chairman and Co-Chief Executive Officer, Bryant R. Riley, owns or controls, in the aggregate, 5,627,388 shares of our common stock or 20.4% of our outstanding common stock as of December 31, 2021. These stockholders are able to exercise influence over matters requiring stockholder approval, such as the election of directors and the approval of significant corporate transactions, including transactions involving an actual or potential change of control of the company or other transactions that non-controlling stockholders may not deem to be in their best interests. This concentration of ownership may harm the market price of our common stock by, among other things:

- delaying, deferring, or preventing a change in control of our company;
- impeding a merger, consolidation, takeover, or other business combination involving our company;
- causing us to enter into transactions or agreements that are not in the best interests of all stockholders; or
- discouraging a potential acquirer from making a tender offer or otherwise attempting to obtain control of our company.

***Our common stock price may fluctuate substantially, and your investment could suffer a decline in value.***

The market price of our common stock may be volatile and could fluctuate substantially due to many factors, including, among other things:

- actual or anticipated fluctuations in our results of operations;
- announcements of significant contracts and transactions by us or our competitors;
- sale of common stock or other securities in the future;

- the trading volume of our common stock;
- changes in our pricing policies or the pricing policies of our competitors; and
- general economic conditions

In addition, the stock market in general has experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. These broad market factors may materially harm the market price of our common stock, regardless of our operating performance.

***The trading price of our common shares is subject to volatility.***

Trading of our common stock has in the past been highly volatile and the market price of shares of our common stock could continue to fluctuate substantially. Additionally, if we are not able to maintain our listing on NASDAQ, then our common stock will be quoted for trading on an over-the-counter quotation system and may be subject to more significant fluctuations in stock price and trading volume and large bid and ask price spreads.

***We may not pay dividends regularly or at all in the future.***

While we currently pay dividends quarterly, our Board of Directors may reduce or discontinue dividends at any time for any reason it deems relevant and there can be no assurances that we will continue to generate sufficient cash to pay dividends, or that we will continue to pay dividends with the cash that we do generate. The determination regarding the payment of dividends is subject to the discretion of our Board of Directors, and there can be no assurances that we will continue to generate sufficient cash to pay dividends, or that we will pay dividends in future periods.

***Our level of indebtedness, and restrictions under such indebtedness, could adversely affect our operations and liquidity.***

Our senior notes include: (a) the 6.75% 2024 Notes with an aggregate principal amount of approximately \$111.2 million; (b) the 6.50% 2026 Notes with an aggregate principal amount of approximately \$178.8 million; (c) the 6.375% 2025 Notes with an aggregate principal amount of approximately \$144.5 million; (d) the 6.00% 2028 Notes with an aggregate principal amount of approximately \$259.3 million; (e) the 5.50% 2026 Notes with an aggregate principal amount of approximately \$214.2 million; (f) the 5.25% 2028 Notes with an aggregate principal amount of approximately \$397.3 million; and (g) the 5.00% 2026 Notes with an aggregate principal amount of approximately \$322.7 million. The Company periodically enters into At Market Issuance Sales Agreements with B. Riley Securities. The most recent sales agreement prospectus was filed by us with the SEC on January 5, 2022 (the “January 2022 Sales Agreement Prospectus”) superseding the prospectus filed with the SEC on August 11, 2021, the prospectus filed with the SEC on April 6, 2021, and the prospectus filed with the SEC on January 28, 2021. Pursuant to the January 2022 Sales Agreement, the Company may sell from time to time, at the Company’s option, up to an aggregate principal amount of \$250.0 million, 6.75% 2024 Notes, 6.50% 2026 Notes, 6.375% 2025 Notes, 6.00% 2028 Notes, 5.50% 2026 Notes, 5.25% 2028 Notes, 5.00% 2026 Notes and Depositary Shares. As of December 31, 2021, the Company had \$111.9 million available for offer and sale pursuant to the January 2022 Sales Agreement.

On June 23, 2021, we and our wholly owned subsidiaries, BR Financial Holdings, LLC, a Delaware limited liability company (the “Primary Guarantor”), and BR Advisory & Investments, LLC, a Delaware limited liability company (the “Borrower”), entered into a credit agreement (the “Credit Agreement”) by and among us, Primary Guarantor, the Borrower, the lenders party thereto, Nomura Corporate Funding Americas, LLC, as administrative agent and Wells Fargo Bank, N.A., as collateral agent, providing for a four-year \$200.0 million secured term loan credit facility (the “Term Loan Facility”) and a four-year \$80.0 million secured revolving loan credit facility (the “Revolving Credit Facility” and, together with the Term Loan Facility, the “Credit Facilities”). The Credit Facilities will mature on June 23, 2025, subject to acceleration or prepayment. On the closing date, the Borrower borrowed the full \$200.0 million under the Term Loan Facility. The Revolving Credit Facility is available for borrowing from time to time prior to the final maturity of the Revolving Credit Facility.

On December 19, 2018, BRPI Acquisition Co LLC (“BRPAC”), a Delaware limited liability company, UOL, and YMAX Corporation, a Delaware corporation (collectively, the “Borrowers”), indirect wholly owned subsidiaries of ours, in the capacity of borrowers, entered into a credit agreement with Banc of California, N.A. in its capacity as agent and lender and with the other lenders party thereto (the “BRPAC Credit Agreement”). Under the BRPAC Credit Agreement, we borrowed \$80.0 million due December 19, 2023. Pursuant to the terms of the BRPAC Credit Agreement, we may request additional optional term loans in an aggregate principal amount of up to \$10.0 million at any time prior to the first anniversary of the agreement date. On February 1, 2019, the Borrowers entered into the First Amendment to Credit Agreement and Joinder with City National Bank as a new lender in which the new lender extended to Borrowers the additional \$10.0 million as further discussed in Note 11 to the accompanying financial statements. On December 31, 2020, the Borrowers entered into the Second Amendment to Credit Agreement pursuant to which, among other things, we borrowed an additional \$75.0 million term loan, the proceeds of which the Borrowers’ will use to repay the outstanding principal amount of the existing term loans and optional loans and for other general corporate purposes. In April 2017, we amended our Credit Agreement with Wells Fargo Bank (the “Wells Fargo Credit Agreement”) to increase our retail liquidation line of credit from \$100 million to \$200 million.

The terms of such indebtedness contain various restrictions and covenants regarding the operation of our business, including, but not limited to, restrictions on our ability to merge or consolidate with or into any other entity. We may also secure additional debt financing in the future in addition to our current debt. Our level of indebtedness generally could adversely affect our operations and liquidity, by, among other things: (i) making it more difficult for us to pay or refinance our debts as they become due during adverse economic and industry conditions because we may not have sufficient cash flows to make our scheduled debt payments; (ii) causing us to use a larger portion of our cash flows to fund interest and principal payments, thereby reducing the availability of cash to fund working capital, capital expenditures and other business activities; (iii) making it more difficult for us to take advantage of significant business opportunities, such as acquisition opportunities or other strategic transactions, and to react to changes in market or industry conditions; and (iv) limiting our ability to borrow additional monies in the future to fund working capital, capital expenditures, acquisitions and other general corporate purposes as and when needed, which could force us to suspend, delay or curtail business prospects, strategies or operations.

We may not be able to generate sufficient cash flow to pay the interest on our debt, and future working capital, borrowings or equity financing may not be available to pay or refinance such debt. If we are unable to generate sufficient cash flow to pay the interest on our debt, we may have to delay or curtail our operations. If we are unable to service our indebtedness, we will be forced to adopt an alternative strategy that may include actions such as reducing capital expenditures, selling assets, restructuring or refinancing our indebtedness or seeking additional equity capital. These alternative strategies may not be affected on satisfactory terms, if at all, and they may not yield sufficient funds to make required payments on our indebtedness. If, for any reason, we are unable to meet our debt service and repayment obligations, we would be in default under the terms of the agreements governing our debt, which could allow our creditors at that time to declare certain outstanding indebtedness to be due and payable or exercise other available remedies, which may in turn trigger cross acceleration or cross default rights in other agreements. If that should occur, we may not be able to pay all such debt or to borrow sufficient funds to refinance it. Even if new financing were then available, it may not be on terms that are acceptable to us.

***Our senior notes are unsecured and therefore are effectively subordinated to any secured indebtedness that we currently have or that we may incur in the future.***

Our senior notes are not secured by any of our assets or any of the assets of our subsidiaries. As a result, our senior notes are effectively subordinated to any secured indebtedness that we or our subsidiaries have currently outstanding or may incur in the future (or any indebtedness that is initially unsecured to which we subsequently grant security) to the extent of the value of the assets securing such indebtedness. The indenture governing our senior notes does not prohibit us or our subsidiaries from incurring additional secured (or unsecured) indebtedness in the future. In any liquidation, dissolution, bankruptcy or other similar proceeding, the holders of any of our existing or future secured indebtedness and the secured indebtedness of our subsidiaries may assert rights against the assets pledged to secure that indebtedness and may consequently receive payment from these assets before they may be used to pay other creditors, including the holders of our senior notes.

***Our senior notes are structurally subordinated to the indebtedness and other liabilities of our subsidiaries.***

Our senior notes are obligations exclusively of the Company and not of any of our subsidiaries. None of our subsidiaries is a guarantor of our senior notes, and our senior notes are not required to be guaranteed by any subsidiaries we may acquire or create in the future. Therefore, in any bankruptcy, liquidation or similar proceeding, all claims of creditors (including trade creditors) of our subsidiaries will have priority over our equity interests in such subsidiaries (and therefore the claims of our creditors, including holders of our senior notes) with respect to the assets of such subsidiaries. Even if we are recognized as a creditor of one or more of our subsidiaries, our claims would still be effectively subordinated to any security interests in the assets of any such subsidiary and to any indebtedness or other liabilities of any such subsidiary senior to our claims. Consequently, our senior notes will be structurally subordinated to all indebtedness and other liabilities (including trade payables) of any of our subsidiaries and any subsidiaries that we may in the future acquire or establish as financing vehicles or otherwise. The indenture governing our senior notes does not prohibit us or our subsidiaries from incurring additional indebtedness in the future. In addition, future debt and security agreements entered into by our subsidiaries may contain various restrictions, including restrictions on payments by our subsidiaries to us and the transfer by our subsidiaries of assets pledged as collateral.

***The indenture under which our senior notes were issued contains limited protection for holders of our senior notes.***

The indenture under which our senior notes were issued offers limited protection to holders of our senior notes. The terms of the indenture and our senior notes do not restrict our or any of our subsidiaries' ability to engage in, or otherwise be a party to, a variety of corporate transactions, circumstances or events that could have an adverse impact on the holders of our senior notes. In particular, the terms of the indenture and our senior notes do not place any restrictions on our or our subsidiaries' ability to:

- issue debt securities or otherwise incur additional indebtedness or other obligations, including (1) any indebtedness or other obligations that would be equal in right of payment to our senior notes, (2) any indebtedness or other obligations that would be secured and therefore rank effectively senior in right of payment to our senior notes to the extent of the values of the assets securing such debt, (3) indebtedness of ours that is guaranteed by one or more of our subsidiaries and which therefore is structurally senior to our senior notes and (4) securities, indebtedness or obligations issued or incurred by our subsidiaries that would be senior to our equity interests in our subsidiaries and therefore rank structurally senior to our senior notes with respect to the assets of our subsidiaries;
- pay dividends on, or purchase or redeem or make any payments in respect of, capital stock or other securities subordinated in right of payment to our senior notes;
- sell assets (other than certain limited restrictions on our ability to consolidate, merge or sell all or substantially all of our assets);
- enter into transactions with affiliates;
- create liens (including liens on the shares of our subsidiaries) or enter into sale and leaseback transactions;
- make investments; or
- create restrictions on the payment of dividends or other amounts to us from our subsidiaries.

In addition, the indenture does not include any protection against certain events, such as a change of control, a leveraged recapitalization or "going private" transaction (which may result in a significant increase of our indebtedness levels), restructuring or similar transactions. Furthermore, the terms of the indenture and our senior notes do not protect holders of our senior notes in the event that we experience changes (including significant adverse changes) in our financial condition, results of operations or credit ratings, as they do not require that we or our subsidiaries adhere to any financial tests or ratios or specified levels of net worth, revenues, income, cash flow, or liquidity. Also, an event of default or acceleration under our other indebtedness would not necessarily result in an event of default under our senior notes.

Our ability to recapitalize, incur additional debt and take a number of other actions that are not limited by the terms of our senior notes may have important consequences for the holders of our senior notes, including making it more difficult for us to satisfy our obligations with respect to our senior notes or negatively affecting the trading value of our senior notes.

Other debt we issue or incur in the future could contain more protections for its holders than the indenture and our senior notes, including additional covenants and events of default. The issuance or incurrence of any such debt with incremental protections could affect the market for and trading levels and prices of our senior notes.

***An increase in market interest rates could result in a decrease in the value of our senior notes.***

In general, as market interest rates rise, notes bearing interest at a fixed rate decline in value. Consequently, if the market interest rates increase after our senior notes were purchased, the market value of our senior notes may decline. We cannot predict the future level of market interest rates.

***An active trading market for our senior notes may not develop, which could limit the market price of our senior notes or the ability of our senior note holders to sell them.***

The 5.00% 2026 Notes are quoted on NASDAQ under the symbol “RILYG,” the 5.25% 2028 Notes are quoted on NASDAQ under the symbol “RILYZ,” the 6.75% 2024 Notes are quoted on NASDAQ under the symbol “RILYO,” the 6.50% 2026 Notes are quoted on NASDAQ under the symbol “RILYN,” the 6.375% 2025 Notes are quoted on NASDAQ under the symbol “RILYM,” the 5.50% 2026 Notes are quoted on the NASDAQ under the symbol “RILYK” and the 6.00% 2028 Notes are quoted on NASDAQ under the symbol “RILYT”. We cannot provide any assurances that an active trading market will develop for our senior notes or that our senior note holders will be able to sell their senior notes. If the senior notes are traded after their initial issuance, they may trade at a discount from their initial offering price depending on prevailing interest rates, the market for similar securities, our credit ratings, general economic conditions, our financial condition, performance and prospects and other factors. Accordingly, we cannot assure our senior note holders that a liquid trading market will develop for our senior notes, that our senior note holders will be able to sell our senior notes at a particular time or that the price our senior note holders receive when they sell will be favorable. To the extent an active trading market does not develop, the liquidity and trading price for our senior notes may be harmed. Accordingly, our senior note holders may be required to bear the financial risk of an investment in our senior notes for an indefinite period of time.

***We may issue additional notes.***

Under the terms of the indenture governing our senior notes, we may from time to time without notice to, or the consent of, the holders of our senior notes, create and issue additional notes which will be equal in rank to our senior notes. We will not issue any such additional notes unless such issuance would constitute a “qualified reopening” for U.S. federal income tax purposes.

***The rating for the 5.00% 2026 Notes, 5.25% 2028 Notes, 6.75% 2024 Notes, 6.50% 2026 Notes, 6.375% 2025 Notes, 5.50% 2026 Notes, or 6.00% 2028 Notes could at any time be revised downward or withdrawn entirely at the discretion of the issuing rating agency.***

We have obtained a rating for the 5.00% 2026 Notes, 5.25% 2028 Notes, 6.75% 2024 Notes, 6.50% 2026 Notes, 6.375% 2025 Notes, 5.50% 2026 Notes, and 6.00% 2028 Notes (collectively, the “Rated Notes”). Ratings only reflect the views of the issuing rating agency or agencies and such ratings could at any time be revised downward or withdrawn entirely at the discretion of the issuing rating agency. A rating is not a recommendation to purchase, sell or hold any of the Rated Notes. Ratings do not reflect market prices or suitability of a security for a particular investor and the rating of the Rated Notes may not reflect all risks related to us and our business, or the structure or market value of the Rated Notes. We may elect to issue other securities for which we may seek to obtain a rating in the future. If we issue other securities with a rating, such ratings, if they are lower than market expectations or are subsequently lowered or withdrawn, could adversely affect the market for or the market value of the Rated Notes.

***There is no established market for the Depositary Shares and the market value of the Depositary Shares could be substantially affected by various factors.***

The Depositary Shares are an issue of securities with no established trading market. Although the shares are trading on the NASDAQ Global Market, an active trading market on the NASDAQ Global Market for the Depositary Shares may not develop or last, in which case the trading price of the Depositary Shares could be adversely affected. If an active trading market does develop on the NASDAQ Global Market, the Depositary Shares may trade at prices higher or lower than their initial offering price. The trading price of the Depositary Shares also depends on many factors, including, but not limited to:

- prevailing interest rates;
- the market for similar securities;
- general economic and financial market conditions; and
- the Company’s financial condition, results of operations and prospects.

The Company has been advised by some of the underwriters that they intend to make a market in the Depositary Shares, but they are not obligated to do so and may discontinue market-making at any time without notice.

***The Existing Preferred Stock and the Depositary Shares rank junior to all of the Company's indebtedness and other liabilities and are effectively junior to all indebtedness and other liabilities of the Company's subsidiaries.***

In the event of a bankruptcy, liquidation, dissolution or winding-up of the affairs of the Company, the Company's assets will be available to pay obligations on the 6.875% Series A Cumulative Perpetual Preferred Stock, par value \$0.0001 per share (the "Series A Preferred Stock") and the 7.375% Series B Cumulative Perpetual Preferred Stock, par value \$0.0001 per share (the "Series B Preferred Stock" and, together with the Series A Preferred Stock, the "Existing Preferred Stock"), which ranks in parity with the Series A Preferred Stock, only after all of the Company's indebtedness and other liabilities have been paid. The rights of holders of the Existing Preferred Stock to participate in the distribution of the Company's assets will rank junior to the prior claims of the Company's current and future creditors and any future series or class of preferred stock the Company may issue that ranks senior to the Existing Preferred Stock. In addition, the Existing Preferred Stock effectively ranks junior to all existing and future indebtedness and other liabilities of (as well as any preferred equity interests held by others in) the Company's existing subsidiaries and any future subsidiaries. The Company's existing subsidiaries are, and any future subsidiaries would be, separate legal entities and have no legal obligation to pay any amounts to the Company in respect of dividends due on the Existing Preferred Stock. If the Company is forced to liquidate its assets to pay its creditors, the Company may not have sufficient assets to pay amounts due on any or all of the Existing Preferred Stock then outstanding. The Company and its subsidiaries have incurred and may in the future incur substantial amounts of debt and other obligations that will rank senior to the Existing Preferred Stock. The Company may incur additional indebtedness and become more highly leveraged in the future, which could harm the Company's financial position and potentially limit cash available to pay dividends. As a result, the Company may not have sufficient funds remaining to satisfy its dividend obligations relating to the Existing Preferred Stock if the Company incurs additional indebtedness.

Future offerings of debt or senior equity securities may adversely affect the market price of the Depositary Shares. If the Company decides to issue debt or senior equity securities in the future, it is possible that these securities will be governed by an indenture or other instrument containing covenants restricting the Company's operating flexibility. Additionally, any convertible or exchangeable securities that the Company issues in the future may have rights, preferences and privileges more favorable than those of the Existing Preferred Stock and may result in dilution to owners of the Depositary Shares. The Company and, indirectly, the Company's shareholders, will bear the cost of issuing and servicing such securities. Because the Company's decision to issue debt or equity securities in any future offering will depend on market conditions and other factors beyond the Company's control, the Company cannot predict or estimate the amount, timing or nature of the Company's future offerings. Thus, holders of the Depositary Shares will bear the risk of the Company's future offerings reducing the market price of the Depositary Shares and diluting the value of their holdings in the Company.

***The Company may issue additional shares of the Existing Preferred Stock and additional series of preferred stock that rank on a parity with the Existing Preferred Stock as to dividend rights, rights upon liquidation or voting rights.***

The Company is allowed to issue additional shares of Existing Preferred Stock and additional series of preferred stock that would rank on a parity with the Existing Preferred Stock as to dividend payments and rights upon the Company's liquidation, dissolution or winding up of the Company's affairs pursuant to the Company's certificate of incorporation and the certificate of designation for the Existing Preferred Stock without any vote of the holders of the Existing Preferred Stock. The Company's certificate of incorporation authorizes the Company to issue up to 1,000,000 shares of preferred stock in one or more series on terms determined by the Company's Board of Directors. However, the use of depositary shares enables the Company to issue significant amounts of preferred stock, notwithstanding the number of shares authorized by the Company's certificate of incorporation. The issuance of additional shares of Existing Preferred Stock and additional series of parity preferred stock could have the effect of reducing the amounts available to the Existing Preferred stockholders upon the Company's liquidation or dissolution or the winding up of the Company's affairs. It also may reduce dividend payments on the Existing Preferred Stock issued and outstanding if the Company does not have sufficient funds to pay dividends on all Existing Preferred Stock outstanding and other classes of stock with equal priority with respect to dividends.

In addition, although holders of the Depositary Shares are entitled to limited voting rights (discussed further below), the holders of the Depositary Shares will vote separately as a class along with all other outstanding series of the Company's preferred stock that the Company may issue upon which like voting rights have been conferred and are exercisable. As a result, the voting rights of holders of the Depositary Shares may be significantly diluted, and the holders of such other series of preferred stock that the Company may issue may be able to control or significantly influence the outcome of any vote.

Future issuances and sales of parity preferred stock, or the perception that such issuances and sales could occur, may cause prevailing market prices for the Depositary Shares and the Company's common stock to decline and may adversely affect the Company's ability to raise additional capital in the financial markets at times and prices favorable to the Company. Such issuances may also reduce or eliminate the Company's ability to pay dividends on the Company's common stock.

***Holders of Depositary Shares have extremely limited voting rights.***

The voting rights of holders of Depositary Shares are limited. The Company's common stock is the only class of the Company's securities that carries full voting rights. Voting rights for holders of Depositary Shares exist primarily with respect to the ability to elect (together with the holders of other outstanding series of the Company's preferred stock, or Depositary Shares representing interests in the Company's preferred stock, or additional series of preferred stock the Company may issue in the future and upon which similar voting rights have been or are in the future conferred and are exercisable) two additional directors to the Company's Board of Directors in the event that six quarterly dividends (whether or not declared or consecutive) payable on the Existing Preferred Stock are in arrears, and with respect to voting on amendments to the Company's certificate of incorporation or certificate of designation (in some cases voting together with the holders of other outstanding series of the Company's preferred stock as a single class) that materially and adversely affect the rights of the holders of Depositary Shares (and other series of preferred stock, as applicable) or create additional classes or series of the Company's stock that are senior to the Existing Preferred Stock, provided that in any event adequate provision for redemption has not been made. Other than the limited circumstances described in this prospectus supplement, holders of Depositary Shares will not have any voting rights.

***The Depositary Shares have not been rated.***

The Existing Preferred Stock and the Depositary Shares have not been rated and may never be rated. It is possible, however, that one or more rating agencies might independently decide to assign a rating to the Depositary Shares or that the Company may elect to obtain a rating of the Depositary Shares in the future. Furthermore, the Company may elect to issue other securities for which the Company may seek to obtain a rating. If any ratings are assigned to the Depositary Shares in the future or if the Company issues other securities with a rating, such ratings, if they are lower than market expectations or are subsequently lowered or withdrawn, could adversely affect the market for, or the market value of, the Depositary Shares.

Ratings reflect the views of the issuing rating agency or agencies, and such ratings could at any time be revised downward, placed on negative outlook or withdrawn entirely at the discretion of the issuing rating agency or agencies. Furthermore, a rating is not a recommendation to purchase, sell or hold any particular security, including the Depositary Shares. Ratings do not reflect market prices or the suitability of a security for a particular investor, and any future rating of the Depositary Shares may not reflect all risks related to the Company and its business, or the structure or market value of the Depositary Shares.

***The conversion feature may not adequately compensate the holders, and the conversion and redemption features of the Existing Preferred Stock and the Depositary Shares may make it more difficult for a party to take over the Company and may discourage a party from taking over the Company.***

Upon the occurrence of a Delisting Event or Change of Control (each as defined in the certificate of designation for each series of the Existing Preferred Stock, respectively), holders of the Depositary Shares will have the right (unless, prior to the Delisting Event Conversion Date or Change of Control Conversion Date (each as defined in the certificate of designation for each series of the Existing Preferred Stock, respectively), as applicable, the Company has provided or provide notice of the Company's election to redeem such series of Existing Preferred Stock) to direct the depositary to convert some or all of such series of Existing Preferred Stock underlying their Depositary Shares into the Company's common stock (or equivalent value of alternative consideration), and under these circumstances the Company will also have a special optional redemption right to redeem such series of Existing Preferred Stock. Upon such a conversion, the holders will be limited to a maximum number of shares of the Company's common stock equal to the Share Cap (as defined in the certificate of designation for each series of the Existing Preferred Stock, respectively) multiplied by the number of shares of such series of Existing Preferred Stock converted. If the common stock price is less than \$11.49 in the case of the Series A Preferred Stock (which is approximately 50% of the closing sale price per share of the Company's common stock on October 1, 2019) or \$13.39 in the case of the Series B Preferred Stock (which is approximately 50% of the closing sale price per share of the Company's common stock on August 31, 2020), subject to adjustment, the holders will receive a maximum number of shares of the Company's common stock per depositary share, which may result in a holder receiving value that is less than the liquidation preference of the Depositary Shares. In addition, those features of the Existing Preferred Stock and Depositary Shares may have the effect of inhibiting a third party from making an acquisition proposal for the Company or of delaying, deferring or preventing a change of control of the Company under circumstances that otherwise could provide the holders of the Company's common stock and Depositary Shares with the opportunity to realize a premium over the then-current market price or that shareholders may otherwise believe is in their best interests.

***The market price of the Depositary Shares could be substantially affected by various factors.***

The market price of the Depositary Shares will depend on many factors, which may change from time to time, including:

- prevailing interest rates, increases in which may have an adverse effect on the market price of the Depositary Shares;
- the annual yield from distributions on the Depositary Shares as compared to yields on other financial instruments;
- general economic and financial market conditions;
- government action or regulation;
- the financial condition, performance and prospects of the Company and its competitors;
- changes in financial estimates or recommendations by securities analysts with respect to the Company, its competitors or the industry in which the Company operates;
- the Company's issuance of additional preferred equity or debt securities; and
- actual or anticipated variations in quarterly operating results of the Company and its competitors.

As a result of these and other factors, investors who purchase the Depositary Shares may experience a decrease, which could be substantial and rapid, in the market price of the Depositary Shares, including decreases unrelated to the Company's operating performance or prospects.

**Item 1B. UNRESOLVED STAFF COMMENTS**

None.

**Item 2. PROPERTIES**

Our headquarters are located in Los Angeles, California in a leased facility. We believe that this facility and our other existing facilities are suitable and adequate for the business conducted therein, appropriately used and have sufficient capacity for their intended purpose.

**Item 3. LEGAL PROCEEDINGS**

The Company is subject to certain legal and other claims that arise in the ordinary course of its business. In particular, the Company and its subsidiaries are named in and subject to various proceedings and claims arising primarily from our securities business activities, including lawsuits, arbitration claims, class actions, and regulatory matters. Some of these claims seek substantial compensatory, punitive, or indeterminate damages. The Company and its subsidiaries are also involved in other reviews, investigations, and proceedings by governmental and self-regulatory organizations regarding our business, which may result in adverse judgments, settlements, fines, penalties, injunctions, and other relief. In view of the number and diversity of claims against our company, the number of jurisdictions in which litigation is pending, and the inherent difficulty of predicting the outcome of litigation and other claims, we cannot state with certainty what the eventual outcome of pending litigation or other claims will be. Notwithstanding this uncertainty, the Company does not believe that the results of these claims are likely to have a material effect on its financial position or results of operations.

**Item 4. MINE SAFETY DISCLOSURES**

Not applicable.

## PART II

### Item 5. MARKET FOR REGISTRANT’S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

#### Stock Market and Other Information

Our common stock is traded on the NASDAQ Global Market under the symbol: “RILY”. From July 16, 2015 to November 15, 2016, our common stock was traded on the NASDAQ Capital Market under the symbol “RILY”.

As of February 18, 2022, there were approximately 119 holders of record of our Common Stock. This number does not include beneficial owners holding shares through nominees or in “street” name.

#### Dividend Policy

From time to time, we may decide to pay dividends which will be dependent upon our financial condition and results of operations. While it is the Board’s current intention to make regular dividend payments each quarter and special dividend payments dependent upon exceptional circumstances from time to time, our Board of Directors may reduce or discontinue the payment of dividends at any time for any reason it deems relevant. The declaration and payment of any future dividends or repurchases of our common stock will be made at the discretion of our Board of Directors and will be dependent upon our financial condition, results of operations, cash flows, capital expenditures, and other factors that may be deemed relevant by our Board of Directors.

#### Share Performance Graph

The following graph compares the cumulative total shareholder return on our common share with the cumulative total return on the Russell 2000 Index and a peer group index for the period from December 31, 2016 to December 31, 2021. The graph and table below assume that \$100 was invested on the starting date and dividends, if any, were reinvested on the date of payment without payment of any commissions. The performance shown in the graph and table represents past performance and should not be considered an indication of future performance.

**B. Riley Financial, Inc.  
Common Stock Price  
Five Year Comparison**



As of December 31,	2016	2017	2018	2019	2020	2021
B. Riley Financial, Inc.	\$ 100	\$ 196	\$ 160	\$ 302	\$ 563	\$ 1,432
Russell 2000	\$ 100	\$ 135	\$ 119	\$ 147	\$ 174	\$ 198
Industry Peer Group	\$ 100	\$ 128	\$ 108	\$ 124	\$ 148	\$ 228

Our peer group index includes the following companies: Cowen Group, Inc., JMP Group LLC (whose performance metrics were included up to November 15, 2021 at which point it was acquired by Citizens Financial Group, Inc.), Oppenheimer Holdings Inc., and Stifel Financial Corp. These companies were selected because their businesses and operations were comparable to ours throughout or for some portion of the five-year period presented in the chart above.

The information provided above under the heading “Share Performance Graph” shall not be considered “filed” for purposes of Section 18 of the Exchange Act or incorporated by reference in any filing under the Securities Act of 1933, as amended or the Exchange Act.

## Item 6. RESERVED

None.

## Item 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*This report contains forward-looking statements. These statements relate to future events or our future financial performance. In some cases, you can identify forward-looking statements by terminology such as "may," "will," "should," "could," "expect," "plan," "anticipate," "believe," "estimate," "predict," "future," "intend," "seek," "likely," "potential" or "continue," the negative of such terms or other comparable terminology. These statements are only predictions. Actual events or results may differ materially.*

*Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements. Moreover, neither we, nor any other person, assume responsibility for the accuracy and completeness of the forward-looking statements. Except as required by law we are under no obligation to update any of the forward-looking statements after the filing of this Annual Report to conform such statements to actual results or to changes in our expectations.*

*The following discussion of our financial condition and results of operations should be read in conjunction with our consolidated financial statements and the related notes and other financial information appearing elsewhere in this Annual Report. Readers are also urged to carefully review and consider the various disclosures made by us which attempt to advise interested parties of the factors which affect our business, including without limitation the disclosures made in Item 1A of Part II of this Annual Report under the caption "Risk Factors."*

*Risk factors that could cause actual results to differ from those contained in the forward-looking statements include but are not limited to risks related to: volatility in our revenues and results of operations; changing conditions in the financial markets; our ability to generate sufficient revenues to achieve and maintain profitability; our exposure to credit risk; the short term nature of our engagements; the accuracy of our estimates and valuations of inventory or assets in "guarantee" based engagements; competition in the asset management business; potential losses related to our auction or liquidation engagements; our dependence on communications, information and other systems and third parties; potential losses related to purchase transactions in our auction and liquidations business; the potential loss of financial institution clients; potential losses from or illiquidity of our proprietary investments; changing economic and market conditions, including increasing inflation; the continuing effects of the COVID-19 pandemic, or other pandemics or severe public health crises, and other related impacts including supply chain disruptions, labor shortages and increased labor costs; potential liability and harm to our reputation if we were to provide an inaccurate appraisal or valuation; potential mark-downs in inventory in connection with purchase transactions; failure to successfully compete in any of our segments; loss of key personnel; our ability to borrow under our credit facilities or at-the-market offering as necessary; failure to comply with the terms of our credit agreements or senior notes; our ability to meet future capital requirements; our ability to realize the benefits of our completed acquisitions, including our ability to achieve anticipated opportunities and cost savings, and accretion to reported earnings estimated to result from completed and proposed acquisitions in the time frame expected by management or at all; the diversion of management time on acquisition-related issues; the failure of our brand investment portfolio licensees to pay us royalties; and the intense competition to which our brand investment portfolio is subject. We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.*

*Except as otherwise required by the context, references in this Annual Report to the "Company," "B. Riley," "B. Riley Financial," "we," "us" or "our" refer to the combined business of B. Riley Financial, Inc. and all of its subsidiaries.*

### Overview

#### General

B. Riley Financial, Inc. (NASDAQ: RILY) ("B. Riley" or the "Company") is a diversified financial services platform and opportunistically invests in companies or assets with attractive risk-adjusted return profiles to benefit its shareholders. Through its affiliated subsidiaries, B. Riley provides a full suite of investment banking, corporate finance research, sales, and trading, as well as advisory, valuation, and wealth management, services. The Company's major business lines include:

- B. Riley Securities, a leading, full service investment bank that provides corporate finance, lending, research, securities lending and sales and trading services to corporate, institutional, and high net worth individual clients. It is nationally recognized for its proprietary small and mid-cap equity research. B. Riley Securities was established from the merger of B. Riley & Co, LLC and FBR Capital Markets & Co. in 2017.

- B. Riley Wealth Management, which provides comprehensive wealth management and brokerage services to individuals and families, corporations and non-profit organizations, including qualified retirement plans, trusts, foundations, and endowments. The firm was formerly known as Wunderlich Securities, Inc., which the Company acquired in July 2017.
- National Holdings Corporation (“National”), which provides wealth management, brokerage, insurance brokerage, tax preparation and advisory services, was acquired in February 2021.
- B. Riley Capital Management, which is a Securities and Exchange Commission (“SEC”) registered investment advisor, that includes B. Riley Asset Management, an advisor to and/or manager of certain private funds.
- B. Riley Advisory Services, which provides expert witness, bankruptcy, financial advisory, forensic accounting, valuation and appraisal, and operations management services to companies, financial institutions, and the legal community. B. Riley Advisory Services is primarily comprised of the bankruptcy and restructuring, forensic accounting, litigation support, and appraisal and valuation practices.
- B. Riley Retail Solutions, which is a leading provider of asset disposition, liquidation, and auction solutions to a wide range of retail and industrial clients.
- B. Riley Real Estate, which advises companies, financial institutions, investors, family offices and individuals on real estate projects worldwide. A core focus of B. Riley Real Estate, LLC is the restructuring of lease obligations in both distressed and non-distressed situations, both inside and outside of the bankruptcy process, on behalf of corporate tenants.
- B. Riley Principal Investments, which identifies attractive investment opportunities and seeks to control or influence the operations of our portfolio company investments to deliver financial and operational improvements that will maximize the Company’s free cash flow, and therefore, shareholder returns. The team concentrates on opportunities presented by distressed companies or divisions that exhibit challenging market dynamics. Representative transactions include recapitalization, direct equity investment, debt investment, active minority investment and buyouts.
- Communications consist of United Online, Inc. (“UOL” or “United Online”), which was acquired in July 2016, magicJack VocalTec Ltd. (“magicJack”), which was acquired in November 2018, a 40% equity interest in Lingo Management, LLC (“Lingo”), which was acquired in November 2020, and a mobile virtual network operator business (“Marconi Wireless”), which was acquired in October 2021. Upon receipt of certain regulatory approvals, the Company has the right to acquire an additional 40% equity interest in Lingo. The following briefly describes each such business:
  - UOL is a communications company that offers consumer subscription services and products, consisting of Internet access services and devices under the NetZero and Juno brands.
  - magicJack is a Voice over IP (“VoIP”) cloud-based technology and services and wireless mobile communications provider.
  - Lingo is a global cloud/UC and managed service provider.
  - Marconi Wireless is a mobile virtual network operator business that provides mobile phone voice, text, and data services and devices.
- BR Brand Holding (“BR Brands”), in which the Company owns a majority interest, provides licensing of certain brand trademarks. BR Brands owns the assets and intellectual property related to licenses of six brands: Catherine Malandrino, English Laundry, Joan Vass, Kensie Girl, Limited Too and Nanette Lepore as well as investments in the Hurley and Justice brands with Bluestar Alliance LLC (“Bluestar”), a brand management company.

We are headquartered in Los Angeles with over 44 offices throughout the United States including New York, Chicago, Boston, Atlanta, Dallas, Memphis, Metro Washington D.C., West Palm Beach, and Boca Raton.

During the fourth quarter of 2020, the Company realigned its segment reporting structure to reflect organizational management changes. Under the new structure, the valuation and appraisal businesses are reported in the Financial Consulting segment and our bankruptcy, financial advisory, forensic accounting, and real estate consulting businesses that were previously reported in the Capital Markets segment are now reported as part of the Financial Consulting segment. In conjunction with the new reporting structure, the Company recast its segment presentation for all periods presented. During the first quarter of 2021, in connection with the acquisition of National on February 25, 2021, the Company further realigned its segment reporting structure to reflect organizational management changes in the Company's wealth management business and created a new Wealth Management segment that was previously reported as part of the Capital Markets segment in 2020. In conjunction with the new reporting structures, the Company recast its segment presentation for all periods presented.

For financial reporting purposes, we classify our businesses into six operating segments: (i) Capital Markets, (ii) Wealth Management, (iii) Auction and Liquidation, (iv) Financial Consulting, (v) Principal Investments – Communications, and (vi) Brands.

Capital Markets Segment. Our Capital Markets segment provides a full array of investment banking, corporate finance, financial advisory, research, securities lending and sales and trading services to corporate, institutional, and individual clients. Our corporate finance and investment banking services include merger and acquisitions as well as restructuring advisory services to public and private companies, initial and secondary public offerings, and institutional private placements. In addition, we trade equity securities as a principal for our account, including investments in funds managed by our subsidiaries. Our Capital Markets segment also includes our asset management businesses that manage various private and public funds for institutional and individual investors.

Wealth Management Segment. Our Wealth Management segment provides wealth management and tax services to corporate and high net worth clients. We offer comprehensive wealth management services for corporate businesses that include investment strategies, executive services, retirement plans, lending & liquidity resources, and settlement solutions. Our wealth management services for individual client services provide investment management, education planning, retirement planning, risk management, trust coordination, lending & liquidity solutions, legacy planning, and wealth transfer. In addition, we supply market insights to provide unbiased guidance to make important financial decisions. Wealth management resources include market views from our investment strategists and B. Riley Securities' proprietary equity research.

Auction and Liquidation Segment. Our Auction and Liquidation segment utilizes our significant industry experience, a scalable network of independent contractors and industry-specific advisors to tailor our services to the specific needs of a multitude of clients, logistical challenges, and distressed circumstances. Our scale and pool of resources allow us to offer our services across North America as well as parts of Europe, Asia, and Australia. Our Auction and Liquidation segment operates through two main divisions, retail store liquidations and wholesale and industrial assets dispositions. Our wholesale and industrial assets dispositions division operates through limited liability companies that are controlled by us.

Financial Consulting Segment. Our Financial Consulting segment provides services to law firms, corporations, financial institutions, lenders, and private equity firms. These services primarily include bankruptcy, financial advisory, forensic accounting, litigation support, operations management consulting, real estate consulting, and valuation and appraisal services. Our Financial Consulting segment operates through limited liability companies that are wholly owned or majority owned by us.

Principal Investments - Communications Segment. Our Principal Investments - Communications segment consists of businesses which have been acquired primarily for attractive investment return characteristics. Currently, this segment includes, among other investments, UOL, through which we provide consumer Internet access, magicJack, through which we provide VoIP communication and related product and subscription services, and Marconi Wireless, through which we provide mobile phone services and devices.

Brands Segment. Our Brands segment consists of our brand investment portfolio that is focused on generating revenue through the licensing of trademarks and is held by BR Brands.

## Recent Developments

On January 19, 2022, we acquired FocalPoint Securities, LLC, an independent investment bank based in Los Angeles. The combination is expected to significantly expand B. Riley Securities' mergers and acquisitions ("M&A") advisory business and enhance its debt capital markets and financial restructuring capabilities. Founded in 2002, FocalPoint specializes in M&A, private capital advisory, financial restructuring, and special situation transactions. The firm includes approximately 50 investment banking professionals with deep industry specialization in high-growth sectors such as aerospace and defense, industrials, business services, consumer, healthcare, and technology/media/telecom. Our acquisition of FocalPoint builds upon the momentum and proven execution capabilities of both firms and is in line with our stated intent to expand capabilities in M&A advisory and fixed income. This combination provides strategic and financial sponsor clients with access to both firms' proven execution capabilities and a full suite of end-to-end services from a single platform.

On January 30, 2020, the World Health Organization ("WHO") announced a global health emergency because of a new strain of coronavirus (the "COVID-19 outbreak"). In March 2020, the WHO classified the COVID-19 outbreak as a pandemic, based on the rapid increase in exposure globally. During the fourth quarter of 2021, the full impact of the COVID-19 outbreak continued to evolve, with the emergence of variant strains and breakthrough infections becoming prevalent both in the U.S. and worldwide. As the U.S. economy recovers, aided by stimulus packages and fiscal and monetary policies, inflation has been rising at historically high rates, and the Federal Reserve has signaled that it will begin increasing the target federal funds effective rate. The impact of the COVID-19 outbreak and these related matters on our results of operations, financial position and cash flows will depend on future developments, including the duration and spread of the outbreak and related advisories and restrictions and the success of vaccines and natural immunity in controlling the pandemic. These developments and the impact of the COVID-19 outbreak on the financial markets and the overall economy continue to be highly uncertain and cannot be predicted. If the financial markets and/or the overall economy continue to be impacted, our results of operations, financial position and cash flows may be materially adversely affected.

## Results of Operations

The following period to period comparisons of our financial results and our interim results are not necessarily indicative of future results. A discussion of changes in our results of operations during the year ended December 31, 2020 compared to the year ended December 31, 2019 has been omitted from this Annual Report on Form 10-K, but may be found in "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations" in our Annual Report on Form 10-K during the year ended December 31, 2020, filed with the SEC on March 4, 2021, which discussion is incorporated herein by reference and which is available free of charge on the SEC's website at [www.sec.gov](http://www.sec.gov).

**Consolidated Statements of Income**  
(Dollars in thousands)

	Year Ended December 31, 2021		Year Ended December 31, 2020		Change	
	Amount	%	Amount	%	Amount	%
<b>Revenues:</b>						
Services and fees	\$ 1,172,957	67.4%	\$ 667,069	73.9%	\$ 505,888	75.8%
Trading income and fair value adjustments on loans	386,676	22.2%	104,018	11.5%	282,658	n/m
Interest income - Loans and securities lending	122,723	7.1%	102,499	11.4%	20,224	19.7%
Sale of goods	58,205	3.3%	29,135	3.2%	29,070	99.8%
<b>Total revenues</b>	<b>1,740,561</b>	<b>100.0%</b>	<b>902,721</b>	<b>100.0%</b>	<b>837,840</b>	<b>92.8%</b>
<b>Operating expenses:</b>						
Direct cost of services	54,390	3.1%	60,451	6.7%	(6,061)	(10.0%)
Cost of goods sold	26,953	1.5%	12,460	1.4%	14,493	116.3%
Selling, general and administrative expenses	906,196	52.1%	428,537	47.5%	477,659	111.5%
Restructuring charge	—	0.0%	1,557	0.2%	(1,557)	(100.0%)
Impairment of tradenames	—	0.0%	12,500	1.4%	(12,500)	(100.0%)
Interest expense - Securities lending and loan participations sold	52,631	3.0%	42,451	4.7%	10,180	24.0%
<b>Total operating expenses</b>	<b>1,040,170</b>	<b>59.7%</b>	<b>557,956</b>	<b>61.9%</b>	<b>482,214</b>	<b>86.4%</b>
<b>Operating income</b>	<b>700,391</b>	<b>40.2%</b>	<b>344,765</b>	<b>38.2%</b>	<b>355,626</b>	<b>103.2%</b>
<b>Other income (expense):</b>						
Interest income	229	0.0%	564	0.1%	(335)	(59.4%)
Gain on extinguishment of loans and other	3,796	0.2%	—	0.0%	3,796	100.0%
Income (loss) on equity investments	2,801	0.2%	(623)	(0.1%)	3,424	n/m
Interest expense	(92,455)	(5.3%)	(65,249)	(7.2%)	(27,206)	41.7%
<b>Income before income taxes</b>	<b>614,762</b>	<b>35.3%</b>	<b>279,457</b>	<b>31.0%</b>	<b>335,305</b>	<b>120.0%</b>
Provision for income taxes	(163,960)	(9.4%)	(75,440)	(8.4%)	(88,520)	117.3%
<b>Net income</b>	<b>450,802</b>	<b>25.9%</b>	<b>204,017</b>	<b>22.6%</b>	<b>246,785</b>	<b>121.0%</b>
Net income (loss) attributable to noncontrolling interests	5,748	0.3%	(1,131)	(0.1%)	6,879	n/m
<b>Net income attributable to B. Riley Financial, Inc.</b>	<b>445,054</b>	<b>25.6%</b>	<b>205,148</b>	<b>22.7%</b>	<b>239,906</b>	<b>116.9%</b>
Preferred stock dividends	7,457	0.4%	4,710	0.5%	2,747	58.3%
<b>Net income available to common shareholders</b>	<b>\$ 437,597</b>	<b>25.1%</b>	<b>\$ 200,438</b>	<b>22.2%</b>	<b>\$ 237,159</b>	<b>118.3%</b>

n/m - Not applicable or not meaningful.

## Revenues

The table below and the discussion that follows are based on how we analyze our business.

	Year Ended December 31, 2021		Year Ended December 31, 2020		Change	
	Amount	%	Amount	%	Amount	%
<b>Revenues - Services and fees</b>						
Capital Markets segment	\$ 575,317	33.1%	\$ 339,877	37.7%	\$ 235,440	69.3%
Wealth Management segment	374,361	21.5%	72,345	8.0%	302,016	n/m
Auction and Liquidation segment	20,169	1.2%	63,101	7.0%	(42,932)	(68.0)%
Financial Consulting segment	94,312	5.4%	91,622	10.1%	2,690	2.9%
Principal Investments - Communications segment	88,490	5.1%	83,666	9.3%	4,824	5.8%
Brands segment	20,308	1.1%	16,458	1.8%	3,850	23.4%
Subtotal	<u>1,172,957</u>	<u>67.4%</u>	<u>667,069</u>	<u>73.9%</u>	<u>505,888</u>	<u>75.8%</u>
<b>Revenues - Sale of goods</b>						
Auction and Liquidation segment	53,348	3.1%	25,663	2.8%	27,685	107.9%
Principal Investments - Communications segment	4,857	0.2%	3,472	0.4%	1,385	39.9%
Subtotal	<u>58,205</u>	<u>3.3%</u>	<u>29,135</u>	<u>3.2%</u>	<u>29,070</u>	<u>99.8%</u>
<b>Trading income and fair value adjustments on loans</b>						
Capital Markets segment	379,053	21.8%	103,214	11.4%	275,839	n/m
Wealth Management segment	7,623	0.4%	804	0.1%	6,819	n/m
Subtotal	<u>386,676</u>	<u>22.2%</u>	<u>104,018</u>	<u>11.5%</u>	<u>282,658</u>	<u>n/m</u>
<b>Interest income - Loans and securities lending</b>						
Capital Markets segment	<u>122,723</u>	<u>7.1%</u>	<u>102,499</u>	<u>11.4%</u>	<u>20,224</u>	<u>19.7%</u>
Total revenues	<u>\$ 1,740,561</u>	<u>100.0%</u>	<u>\$ 902,721</u>	<u>100.0%</u>	<u>\$ 837,840</u>	<u>92.8%</u>

n/m - Not applicable or not meaningful.

Total revenues increased approximately \$837.8 million to \$1,740.6 million during the year ended December 31, 2021 from \$902.7 million during the year ended December 31, 2020. The increase in revenues during the year ended December 31, 2021 was primarily due to an increase in revenue from services and fees of \$505.9 million, an increase in revenue from trading income and fair value adjustments on loans of \$282.7 million, an increase in revenue from sale of goods of \$29.1 million, and an increase in revenue from interest income - loans and securities lending of \$20.2 million, as further described below. The increase in revenue from services and fees of \$505.9 million was primarily due to increases in revenue of \$302.0 million in the Wealth Management segment, \$235.4 million in the Capital Markets segment, \$4.8 million in the Principal Investments - Communications segment, \$3.9 million in the Brands segment, and \$2.7 million in the Financial Consulting segment, partially offset by a decrease of \$42.9 million in the Auction and Liquidation segment, as further described below.

Revenues from services and fees in the Capital Markets segment increased approximately \$235.4 million, to \$575.3 million during the year ended December 31, 2021 from \$339.9 million during the year ended December 31, 2020. The increase in revenues was primarily due to increases in revenue of \$203.2 million from corporate finance, consulting and investment banking fees, \$26.0 million from the acquisition of National, \$5.5 million in dividends, and \$1.4 million in other income, partially offset by a decrease in revenue of \$0.6 million from asset management fees.

Revenues from services and fees in the Wealth Management segment increased \$302.0 million, to \$374.4 million during the year ended December 31, 2021 from \$72.3 million during the year ended December 31, 2020. The increase in revenues was primarily due to increases in revenue of \$280.9 million from the acquisition of National, \$20.7 million from wealth and asset management fees, and \$0.5 million in other income.

Revenues from services and fees in the Auction and Liquidation segment decreased \$42.9 million, to \$20.2 million during the year ended December 31, 2021 from \$63.1 million during the year ended December 31, 2020. The decrease in revenues was primarily due to fewer large retail fee liquidation engagements.

Revenues from services and fees in the Financial Consulting segment increased \$2.7 million, to \$94.3 million during the year ended December 31, 2021 from \$91.6 million during the year ended December 31, 2020. The increase in revenues was primarily due to an increase in revenue of \$2.4 million from advisory services.

Revenues from services and fees in the Principal Investments - Communications segment increased \$4.8 million to \$88.5 million during the year ended December 31, 2021 from \$83.7 million during the year ended December 31, 2020. The increase in revenues was primarily due to \$12.4 million from the acquisition of a mobile phone services business during Q4 2021, partially offset by a decrease in revenues of \$7.6 million from subscription services.

Revenues from services and fees in the Brands segment increased approximately \$3.9 million, to \$20.3 million during the year ended December 31, 2021 from \$16.4 million during the year ended December 31, 2020. The primary source of revenue included in this segment is the licensing of trademarks.

Trading income and fair value adjustments on loans increased \$282.7 million to income of \$386.7 million during the year ended December 31, 2021 compared to \$104.0 million during the year ended December 31, 2020. This was primarily due to increases of \$275.8 million in the Capital Markets segment and \$6.8 million in the Wealth Management segment. The gain of \$386.7 million during the year ended December 31, 2021 included realized and unrealized amounts earned on investments made in our proprietary trading accounts of \$376.2 million and unrealized amounts on our loans receivable, at fair value of \$10.5 million.

Interest income – loans and securities lending increased \$20.2 million, to \$122.7 million during the year ended December 31, 2021 from \$102.5 million during the year ended December 31, 2020. Interest income from securities lending was \$66.1 million and \$51.3 million during the year ended December 31, 2021 and 2020, respectively. Interest income from loans was \$56.6 million and \$51.2 million during the year ended December 31, 2021 and 2020, respectively. The increase in interest income on loans was primarily due to the increase in lending activities in our Capital Markets segment which included an increase in loans receivable to \$873.2 million as of December 31, 2021 from \$390.7 million as of December 31, 2020.

#### **Revenues – Sale of Goods**

Revenues from the sale of goods increased \$29.1 million, to \$58.2 million during the year ended December 31, 2021 from \$29.1 million during the year ended December 31, 2020. Revenues from sale of goods were primarily attributable to \$46.1 million of sales of retail goods related to retail liquidation engagements in Europe, \$6.1 million of sales of retail goods related to a retail liquidation engagement in the U.S., and \$2.7 million in sales of magicJack devices that were sold in connection with VoIP services, partially offset by a decrease of \$25.7 million from sales of goods related to multiple liquidation engagements that ended in 2020. Cost of goods sold during the years ended December 31, 2021 and 2020 was \$27.0 million and \$12.5 million, respectively, resulting in a gross margin of 53.7% and 57.2%, respectively.

## Operating Expenses

### Direct Cost of Services

Total direct costs decreased \$6.1 million, to \$54.4 million during the year ended December 31, 2021 from \$60.5 million during the year ended December 31, 2020. Direct costs of services decreased by \$10.0 million in the Auction and Liquidation segment, partially offset by an increase of \$4.0 million in the Principal Investments - Communications segment. The decrease in direct costs in the Auction and Liquidation segment was primarily due to a decrease in the number of retail fee type engagements performed during the year ended December 31, 2021, partially offset by an increase of \$11.7 million of direct costs incurred on a retail liquidation engagement in Europe, where we purchased inventory for resale and as part of the retail liquidation engagement we incurred costs related to the store operations which primarily related to expenses for occupancy, payroll and other store operating costs.

### Selling, General and Administrative Expenses

Selling, general and administrative expenses during the years ended December 31, 2021 and 2020 were comprised of the following:

#### Selling, General and Administrative Expenses

	Year Ended December 31, 2021		Year Ended December 31, 2020		Change	
	Amount	%	Amount	%	Amount	%
Capital Markets segment	\$ 347,591	38.4%	\$ 201,348	47.0%	\$ 146,243	72.6%
Wealth Management segment	366,050	40.3%	70,248	16.4%	295,802	n/m
Auction and Liquidation segment	14,069	1.6%	12,359	2.9%	1,710	13.8%
Financial Consulting segment	77,418	8.5%	68,579	16.0%	8,839	12.9%
Principal Investments - Communications segment	36,240	4.0%	31,363	7.3%	4,877	15.6%
Brands segment	5,923	0.7%	5,747	1.3%	176	3.1%
Corporate and Other segment	58,905	6.5%	38,893	9.1%	20,012	51.5%
Total selling, general & administrative expenses	<u>\$ 906,196</u>	<u>100.0%</u>	<u>\$ 428,537</u>	<u>100.0%</u>	<u>\$ 477,659</u>	<u>111.5%</u>

Total selling, general and administrative expenses increased \$477.7 million to \$906.2 million during the year ended December 31, 2021 from \$428.5 million during the year ended December 31, 2020. The increase of \$477.7 million in selling, general and administrative expenses was due to increases of \$146.2 million in the Capital Markets segment, \$295.8 million in the Wealth Management segment, \$1.7 million in the Auction and Liquidation segment, \$8.8 million in the Financial Consulting segment, \$4.9 million in the Principal Investments - Communications segment, \$0.2 million in the Brands segment, and \$20.0 million in the Corporate and Other segment, as described below.

#### Capital Markets

Selling, general and administrative expenses in the Capital Markets segment increased by \$146.2 million to \$347.6 million during the year ended December 31, 2021 from \$201.3 million during the year ended December 31, 2020. The increase was primarily due to increases of \$85.4 million in payroll and related expenses, \$32.1 million in consulting expenses, \$18.7 million from the acquisition of National, and \$10.3 million in investment banking deal expenses, partially offset by a decrease in depreciation and amortization of \$0.3 million.

#### Wealth Management

Selling, general and administrative expenses in the Wealth Management segment increased by \$295.8 million to \$366.1 million during the year ended December 31, 2021 from \$70.2 million during the year ended December 31, 2020. The increase was primarily due to increases of \$280.8 million from the acquisition of National and \$16.7 million in payroll and related expenses, partially offset by decreases of \$1.3 million in legal expenses and \$0.5 million in other expenses.

### ***Auction and Liquidation***

Selling, general and administrative expenses in the Auction and Liquidation segment increased by \$1.7 million to \$14.1 million during the year ended December 31, 2021 from \$12.4 million during the year ended December 31, 2020. The increase was primarily due to an increase of \$3.5 million in other business development activities, partially offset by decreases of \$0.7 million in payroll and related expenses, \$0.6 million in outside contractors, and \$0.4 million in foreign currency fluctuations.

### ***Financial Consulting***

Selling, general and administrative expenses in the Financial Consulting segment increased by \$8.8 million to \$77.4 million during the year ended December 31, 2021 from \$68.6 million during the year ended December 31, 2020. The increase was primarily due to increases of \$5.7 million in payroll and related expenses, \$1.8 million in legal expenses, \$0.7 million in other expenses, \$0.6 million in travel and entertainment expenses, and \$0.2 million in occupancy expenses.

### ***Principal Investments - Communications***

Selling, general and administrative expenses in the Principal Investments - Communications segment increased by \$4.9 million to \$36.2 million during the year ended December 31, 2021 from \$31.4 million during the year ended December 31, 2020. The increase was primarily due to increases of \$1.2 million in communications expenses, \$0.9 million in payroll and related expenses, \$0.8 million due to a legal settlement accrual release in 2020, \$0.8 million in transaction costs, \$0.7 million in other expenses, and \$0.5 million in other business development activities expenses.

### ***Brands***

Selling, general and administrative expenses in the Brands segment increased by \$0.2 million to \$5.9 million during the year ended December 31, 2021 from \$5.7 million during the year ended December 31, 2020.

### ***Corporate and Other***

Selling, general and administrative expenses for the Corporate and Other segment increased \$20.0 million to \$58.9 million during the year ended December 31, 2021 from \$38.9 million during the year ended December 31, 2020. The increase was primarily due to increases of \$18.9 million in payroll and related expenses, \$8.0 million in gains on extinguishment of debt, and \$4.0 million from the consolidation of special purpose acquisition corporations ("SPACs"), partially offset by decreases of \$8.7 million in legal settlement accrual, primarily due to recording a pre-acquisition litigation claim related to one of our acquired subsidiaries, \$1.8 million in other expenses, and \$0.8 million in legal expenses.

During the year ended December 31, 2021, we repurchased \$513.8 million of our senior notes with an aggregate face value of \$504.1 million, resulting in a loss net of expenses, premiums paid, and original issue discount of \$6.5 million. The total redemption payments included approximately \$6.5 million in accrued interest.

During the year ended December 31, 2020, we repurchased bonds with an aggregate face value of \$3.4 million for \$1.8 million resulting in a gain net of expenses of \$1.6 million. As part of the repurchase, we paid \$0.03 million in interest accrued through the date of each respective repurchase.

**Impairment of tradenames.** Due to the impact of the COVID-19 outbreak on economic activity and market volatility, we tested our intangible assets as of March 31, 2020 and June 30, 2020 and made the determination that the indefinite-lived tradenames in the Brands segment were impaired and the Company recognized impairment charges of \$12.5 million during the year ended December 31, 2020. There was no impairment recognized during the year ended December 31, 2021.

**Other Income (Expense).** Other income included interest income of \$0.2 million during the year ended December 31, 2021 compared to \$0.6 million during the year ended December 31, 2020. Gain on extinguishment of loans and other in the amount of \$3.8 million during the year ended December 31, 2021 was primarily due to a gain of \$6.5 million from National PPP loans that were forgiven by the SBA, partially offset by a loss of \$2.7 million due to changes in fair value of warrant liabilities. Income on equity investments was \$2.8 million during the year ended December 31, 2021 compared to a loss of \$0.6 million during the year ended December 31, 2020. Interest expense was \$92.5 million during the year ended December 31, 2021 compared to \$65.2 million during the year ended December 31, 2020. The increase in interest expense was primarily due to increases in interest expense of \$20.2 million from the issuance of senior notes, \$5.9 million from the Nomura term loan, and \$1.9 million from the Nomura revolver.

**Income Before Income Taxes.** Income before income taxes increased \$335.3 million to \$614.8 million during the year ended December 31, 2021 from \$279.5 million during the year ended December 31, 2020. The increase in income before income taxes was primarily due to increases in revenues of approximately \$837.8 million, gain on extinguishment of loans and other of \$3.8 million, and income from equity investments of \$3.4 million, partially offset by increases in operating expenses of \$482.2 million, interest expense of \$27.2 million, and a decrease in interest income of \$0.3 million.

**Provision for Income Taxes.** Provision for income taxes was \$164.0 million during the year ended December 31, 2021 compared to \$75.4 million during the year ended December 31, 2020. The effective income tax rate was a provision of 26.7% during the year ended December 31, 2021 as compared to a provision of 27.0% during the year ended December 31, 2020.

**Net Income (Loss) Attributable to Noncontrolling Interest.** Net income attributable to noncontrolling interests represents the proportionate share of net income (loss) generated by membership interests of partnerships that we do not own. The net income attributable to noncontrolling interests was \$5.7 million during the year ended December 31, 2021 compared to a net loss of \$1.1 million during the year ended December 31, 2020.

**Net Income Attributable to the Company.** Net income attributable to the Company during the year ended December 31, 2021 was \$445.1 million, an increase of \$239.9 million, from net income attributable to the Company of \$205.1 million during the year ended December 31, 2020. The increase was primarily due to increases in operating income of \$355.6 million, gain on extinguishment of loans and other of \$3.8 million, and income from equity investments of \$3.4 million, partially offset by increases in provision for income taxes of \$88.5 million, interest expense of approximately \$27.2 million, net income attributable to noncontrolling interests of \$6.9 million, and a decrease in interest income of \$0.3 million.

**Preferred Stock Dividends.** Holders of Series A Preferred Stock, when and as authorized by the board of directors of the Company, are entitled to cumulative cash dividends at the rate of 6.875% per annum of the \$25,000 liquidation preference (\$25.00 per Depositary Share) per year (equivalent to \$1,718.75 or \$1.71875 per Depositary Share). Dividends are payable quarterly in arrears. On January 11, 2021, the Company declared a cash dividend \$0.4296875 per Depositary Share, which was paid on January 29, 2021 to holders of record as of the close of business on January 21, 2021. On April 5, 2021, the Company declared a cash dividend \$0.4296875 per Depositary Share, which was paid on April 30, 2021 to holders of record as of the close of business on April 20, 2021. On July 8, 2021, the Company declared a cash dividend \$0.4296875 per Depositary Share, which was paid on August 2, 2021 to holders of record as of the close of business on July 21, 2021. On October 6, 2021, the Company declared a cash dividend \$0.4296875 per Depositary Share, which was paid on November 1, 2021 to holders of record as of the close of business on October 21, 2021.

Holders of Series B Preferred Stock, when and as authorized by the board of directors of the Company, are entitled to cumulative cash dividends at the rate of 7.375% per annum of the \$25,000 liquidation preference (\$25.00 per Depositary Share) per year (equivalent to \$1,843.75 or \$1.84375 per Depositary Share). Dividends are payable quarterly in arrears. On January 11, 2021, the Company declared a cash dividend \$0.4609375 per Depositary Share, which was paid on January 29, 2021 to holders of record as of the close of business on January 21, 2021. On April 5, 2021, the Company declared a cash dividend \$0.4609375 per Depositary Share, which was paid on April 30, 2021 to holders of record as of the close of business on April 20, 2021. On July 8, 2021, the Company declared a cash dividend \$0.4609375 per Depositary Share, which was paid on August 2, 2021 to holders of record as of the close of business on July 21, 2021. On October 6, 2021, the Company declared a cash dividend \$0.4609375 per Depositary Share, which was paid on November 1, 2021 to holders of record as of the close of business on October 21, 2021.

**Net Income Available to Common Shareholders.** Net income available to common shareholders during the year ended December 31, 2021 was \$437.6 million, an increase of \$237.2 million, from net income available to common shareholders of \$200.4 million during the year ended December 31, 2020. The increase was primarily due to increases in operating income of \$355.6 million, gain on extinguishment of loans and other of \$3.7 million, and income from equity investments of \$3.4 million, partially offset by increases in provision for income taxes of \$88.5 million, interest expense of approximately \$27.2 million, net income attributable to noncontrolling interests of \$6.9 million, preferred stock dividends of \$2.7 million, and a decrease in interest income of \$0.3 million.

## Liquidity and Capital Resources

Our operations are funded through a combination of existing cash on hand, cash generated from operations, borrowings under our senior notes payable, term loans and credit facilities, and special purpose financing arrangements. During the years ended December 31, 2021 and 2020, we generated net income attributable to the Company of \$445.1 million and \$205.2 million, respectively. Our cash flows and profitability are impacted by capital markets engagements performed on a quarterly and annual basis and amounts realized from the sale of our investments in marketable securities.

As of December 31, 2021, we had \$278.9 million of unrestricted cash and cash equivalents, \$0.9 million of restricted cash, \$1,532.1 million of securities and other investments, at fair value, \$873.2 million of loans receivable, at fair value, and \$2,033.3 million of borrowings outstanding. The borrowings outstanding of \$2,033.3 million as of December 31, 2021 included \$1,606.6 million of borrowings from the issuance of the series of senior notes that are due at various dates ranging from May 31, 2024 to August 31, 2028 with interest rates ranging from 5.00% to 6.75%, \$346.4 million term loans borrowed pursuant to the BRPAC Credit Agreement and Nomura Credit Agreement discussed below, \$80.0 million of revolving credit facility under the Nomura credit facility discussed below, and \$0.4 million of notes payable.

We believe that our current cash and cash equivalents, securities and other investments owned, funds available under our asset based credit facility, funds available under the BRPAC and Nomura term loans, funds available under the Nomura revolving credit facility, and cash expected to be generated from operating activities will be sufficient to meet our working capital and capital expenditure requirements for at least the next 12 months from issuance date of the accompanying financial statements. We continue to monitor our financial performance to ensure sufficient liquidity to fund operations and execute on our business plan.

### Cash Flow Summary

Following is a summary of our cash flows provided by (used in) operating activities, investing activities and financing activities during the years ended December 31, 2021 and 2020. A discussion of cash flows during the year ended December 31, 2019 has been omitted from this Annual Report on Form 10-K, but may be found in “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations,” under the heading “Liquidity and Capital Resources” in our Annual Report on Form 10-K during the year ended December 31, 2020, filed with the SEC on March 4, 2021, which discussion is incorporated herein by reference and which is available free of charge on the SEC’s website at [www.sec.gov](http://www.sec.gov).

#### *Year Ended December 31, 2021 Compared to Year Ended December 31, 2020*

	Year Ended December 31,	
	2021	2020
	(Dollars in thousands)	
<b>Net cash provided by (used in):</b>		
Operating activities	\$ 50,894	\$ 57,689
Investing activities	(956,534)	21,790
Financing activities	1,081,045	(80,692)
Effect of foreign currency on cash	(382)	1,311
Net increase in cash, cash equivalents and restricted cash	<u>\$ 175,023</u>	<u>\$ 98</u>

Cash provided by operating activities was \$50.9 million during the year ended December 31, 2021 compared to cash provided by operating activities of \$57.7 million during the year ended December 31, 2020. Cash provided by operating activities during the year ended December 31, 2021 included net income of \$450.8 million adjusted for noncash items of \$91.5 million and changes in operating assets and liabilities of \$491.4 million. Noncash items of \$91.5 million included deferred income taxes of \$61.8 million, share-based compensation of \$36.0 million, depreciation and amortization of \$25.9 million, loss on extinguishment of debt of \$6.1 million, dividends from equity investments of \$2.1 million, provision for doubtful accounts of \$1.5 million, effect of foreign currency on operations of \$0.1 million, and income allocated for mandatorily redeemable noncontrolling interests of \$0.9 million, partially offset by interest and other of \$22.3 million, fair value adjustments of \$7.6 million, gain on extinguishment of loans of \$6.5 million, gain on equity investments of \$3.5 million, income from equity investments of \$2.8 million, and impairment of leaseholds, intangibles and lease loss accrual and gain on disposal of fixed assets of \$0.1 million. Cash provided by operating activities during the year ended December 31, 2020 included net income of \$204.0 million adjusted for noncash items of \$123.4 million and changes in operating assets and liabilities of \$269.7 million. Noncash items of \$123.4 million included deferred income taxes of \$61.6 million, noncash fair value adjustments of \$22.0 million, depreciation and amortization of \$19.4 million, share-based compensation of \$18.6 million, other noncash interest and other of \$16.8 million, impairment of leaseholds, intangibles and lease loss accrual and gain on disposal of fixed assets of \$14.1 million, provision for doubtful accounts of \$3.4 million, gain on extinguishment of debt of \$1.6 million, dividends from equity investments of \$1.3 million, income allocated for mandatorily redeemable noncontrolling interests of \$1.2 million, and loss on equity investments of \$0.6 million.

Cash used in investing activities was \$956.5 million during the year ended December 31, 2021 compared to cash provided by investing activities of \$21.8 million during the year ended December 31, 2020. During the year ended December 31, 2021, cash used in investing activities consisted of cash used for purchases of loans receivable of \$738.9 million, cash of \$345.0 million used to fund two trust accounts for the future redemption of our subsidiaries' redeemable common stock, cash used for acquisition of businesses of \$28.3 million, cash used for repayments of loan participations sold of \$15.2 million, cash used for purchases of property and equipment and intangible assets of \$0.7 million, and purchases of equity investments of \$0.6 million, partially offset by cash received from loans receivable repayment of \$172.1 million. During the year ended December 31, 2020, cash provided by investing activities consisted of funds received from trust account of subsidiary of \$320.5 million, cash received from loans receivable repayment of \$90.1 million, loan participations sold of \$6.9 million, and proceeds from sale of loans receivable to related party of \$1.8 million, partially offset by cash used for purchases of loans receivable of \$207.5 million, cash of \$176.8 million used to fund a trust account for the future redemption of one of our subsidiaries' redeemable common stock, cash used for purchases of equity investments of \$7.5 million, repayments of loan participations sold of \$2.2 million, cash used for acquisition of businesses of \$1.5 million and cash used for purchases of property and equipment and intangible assets of \$2.0 million.

Cash provided by financing activities was \$1,081.0 million during the year ended December 31, 2021 compared to cash used in financing activities of \$80.7 million during the year ended December 31, 2020. During the year ended December 31, 2021, cash provided by financing activities primarily consisted of \$1,249.1 million proceeds from issuance of senior notes, \$345.0 million proceeds from initial public offering of subsidiaries, \$300.0 million proceeds from our term loan, \$80.0 million proceeds from revolving line of credit, \$64.7 million proceeds from our offering of common stock, \$13.7 million contributions from noncontrolling interests, \$14.7 million proceeds from our offering of preferred stock, partially offset by \$507.3 million used to repurchase our senior notes, \$347.1 million used to pay dividends on our common shares, \$37.6 million used to repay our notes payable, \$33.4 million used to pay debt issuance costs, \$20.7 million used for repayment on our term loan, \$16.5 million distribution to noncontrolling interests, \$9.6 million used for payment of employment taxes on vesting of restricted stock, \$7.5 million used to pay dividends on our preferred shares, \$2.7 million used to repurchase our common stock, and \$3.7 million used for payment of participating note payable and contingent consideration. During the year ended December 31, 2020, cash used in financing activities primarily consisted of \$318.8 million used for redemption of subsidiary temporary equity and distributions, \$67.3 million used for repayment on our term loan, \$48.2 million used to repurchase our common stock, \$38.8 million used to pay dividends on our common shares, \$37.1 million used for repayment of our asset based credit facility, \$22.6 million used for payment of employment taxes on vesting of restricted stock, \$9.8 million used to pay debt issuance and offering costs, \$4.7 million used to pay dividends on our preferred shares, \$4.3 million used for payment of participating note payable and contingent consideration, \$3.8 million distribution to noncontrolling interests, \$1.8 million used to repurchase our senior notes, and \$0.4 million used to repay our other notes payable, partially offset by \$186.8 million proceeds from issuance of senior notes, \$175.0 million proceeds from initial public offering of subsidiaries, \$75.0 million proceeds from our term loan, \$39.5 million proceeds from our offering of preferred stock, and \$0.6 million contributions from noncontrolling interests.

## Credit Agreements

### Nomura Credit Agreement

On June 23, 2021, we, and our wholly owned subsidiaries, BR Financial Holdings, LLC (the “Primary Guarantor”), and BR Advisory & Investments, LLC (the “Borrower”) entered into a credit agreement (as amended prior to the Second Amendment (as defined below) the “Credit Agreement”) with Nomura Corporate Funding Americas, LLC, as administrative agent (the “Administrative Agent”), and Wells Fargo Bank, N.A., as collateral agent (the “Collateral Agent”), for a four-year \$200.0 million secured term loan credit facility (the “Term Loan Facility”) and a four-year \$80.0 million revolving loan credit facility (the “Revolving Credit Facility”).

On December 17, 2021 (the “Amendment Date”), we, the Primary Guarantor, and the Borrower entered into a Second Incremental Amendment to Credit Agreement (the “Second Amendment”), by and among us, the Primary Guarantor, the Borrower, each of the subsidiary guarantors signatory thereto, each of the lenders party thereto, the Administrative Agent and the Collateral Agent, pursuant to which the Borrower established an incremental facility in an aggregate principal amount of \$100.0 million (the “Incremental Facility” and the incremental term loans made thereunder, the “Incremental Term Loans”) of secured term loans under the Credit Agreement on terms identical to those applicable to the Term Loan Facility. The Borrower borrowed the full amount of the Incremental Term Loans on the Amendment Date. The Term Loan Facility, Revolving Credit Facility, and Incremental Facility, together, (“Credit Facilities”), mature on June 23, 2025, subject to acceleration or prepayment.

Eurodollar loans under the Credit Facilities accrue interest at the Eurodollar Rate plus an applicable margin of 4.50%. Base rate loans accrue interest at the Base Rate plus an applicable margin of 3.50%. In addition to paying interest on outstanding borrowings under the Revolving Credit Facility, we are required to pay a quarterly commitment fee based on the unused portion of the Revolving Credit Facility, which is determined by the average utilization of the Revolving Credit Facility for the immediately preceding fiscal quarter.

Subject to certain eligibility requirements, the assets of certain subsidiaries of ours that hold credit assets, private equity assets, and public equity assets are placed into a borrowing base, which serves to limit the borrowings under the Credit Facilities. If borrowings under the Credit Facilities exceed the borrowing base, we are obligated to prepay the loans in an aggregate amount equal to such excess. The Credit Agreement and the Second Amendment contain certain representations and warranties (subject to certain agreed qualifications) that are customary for financings of this kind.

The Credit Agreement and the Second Amendment contain certain affirmative and negative covenants customary for financings of this type that, among other things, limit our, the Primary Guarantor’s, the Borrower’s, and the Borrower’s subsidiaries’ ability to incur additional indebtedness or liens, to dispose of assets, to make certain fundamental changes, to enter into restrictive agreements, to make certain investments, loans, advances, guarantees and acquisitions, to prepay certain indebtedness and to pay dividends or to make other distributions or redemptions/repurchases in respect of their respective equity interests. In addition, the Credit Agreement and the Second Amendment contain a financial covenant that requires us to maintain Operating EBITDA of at least \$135.0 million and the Primary Guarantor to maintain net asset value of at least \$1,100.0 million. The Credit Agreement and the Second Amendment contain customary events of default, including with respect to a failure to make payments under the credit facilities, cross-default, certain bankruptcy and insolvency events and customary change of control events.

Commencing on September 30, 2022, the Term Loan Facility and Incremental Facility will amortize in equal quarterly installments of 1.25% of the aggregate principal amount of the term loan as of the closing date with the remaining balance due at final maturity. Quarterly installments from September 30, 2022 to March 31, 2025 are in the amount of \$3.8 million per quarter.

As of December 31, 2021, the outstanding balance on the Term Loan Facility and Incremental Facility was \$292.7 million (net of unamortized debt issuance costs of \$7.4 million). Interest on the term loan during the year ended December 31, 2021 was \$5.9 million (including amortization of deferred debt issuance costs of \$0.8 million). The interest rate on the term loan as of December 31, 2021 was 4.72%.

We had an outstanding balance of \$80.0 million under the Revolving Credit Facility as of December 31, 2021. Interest on the revolving facility during the year ended December 31, 2021 was \$1.9 million (including unused commitment fees of \$0.08 million and amortization of deferred financing costs of \$0.3 million). The interest rate on the Revolving Credit Facility as of December 31, 2021 was 4.67%.

We are in compliance with all financial covenants in the Nomura Credit Agreement as of December 31, 2021.

## **Wells Fargo Credit Agreement**

On April 21, 2017, we amended the asset based credit facility agreement (as amended, the “Credit Agreement”) with Wells Fargo Bank to increase the maximum borrowing limit from \$100.0 million to \$200.0 million. Such amendment, among other things, also extended the expiration date of the credit facility from July 15, 2018 to April 21, 2022. The Credit Agreement continues to allow for borrowings under a separate credit agreement (a “UK Credit Agreement”) dated March 19, 2015 with an affiliate of Wells Fargo Bank which provides for the financing of transactions in the United Kingdom with borrowings up to 50.0 million British Pounds. Any borrowing on the UK Credit Agreement reduces the availability of the asset based \$200.0 million credit facility. The UK Credit Agreement is cross collateralized and integrated in certain respects with the Credit Agreement. The Credit Agreement continues to include the addition of our Canadian subsidiary, from the October 5, 2016 amendment to the Credit Agreement, to facilitate borrowings to fund retail liquidation transactions in Canada. From time to time, we utilize this credit facility to fund costs and expenses incurred in connection with liquidation engagements. We also utilize this credit facility in order to issue letters of credit in connection with liquidation engagements conducted on a guaranteed basis. Subject to certain limitations and offsets, we are permitted to borrow up to \$200.0 million under the credit facility, less the aggregate principal amount borrowed under the UK Credit Agreement (if in effect). Borrowings under the credit facility are only made at the discretion of the lender and are generally required to be repaid within 180 days. The interest rate for each revolving credit advance under the related credit agreement is, subject to certain terms and conditions, equal to the LIBOR plus a margin of 2.25% to 3.25% depending on the type of advance and the percentage such advance represents of the related transaction for which such advance is provided. The credit facility is secured by the proceeds received for services rendered in connection with the liquidation service contracts pursuant to which any outstanding loan or letters of credit are issued and the assets that are sold at liquidation related to such contract, if any. The credit facility also provides for success fees in the amount of 2.5% to 17.5% of the net profits, if any, earned on liquidation engagements that are financed under the credit facility as set forth in the related credit agreement. We typically seek borrowings on an engagement-by-engagement basis. The Credit Agreement contains certain covenants, including covenants that limit or restrict our ability to incur liens, incur indebtedness, make investments, dispose of assets, make certain restricted payments, merge, or consolidate and enter into certain transactions with affiliates. There was no outstanding balance on this credit facility as of December 31, 2021 or 2020. As of December 31, 2021, there were no open letters of credit outstanding.

We are in compliance with all financial covenants in the asset based credit facility as of December 31, 2021.

## **BRPAC Credit Agreement**

On December 19, 2018, BRPI Acquisition Co LLC (“BRPAC”), a Delaware limited liability company, UOL, and YMAX Corporation, Delaware corporations (collectively, the “Borrowers”), indirect wholly owned subsidiaries of ours, in the capacity of borrowers, entered into a credit agreement (the “BRPAC Credit Agreement”) with Banc of California, N.A. in its capacity as agent (the “Agent”) and lender and with the other lenders party (the “Closing Date Lenders”). Under the BRPAC Credit Agreement, we borrowed \$80.0 million due December 19, 2023. Pursuant to the terms of the BRPAC Credit Agreement, we may request additional optional term loans in an aggregate principal amount of up to \$10.0 million at any time prior to the first anniversary of the agreement date. On February 1, 2019, the Borrowers entered into the First Amendment to Credit Agreement and Joinder with City National Bank as a new lender in which the new lender extended to Borrowers the additional \$10.0 million.

On December 31, 2020, the Borrowers, the Secured Guarantors, the Agent, and the Closing Date Lenders, entered into the Second Amendment to Credit Agreement (the “Second Amendment”) pursuant to which, among other things, (i) the Lenders agreed to make a new \$75.0 million term loan to the Borrowers, the proceeds of which the Borrowers’ will use to repay the outstanding principal amount of the existing Terms Loans and Optional Loans and for other general corporate purposes, (ii) the Borrowers were permitted to make a one-time Permitted Distribution (as defined in the Second Amendment) in the amount of \$30.0 million on the date of the Second Amendment, (iii) the maturity date of the new Term Loans is five (5) years from the date of the Second Amendment, (iv) the interest rate margin was increased by 25 basis points as set forth in the Second Amendment, (v) the Borrowers agreed to make mandatory prepayments of the Term Loans from a portion of the Consolidated Excess Cash Flow (as defined in the Credit Agreement), (vi) the maximum Consolidated Total Funded Debt Ratio (as defined in the Credit Agreement) was increased as set forth in the Second Amendment and (vii) the Company and B. Riley Principal Investments, LLC entered into a reaffirmation of their guarantees of the Borrowers’ obligations under the Credit Agreement. Additionally, the Borrowers paid a commitment fee and an arrangement fee, each based on a percentage of the aggregate commitments, in each case upon the closing of the Second Amendment.

On December 16, 2021, the Borrowers, the Secured Guarantors, the Agent, and the Closing Date Lenders, entered into the Third Amendment to Credit Agreement (the "Third Amendment") pursuant to which, among other things, replaced LIBOR with the Secured Overnight Financing Rate ("SOFR") reference rate and the Borrowers were permitted to make a one-time Permitted Distribution (as defined in the Third Amendment) in the amount of \$30.0 million on the date of the Third Amendment.

The borrowings under the amended BRPAC Credit Agreement bear interest equal to the SOFR rate plus a margin of 2.75% to 3.25% depending on the Borrowers' consolidated total funded debt ratio as defined in the BRPAC Credit Agreement. As of December 31, 2021 and 2020, the interest rate on the amended BRPAC Credit Agreement was at 3.17% and 3.40%, respectively.

Principal outstanding under the amended BRPAC Credit Agreement is due in quarterly installments. Quarterly installments from March 31, 2022 to December 31, 2022 are in the amount of \$4.1 million per quarter, from March 31, 2023 to December 31, 2023 are in the amount of \$3.6 million per quarter, from March 31, 2024 to December 31, 2024 are in the amount of \$3.1 million per quarter, from March 31, 2025 to December 31, 2025 are \$2.8 million per quarter, and the remaining principal balance is due at final maturity on December 31, 2025.

As of December 31, 2021 and 2020, the outstanding balance on the term loan was \$53.7 million (net of unamortized debt issuance costs of \$0.6 million), and \$74.2 million (net of unamortized debt issuance costs of \$0.8 million), respectively. Interest expense on the term loan during the years ended December 31, 2021 and 2020, was \$2.5 million (including amortization of deferred debt issuance costs of \$0.3 million) and \$2.4 million (including amortization of deferred debt issuance costs of \$0.3 million), respectively.

We are in compliance with all financial covenants in the amended BRPAC Credit Agreement as of December 31, 2021.

### ***Preferred Stock Offering***

On September 4, 2020, the Company closed its public offering of Depositary Shares, each representing 1/1000th of a share of 7.375% Series B Cumulative Perpetual Preferred Stock. The liquidation preference of each share of Series A Preferred Stock is \$25,000 (\$25.00 per Depositary Share). As a result of the offering the Company issued 1,300 shares of Series B Preferred Stock represented by 1,300,000 depositary shares. The offering resulted in gross proceeds of approximately \$32.5 million.

### ***Senior Note Offerings***

During the year ended December 31, 2021, we issued \$223.4 million of senior notes due with maturities dates ranging from May 2023 to August 2028 pursuant to At the Market Issuance Sales Agreements with B. Riley Securities, which governs the program of at-the-market sales of our senior notes. We filed a series of prospectus supplements with the SEC which allowed us to sell these senior notes.

On January 25, 2021, we issued \$230.0 million of senior notes due in January 2028 ("6.0% 2028 Notes"). Interest on the 6.0% 2028 Notes is payable quarterly at 6.0%. The 6.0% 2028 Notes are unsecured and due and payable in full on January 31, 2028. In connection with the issuance of the 6.0% 2028 Notes, we received net proceeds of \$225.7 million (after underwriting commissions, fees, and other issuance costs of \$4.3 million). The Notes bear interest at the rate of 6.0% per annum.

On March 29, 2021, we issued \$159.5 million of senior notes due in March 2026 ("5.5% 2026 Notes"). Interest on the 5.5% 2026 Notes is payable quarterly at 5.5%. The 5.5% 2026 Notes are unsecured and due and payable in full on March 31, 2026. In connection with the issuance of the 5.5% 2026 Notes, we received net proceeds of \$156.3 million (after underwriting commissions, fees, and other issuance costs of \$3.2 million). The Notes bear interest at the rate of 5.5% per annum.

On March 31, 2021, we exercised our option for early redemption at par \$128.2 million of senior notes due in May 2027 ("7.50% 2027 Notes") pursuant to the second supplemental indenture dated May 31, 2017. The total redemption payment included \$1.6 million in accrued interest.

On July 26, 2021, we redeemed, in full, \$122.8 million aggregate principal amount of our 7.25% Senior Notes due 2027 ("7.25% 2027 Notes") pursuant to the third supplemental indenture dated December 31, 2017. The total redemption payment included approximately \$2.1 million in accrued interest. In connection with the full redemption, the 7.25% 2027 Notes under the ticker symbol "RILYG," were delisted from NASDAQ.

On August 4, 2021, we issued \$316.3 million of senior notes due in August 2028 (“5.25% 2028 Notes”). Interest on the 5.25% 2028 Notes is payable quarterly at 5.25%. The 5.25% 2028 Notes are unsecured and due and payable in full on August 31, 2028. In connection with the issuance of the 5.25% 2028 Notes, we received net proceeds of \$308.7 million (after underwriting commissions, fees, and other issuance costs of \$7.6 million). The Notes bear interest at the rate of 5.25% per annum.

On September 4, 2021, we redeemed, in full, \$137.5 million aggregate principal amount of our 7.375% Senior Notes due 2023 (“7.375% 2023 Notes”) pursuant to the fifth supplemental indenture dated September 11, 2018. The redemption price was equal to 101.5% of the aggregate principal amount, plus accrued and unpaid interest up to, but excluding, the redemption date. The total redemption payment included approximately \$1.0 million in accrued interest and \$2.1 million in premium. In connection with the full redemption, the 7.375% 2023 Notes under the ticker symbol “RILYH,” were delisted from NASDAQ.

On October 22, 2021, we redeemed, in full, \$115.7 million aggregate principal amount of our 6.875% Senior Notes due 2023 (the “6.875% 2023 Notes”) pursuant to the fifth supplemental indenture dated September 11, 2018. The redemption price was equal to 101% of the aggregate principal amount, plus accrued and unpaid interest, up to, but excluding, the redemption date. The total redemption payment included approximately \$1.8 million in accrued interest and \$1.2 million in premium. In connection with the full redemption, the 6.875% 2023 Notes under the ticker symbol “RILYI,” were delisted from NASDAQ.

On December 3, 2021, we issued \$322.7 million of senior notes due in December 2026 (“5.00% 2026 Notes”). Interest on the 5.00% 2026 Notes is payable quarterly at 5.00%. The 5.00% 2026 Notes are unsecured and due and payable in full on December 31, 2026. In connection with the issuance of the 5.00% 2026 Notes, we received net proceeds of \$317.6 million (after underwriting commissions, fees, and other issuance costs of \$5.0 million). The Notes bear interest at the rate of 5.00% per annum.

As of December 31, 2021 and December 31, 2020, the total senior notes outstanding was \$1,606.6 million (net of unamortized debt issue costs of \$21.5 million) and \$870.8 million (net of unamortized debt issue costs of \$9.6 million) with a weighted average interest rate of 5.69% and 6.95%, respectively. Interest on senior notes is payable on a quarterly basis. Interest expense on senior notes totaled \$81.5 million and \$61.2 million, during the years ended December 31, 2021 and 2020, respectively.

The most recent sales agreement prospectus was filed by us with the SEC on January 5, 2022 (the “January 2022 Sales Agreement Prospectus”), supplementing the prospectus filed on August 11, 2021, the prospectus filed on April 6, 2021, and the prospectus filed on January 28, 2021. This program provides for the sale by the Company of up to \$250.0 million of certain of the Company’s senior notes. As of December 31, 2021, the Company had \$111.9 million remaining availability under the January 2022 Sales Agreement.

#### **Off Balance Sheet Arrangements**

Information about our off-balance sheet arrangements is included in Note 17 of the Notes to Consolidated Financial Statements. Such information is hereby incorporated by reference.

#### **Dividends**

From time to time, we may decide to pay dividends which will be dependent upon our financial condition and results of operations. During the years ended December 31, 2021 and 2020, we paid cash dividends on our common stock of \$347.1 million and \$38.8 million, respectively. On February 23, 2022, the Company declared a regular quarterly dividend of \$1.00 per share, which will be paid on or about March 23, 2022 to stockholders of record as of March 9, 2022. On October 28, 2021, we declared a regular dividend of \$1.00 per share and special dividend of \$3.00 per share that will be paid on or about November 23, 2021 to stockholders of record as of November 9, 2021. On July 29, 2021, we declared a regular dividend of \$0.50 per share and special dividend of \$1.50 per share that was paid on August 26, 2021 to stockholders of record as of August 13, 2021. On May 3, 2021, we declared a regular dividend of \$0.50 per share and special dividend of \$2.50 per share that was paid on May 28, 2021 to stockholders of record as of May 17, 2021. On October 28, 2021, the Board of Directors announced an increase to the regular quarterly dividend from \$0.50 per share to \$1.00 per share. While it is the Board’s current intention to make regular dividend payments of \$1.00 per share each quarter and special dividend payments dependent upon exceptional circumstances from time to time, our Board of Directors may reduce or discontinue the payment of dividends at any time for any reason it deems relevant. The declaration and payment of any future dividends or repurchases of our common stock will be made at the discretion of our Board of Directors and will be dependent upon our financial condition, results of operations, cash flows, capital expenditures, and other factors that may be deemed relevant by our Board of Directors.

A summary of our common stock dividend activity during the years ended December 31, 2021 and 2020 was as follows:

<b>Date Declared</b>	<b>Date Paid</b>	<b>Stockholder Record Date</b>	<b>Regular Dividend Amount</b>	<b>Special Dividend Amount</b>	<b>Total Dividend Amount</b>
October 28, 2021	November 23, 2021	November 9, 2021	\$ 1.000	\$ 3.000	\$ 4.000
July 29, 2021	August 26, 2021	August 13, 2021	0.500	1.500	2.000
May 3, 2021	May 28, 2021	May 17, 2021	0.500	2.500	3.000
February 25, 2021	March 24, 2021	March 10, 2021	0.500	3.000	3.500
October 28, 2020	November 24, 2020	November 10, 2020	0.375	0.000	0.375
July 30, 2020	August 28, 2020	August 14, 2020	0.300	0.050	0.350
May 8, 2020	June 10, 2020	June 1, 2020	0.250	0.000	0.250
March 3, 2020	March 31, 2020	March 17, 2020	0.250	0.100	0.350

Holders of Series A Preferred Stock, when and as authorized by the board of directors of the Company, are entitled to cumulative cash dividends at the rate of 6.875% per annum of the \$0.03 million liquidation preference (\$25.00 per Depositary Share) per year (equivalent to \$1,718.75 or \$1.71875 per Depositary Share). Dividends are payable quarterly in arrears. As of December 31, 2021, dividends in arrears in respect of the Depositary Shares were \$0.8 million. On January 11, 2021, the Company declared a cash dividend \$0.4296875 per Depositary Share, which was paid on January 29, 2021 to holders of record as of the close of business on January 21, 2021. On April 5, 2021, the Company declared a cash dividend \$0.4296875 per Depositary Share, which was paid on April 30, 2021 to holders of record as of the close of business on April 20, 2021. On July 8, 2021, the Company declared a cash dividend \$0.4296875 per Depositary Share, which was paid on August 2, 2021 to holders of record as of the close of business on July 21, 2021. On October 6, 2021, the Company declared a cash dividend \$0.4296875 per Depositary Share, which was paid on November 1, 2021 to holders of record as of the close of business on October 21, 2021. On January 10, 2022, the Company declared a cash dividend \$0.4296875 per Depositary Share, which was paid on January 31, 2022 to holders of record as of the close of business on January 21, 2022.

Holders of Series B Preferred Stock, when and as authorized by the board of directors of the Company, are entitled to cumulative cash dividends at the rate of 7.375% per annum of the \$25 thousand liquidation preference (\$25.00 per Depositary Share) per year (equivalent to \$1,843.75 or \$1.84375 per Depositary Share). Dividends are payable quarterly in arrears. As of December 31, 2021, dividends in arrears in respect of the Depositary Shares were \$0.5 million. On January 11, 2021, the Company declared a cash dividend \$0.4609375 per Depositary Share, which was paid on January 29, 2021 to holders of record as of the close of business on January 21, 2021. On April 5, 2021, the Company declared a cash dividend \$0.4609375 per Depositary Share, which was paid on April 30, 2021 to holders of record as of the close of business on April 20, 2021. On July 8, 2021, the Company declared a cash dividend \$0.4609375 per Depositary Share, which was paid on August 2, 2021 to holders of record as of the close of business on July 21, 2021. On October 6, 2021, the Company declared a cash dividend \$0.4609375 per Depositary Share, which was paid on November 1, 2021 to holders of record as of the close of business on October 21, 2021. On January 10, 2022, the Company declared a cash dividend \$0.4609375 per Depositary Share, which was paid January 31, 2022 to holders of record as of the close of business on January 21, 2022.

### Critical Accounting Policies

Our financial statements and the notes thereto contain information that is pertinent to management's discussion and analysis. The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America ("GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities. Management bases its estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. On a continual basis, management reviews its estimates utilizing currently available information, changes in facts and circumstances, historical experience and reasonable assumptions. After such reviews, and if deemed appropriate, management's estimates are adjusted accordingly. Actual results may vary from these estimates and assumptions under different and/or future circumstances. Management considers an accounting estimate to be critical if:

- it requires assumptions to be made that were uncertain at the time the estimate was made; and
- changes in the estimate, or the use of different estimating methods that could have been selected, could have a material impact on results of operations or financial condition.

**Use of Estimates.** The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Estimates are used when accounting for certain items such as valuation of securities, reserves for accounts receivable, the fair value of loans receivable, intangible assets and goodwill, share based arrangements and accounting for income tax valuation allowances, recovery of contract assets and sales returns and allowances. Estimates are based on historical experience, where applicable, and assumptions that management believes are reasonable under the circumstances. Due to the inherent uncertainty involved with estimates, actual results may differ.

On January 30, 2020, the World Health Organization (“WHO”) announced a global health emergency because of a new strain of coronavirus (the “COVID-19 outbreak”). In March 2020, the WHO classified the COVID-19 outbreak as a pandemic, based on the rapid increase in exposure globally. During the fourth quarter of 2021, the full impact of the COVID-19 outbreak continued to evolve, with the emergence of variant strains and breakthrough infections becoming prevalent both in the U.S. and worldwide. As the U.S. economy recovers, aided by stimulus packages and fiscal and monetary policies, inflation has been rising at historically high rates, and the Federal Reserve has signaled that it will begin increasing the target federal funds effective rate. The impact of the COVID-19 outbreak and these related matters on our results of operations, financial position and cash flows will depend on future developments, including the duration and spread of the outbreak and related advisories and restrictions and the success of vaccines and natural immunity in controlling the pandemic. These developments and the impact of the COVID-19 outbreak on the financial markets and the overall economy continue to be highly uncertain and cannot be predicted. If the financial markets and/or the overall economy continue to be impacted, our results of operations, financial position and cash flows may be materially adversely affected.

Our significant accounting policies are described in Note 2 to the consolidated financial statements included elsewhere in this Annual Report. Management believes that the following critical accounting policies reflect the more significant estimates and assumptions used in the preparation of our financial statements.

**Revenue Recognition.** We recognize revenues under Accounting Standards Codification (“ASC”) 606 – *Revenue from Contracts with Customers*

Revenues are recognized when control of the promised goods or performance obligations for services is transferred to our customers, in an amount that reflects the consideration we expect to be entitled to in exchange for the goods or services.

Revenues from contracts with customers in the Capital Markets segment, Wealth Management segment, Auction and Liquidation segment, Financial Consulting segment, Principal Investments – Communications segment and Brands segment are primarily comprised of the following:

*Capital Markets Segment* - Fees earned from corporate finance and investment banking services are derived from debt, equity and convertible securities offerings in which the Company acted as an underwriter or placement agent. Fees from underwriting activities are recognized as revenues when the performance obligation for the services related to the underwriting transaction is satisfied under the terms of the engagement and is not subject to any other contingencies. Fees are also earned from financial advisory and consulting services rendered in connection with client mergers, acquisitions, restructurings, recapitalizations and other strategic transactions. The performance obligation for financial advisory services is satisfied over time as work progresses on the engagement and services are delivered to the client. The performance obligation for financial advisory services may also include success and performance based fees which are recognized as revenue when the performance obligation is no longer constrained and it is not probable that the revenue recognized would be subject to significant reversal in a future period. Generally, it is probable that the revenue recognized is no longer subject to significant reversal upon the closing of the investment banking transaction.

Fees from asset management services are recognized over the period the performance obligation for the services are provided. Asset management fees are primarily comprised of fees for asset management services and are generally based on the dollar amount of the assets being managed.

Revenues from sales and trading are recognized when the performance obligation is satisfied and include commissions resulting from equity securities transactions executed as agent or principal and are recorded on a trade date basis and fees paid for equity research.

Revenues from other sources in the Capital Markets segment is primarily comprised of (i) interest income from loans receivable and securities lending activities, (ii) related net trading gains and losses from market making activities, the commitment of capital to facilitate customer orders, (iii) trading activities from our Principal Investments in equity and other securities for the Company's account, and (iv) other income.

Interest income from securities lending activities consists of interest income from equity and fixed income securities that are borrowed from one party and loaned to another. The Company maintains relationships with a broad group of banks and broker-dealers to facilitate the sourcing, borrowing and lending of equity and fixed income securities in a "matched book" to limit the Company's exposure to fluctuations in the market value or securities borrowed and securities loaned.

Other revenues include (i) net trading gains and losses from market making activities in our fixed income group, (ii) carried interest from our asset management recognized as earnings from financial assets within the scope of ASC 323 - *Investments - Equity Method and Joint Ventures*, and therefore will not be in the scope of ASC 606 - *Revenue from Contracts with Customers*. In accordance with ASC 323 - *Investments - Equity Method and Joint Ventures*, the Company will record equity method income (losses) as a component of investment income based on the change in our proportionate claim on net assets of the investment fund, including performance-based capital allocations, assuming the investment fund was liquidated as of each reporting date pursuant to each fund's governing agreements, and (iii) other miscellaneous income.

*Wealth Management segment* - Fees from wealth management asset advisory services consist primarily of investment advisory fees that are recognized over the period the performance obligation for the services provided. Investment advisory and asset management fees are primarily comprised of fees for investment services and are generally based on the dollar amount of the assets being managed. Investment advisory fee revenues as a principal registered investment advisor (RIA) are recognized on a gross basis. Asset management fee revenues as an agent are recognized on a net basis.

Revenues from sales and trading are recognized when the performance obligation is satisfied and include commissions resulting from equity securities transactions executed as agent and are recorded on a trade date basis.

*Auction and Liquidation segment* - Commission and fees earned on the sale of goods at Auction and Liquidation sales are recognized when evidence of a contract or arrangement exists, the transaction price has been determined, and the performance obligation has been satisfied when control of the product and risks of ownership has been transferred to the buyer. The commission and fees earned for these services are included in revenues in the accompanying consolidated statements of income. Under these types of arrangements, revenues also include contractual reimbursable costs.

Revenues earned from Auction and Liquidation services contracts where the Company guarantees a minimum recovery value for goods being sold at auction or liquidation are recognized over time when the performance obligation is satisfied. We generally use the cost-to-cost measure of progress for our contracts because it best depicts the transfer of services to the customer which occurs as we incur costs on our contracts. Under the cost-to-cost measure of progress, the extent of progress towards completion is measured based on the ratio of costs incurred to date to the total estimated costs at completion of the performance obligation. Revenues, including estimated fees or profits, are recorded proportionally as costs are incurred. Costs to fulfill the contract include labor and other direct costs incurred by the Company related to the contract. Due to the nature of the guarantees and performance obligations under these contracts, the estimation of revenue that is ultimately earned is complex and subject to many variables and requires significant judgment. It is common for these contracts to contain provisions that can either increase or decrease the transaction price upon completion of our performance obligations under the contract. Estimated amounts are included in the transaction price at the most likely amount it is probable that a significant reversal of revenue will not occur. Our estimates of variable consideration and determination of whether or not to include estimated amounts in the transaction price are based on an assessment of our anticipated performance under the contract taking into consideration all historical, current and forecasted information that is reasonably available to us. Costs that directly relate to the contract and expected to be recoverable are capitalized as an asset and included in advances against customer contracts in the accompanying consolidated balance sheets. These costs are amortized as the services are transferred to the customer over the contract period, which generally does not exceed six months, and the expense is recognized as a component of direct cost of services. If, during the auction or liquidation sale, the Company determines that the total costs to be incurred on a performance obligation under a contract exceeds the total estimated revenues to be earned, a provision for the entire loss on the performance obligation is recognized in the period the loss is determined.

If the Company determines that the variable consideration used in the initial determination of the transaction price for the contract is such that the total recoveries from the auction or liquidation will not exceed the guaranteed recovery values or advances made in accordance with the contract, the transaction price will be reduced and a loss or negative revenue could result from the performance obligation. A provision for the entire loss as negative revenue on the performance obligation is recognized in the period the loss is determined.

*Financial Consulting Segment* - Revenues in the Financial Consulting segment are primarily comprised of fees earned from providing bankruptcy, financial advisory, forensic accounting, real estate consulting and valuation and appraisal services. Fees earned from bankruptcy, financial advisory, forensic accounting and real estate consulting services are rendered to clients over time as work progresses on the engagement and services are delivered to the client. Fees may also include success and performance based fees which are recognized as revenue when the performance obligation is no longer constrained and it is not probable that the revenue recognized would be subject to significant reversal in a future period. Revenues for valuation and appraisal services are recognized when the performance obligation is completed and is generally at the point in time upon delivery of the report to the customer. Revenues in the Financial Consulting segment also include contractual reimbursable costs.

*Principal Investments – Communications Segment* – Revenues in the Principal Investments - Communications segment are primarily comprised of subscription services revenues which consist of fees charged to United Online pay accounts; revenues from the sale of the magicJack access rights; revenues from access rights renewals and mobile apps; prepaid minutes revenues; revenues from access and wholesale charges; service revenue from UCaaS hosting services; and revenues from mobile phone voice, text, and data services. Products revenues consist of revenues from the sale of magicJack, mobile phone, and mobile broadband service devices, including the related shipping and handling and installation fees, if applicable. This segment's revenues also include advertising revenues which consist primarily of amounts from the Company's Internet search partner that are generated as a result of users utilizing the partner's Internet search services and amounts generated from display advertisements. The Company recognizes such advertising revenues in the period in which the advertisement is displayed or, for performance-based arrangements, when the related performance criteria are met.

Subscription service revenues are recognized over time in the service period in which the transaction price has been determinable and the related performance obligations for services are provided to the customer. Fees charged to customers in advance are initially recorded in the consolidated balance sheets as deferred revenue and then recognized ratably over the service period as the performance obligations are provided.

Product revenues for hardware and shipping are recognized at the time of delivery. Revenues from sales of devices and services represent revenues recognized from sales of the magicJack devices to retailers, wholesalers, or direct to customers, net of returns, and rights to access the Company's servers over the period associated with the access right period, and from sales of mobile phones and voice, text, and data services. The transaction price for devices is allocated between equipment and service based on stand-alone selling prices. Revenues allocated to devices are recognized upon delivery (when control transfers to the customer), and service revenue is recognized ratably over the service term. The Company estimates the return of magicJack device direct sales as part of the transaction price using a six month rolling average of historical returns.

*Brands Segment* – Licensing revenue results from various license agreements that provide revenue based on guaranteed minimum royalty amounts and advertising/marketing fees with additional royalty revenue based on a percentage of defined sales. Guaranteed minimum royalty amounts are recognized as revenue on a straight-line basis over the full contract term. Royalty payments exceeding the guaranteed minimum amounts in a specific contract year are recognized only subsequent to when the guaranteed minimum amount has been achieved. Other licensing fees are recognized at a point in time once the performance obligations have been satisfied.

Payments received as consideration for the grant of a license are recorded as deferred revenue at the time payment is received and recognized ratably as revenue over the term of the license agreement. Advanced royalty payments are recorded as deferred revenue at the time payment is received and recognized as revenue when earned. Revenue is not recognized unless collectability is probable.

**Allowance for Doubtful Accounts.** We maintain an allowance for doubtful accounts for estimated losses inherent in our accounts receivable portfolio. In establishing the required allowance, management utilizes the expected loss model. Management also considers historical losses adjusted for current market conditions and the customers' financial condition, the amount of receivables in dispute, and the current receivables aging and current payment patterns. Account balances are charged off against the allowance after all means of collection have been exhausted and the potential for recovery is considered remote. The bad debt expense is included as a component of selling, general and administrative expenses in the accompanying consolidated statements of income.

**Goodwill and Other Intangible Assets.** We account for goodwill and intangible assets in accordance with the accounting guidance which requires that goodwill and other intangibles with indefinite lives be tested for impairment annually or on an interim basis if events or circumstances indicate that the fair value of an asset has decreased below its carrying value.

Goodwill includes the excess of the purchase price over the fair value of net assets acquired in business combinations and the acquisition of noncontrolling interests. The Codification requires that goodwill be tested for impairment at the reporting unit level (operating segment or one level below an operating segment). Application of the goodwill impairment test requires judgment, including the identification of reporting units, assigning assets and liabilities to reporting units, assigning goodwill to reporting units, and determining the fair value. The Company operates five reporting units, which are the same as its reporting segments described in Note 22 to the consolidated financial statements. Significant judgment is required to estimate the fair value of reporting units which includes estimating future cash flows, determining appropriate discount rates and other assumptions. Changes in these estimates and assumptions could materially affect the determination of fair value and/or goodwill impairment.

When testing goodwill for impairment, in accordance with ASU 2017-04, Intangibles-Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment, the Company made a qualitative assessment of the impact of the COVID-19 outbreak on goodwill and other intangible assets. Based on the Company's qualitative assessments during 2020, the Company concluded that a positive assertion can be made from the qualitative assessment that it is more likely than not that the fair value of the reporting units exceeded their carrying values and no impairments were identified.

The Company reviews the carrying value of its amortizable intangibles and other long-lived assets for impairment at least annually or whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of long-lived assets is measured by comparing the carrying amount of the asset or asset group to the undiscounted cash flows that the asset or asset group is expected to generate. If the undiscounted cash flows of such assets are less than the carrying amount, the impairment to be recognized is measured by the amount by which the carrying amount of the asset or asset group, if any, exceeds its fair market value. During the year ended December 31, 2020, the Company determined that the COVID-19 outbreak was a triggering event for testing the indefinite-lived tradenames in the Brands segment during the first quarter and again in the second quarter and determined that the indefinite-lived tradenames in the Brands segment were impaired. As a result, the Company recognized impairment charges of \$12,500, during the year ended December 31, 2020, which are included in restructuring charge in the Company's consolidated statements of income. During the year ended December 31, 2021, the Company recognized no impairment of intangibles.

**Fair Value Measurements.** The Company records securities and other investments owned, securities sold not yet purchased, and mandatorily redeemable noncontrolling interests that were issued after November 5, 2003 at fair value with fair value determined in accordance with the Codification. Our mandatorily redeemable noncontrolling interests are measured at fair value on a recurring basis and are categorized using the three levels of fair value hierarchy. In general, fair values determined by Level 1 inputs utilize quoted prices (unadjusted) for identical instruments that are highly liquid, observable and actively traded in over-the-counter markets. Fair values determined by Level 2 inputs utilize inputs other than quoted prices included in Level 1 that are observable for the asset or liability, either directly or indirectly. Level 2 inputs include quoted prices for similar instruments in active markets, quoted prices for identical or similar instruments in markets that are not active and model-derived valuations whose inputs are observable and can be corroborated by market data. Level 3 inputs are unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities. In certain cases, the inputs used to measure fair value may fall into different levels of the fair value hierarchy. In such cases, the level in the fair value hierarchy within which the fair value measurement in its entirety falls has been determined based on the lowest level input that is significant to the fair value measurement in its entirety. Our assessment of the significance of a particular input to the fair value measurement in its entirety requires judgment and considers factors specific to the asset or liability.

The fair value of mandatorily redeemable noncontrolling interests is determined based on the issuance of similar interests for cash, references to industry comparables, and relied, in part, on information obtained from appraisal reports and internal valuation models.

Investments in partnership interests include investments in private equity partnerships that primarily invest in equity securities, bonds, and direct lending funds. We also invest in priority investment funds and the underlying securities held by these funds are primarily corporate and asset-backed fixed income securities and restrictions exist on the redemption of amounts invested by the Company. The Company's partnership and investment fund interests are valued based on the Company's proportionate share of the net assets of the partnerships and funds; the value for these investments is derived from the most recent statements received from the general partner or fund administrator. These partnership and investment fund interests are valued at net asset value ("NAV") in accordance with ASC 820 - *Fair Value Measurements*.

The carrying amounts reported in the consolidated financial statements for cash, restricted cash, accounts receivable, accounts payable and accrued expenses and other current liabilities approximate fair value based on the short-term maturity of these instruments. The carrying amounts of the notes payable (including credit lines used to finance liquidation engagements), long-term debt and capital lease obligations approximate fair value because the contractual interest rates or effective yields of such instruments are consistent with current market rates of interest for instruments of comparable credit risk.

**Share-Based Compensation.** The Company's share based payment awards principally consist of grants of restricted stock and restricted stock units. Share based payment awards also include grants of membership interests in the Company's majority owned subsidiaries. The grants of membership interests consist of percentage interests in the Company's majority owned subsidiaries as determined at the date of grant. In accordance with the accounting guidance share based payment awards are classified as either equity or a liability. For equity-classified awards, the Company measures compensation cost for the grant of membership interests at fair value on the date of grant and recognizes compensation expense in the consolidated statements of income over the requisite service or performance period the award is expected to vest.

In June 2018, the Company adopted the 2018 Employee Stock Purchase Plan ("Purchase Plan") which allows eligible employees to purchase common stock through payroll deductions at a price that is 85% of the market value of the common stock on the last day of the offering period. In accordance with the provisions of ASC 718 - *Compensation – Stock Compensation*, the Company is required to recognize compensation expense relating to shares offered under the Purchase Plan.

**Income Taxes.** The Company recognizes deferred tax liabilities and assets for the expected future tax consequences of events that have been included in the financial statements or tax returns. Deferred tax liabilities and assets are determined based on the difference between the financial statement and tax basis of assets and liabilities using enacted tax rates in effect during the year in which the differences are expected to reverse. The Company estimates the degree to which tax assets and credit carryforwards will result in a benefit based on expected profitability by tax jurisdiction, the eligible carryforward period, and other circumstances. A valuation allowance for such tax assets and loss carryforwards is provided when it is determined to be more likely than not that the benefit of such deferred tax asset will not be realized in future periods. Tax benefits of operating loss carryforwards are evaluated on an ongoing basis, including a review of historical and projected future operating results, the eligible carryforward period, and other circumstances. If it becomes more likely than not that a tax asset will be used, the related valuation allowance on such assets would be reduced.

The Company establishes a valuation allowance if, based on the weight of available evidence, it is more likely than not that some portion or all of the deferred tax assets will not be realized. Tax benefits of operating loss and tax credit carryforwards are evaluated on an ongoing basis, including a review of historical and projected future operating results, the eligible carryforward period, and other circumstances. As a result of the common stock offering that was completed on June 5, 2014, the Company had a more than 50% ownership shift in accordance with Internal Revenue Code Section 382. Accordingly, the Company is limited to the amount of net operating loss that may be utilized in future taxable years depending on the Company's actual taxable income. As of December 31, 2019, the Company believes that the net operating loss that existed as of the more than 50% ownership shift will be utilized in future tax periods and it is more-likely-than-not that future taxable earnings will be sufficient to realize its deferred tax assets and has not provided an allowance.

#### **Recent Accounting Standards**

See Note 2(ac) to the accompanying financial statements for recent accounting standards we have not yet adopted and recently adopted.

## **Item 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

We periodically use derivative instruments, which primarily consist of the purchase of forward exchange contracts, for certain loans receivable and Auction and Liquidation engagements with operations outside the United States. During the year ended December 31, 2020, our use of derivatives consisted of the purchase of forward exchange contracts in the amount of 12.7 million Euros, of which 6.7 million Euros were settled. As of December 31, 2021 and 2020, forward exchange contracts in the amount of 6.0 million Euros were outstanding.

The forward exchange contracts were entered into to improve the predictability of cash flows related to a retail store liquidation engagement and a loan receivable. The net gain from forward exchange contracts was \$1.1 million and net loss was \$0.3 million during the years ended December 31, 2021 and 2020, respectively. This amount is reported as a component of selling, general and administrative expenses in the consolidated statements of income.

We transact business in various foreign currencies. In countries where the functional currency of the underlying operations has been determined to be the local country's currency, revenues and expenses of operations outside the United States are translated into United States dollars using average exchange rates while assets and liabilities of operations outside the United States are translated into United States dollars using period-end exchange rates. The effects of foreign currency translation adjustments are included in stockholders' equity as a component of accumulated other comprehensive income in the accompanying consolidated balance sheets. Transaction gains (losses) are included in selling, general and administrative expenses in our consolidated statements of income.

### ***Interest Rate Risk***

Our primary exposure to market risk consists of risk related to changes in interest rates. We utilize borrowings under our senior notes payable and credit facilities to fund costs and expenses incurred in connection with our acquisitions and retail liquidation engagements. Borrowings under our senior notes payable are at fixed interest rates and borrowings under our credit facilities bear interest at a floating rate of interest. In our portfolio of securities owned we invest in loans receivable that primarily bear interest at a floating rate of interest. If floating rates of interest had increased by 1% during the year ended December 31, 2021, the rate increase would have resulted in an increase in interest expense of \$4.3 million.

The primary objective of our investment activities is to preserve capital for the purpose of funding operations while at the same time maximizing the income we receive from investments without significantly increasing risk. To achieve these objectives, our investments allow us to maintain a portfolio of cash equivalents, short-term investments through a variety of securities owned that primarily includes common stocks, loans receivable and investments in partnership interests. Our cash and cash equivalents through December 31, 2021 included amounts in bank checking and liquid money market accounts. We may be exposed to interest rate risk through trading activities in convertible and fixed income securities as well as U.S. Treasury securities, however, based on our daily monitoring of this risk, we believe we currently have limited exposure to interest rate risk in these activities.

### ***Foreign Currency Risk***

The majority of our operating activities are conducted in U.S. dollars. Revenues generated from our foreign subsidiaries totaled \$50.5 million during the year ended December 31, 2021 or 2.9% of our total revenues of \$1,741.0 million during the year ended December 31, 2021. The financial statements of our foreign subsidiaries are translated into U.S. dollars at period-end rates, with the exception of revenues, costs, and expenses, which are translated at average rates during the reporting period. We include gains and losses resulting from foreign currency transactions in income, while we exclude those resulting from translation of financial statements from income and include them as a component of accumulated other comprehensive income (loss). Transaction gains (losses), which were included in our consolidated statements of income, amounted to a gain of \$1.3 million and loss of \$0.6 million during the years ended December 31, 2021 and 2020, respectively. We may be exposed to foreign currency risk; however, our operating results during the year ended December 31, 2021 included \$50.5 million of revenues and \$42.8 million of operating expenses from our foreign subsidiaries and a 10% appreciation or depreciation of the U.S. dollar relative to the local currency exchange rates would result in an approximately \$0.7 million change in our operating income during the year ended December 31, 2021.

## **Item 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

The information required by this Item 8 is submitted as a separate section beginning on page F-1 of this Annual Report on Form 10-K (the “Financial Statements”).

## **Item 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

None.

## **Item 9A. CONTROLS AND PROCEDURES**

### *Evaluation of Disclosure Controls and Procedures*

We maintain a system of disclosure controls and procedures (as defined in the Rules 13a-15(e) and 15(d)-15(e) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”)) that is designed to ensure that information required to be disclosed in our Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission’s rules and forms, and that such information is accumulated and communicated to our management, including our Co-Chief Executive Officers and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosures.

Under the supervision and with the participation of our management, including our Co-Chief Executive Officers and Chief Financial Officer, we conducted an evaluation of our disclosure controls and procedures pursuant to Rule 13a-15 under the Exchange Act. Based upon the foregoing evaluation, our Co-Chief Executive Officers and our Chief Financial Officer concluded that as of December 31, 2021 our disclosure controls and procedures were effective at the reasonable assurance level.

### *Changes in Internal Control over Financial Reporting*

On February 25, 2021, we completed the acquisition of National Holdings Corporation (“National”). We are in the process of integrating National and will be conducting an evaluation of internal control over financial reporting pursuant to the Sarbanes-Oxley Act of 2002. Excluding the National acquisition, there have not been any changes in our internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the fourth fiscal quarter to which this report relates that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

### *Report of Management on Internal Control over Financial Reporting*

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act). Under the supervision and with the participation of management, including our Co-Chief Executive Officers and Chief Financial Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on our evaluation, our management concluded that our internal control over financial reporting was effective as of December 31, 2021.

Management has excluded from its assessment of internal controls over financial reporting as of December 31, 2021 the internal control over financial reporting of National and their subsidiaries, which we acquired in a purchase business combination on February 25, 2021. National’s total assets and total revenues represents 2.6% and 18.0%, respectively, of our related consolidated financial statements amounts as of and for the year ended December 31, 2021.

Our independent registered public accounting firm, Marcum LLP, has audited the effectiveness of our internal control over financial reporting as of December 31, 2021, as stated in their report which is included in the Financial Statements of this Annual Report on Form 10-K.

Our management, including our Co-Chief Executive Officers and Chief Financial Officer, does not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent or detect all errors and all fraud. A control system, no matter how well- designed and operated, can provide only reasonable, not absolute, assurance that the control system’s objectives will be met. The design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Further, because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, have been detected. The design of any system of controls is based in part on certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Projections of any evaluation of the effectiveness of controls to future periods are subject to risks. Over time, controls may become inadequate because of changes in conditions or deterioration in the degree of compliance with policies or procedures.

## **Item 9B. OTHER INFORMATION**

None.

## **Item 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS**

None.

### **PART III**

#### **Item 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

The information called for by this item is hereby incorporated by reference from our definitive Proxy Statement relating to the 2022 Annual Meeting of Stockholders, which Proxy Statement is anticipated to be filed with the Securities and Exchange Commission within 120 days of December 31, 2021.

#### **Item 11. EXECUTIVE COMPENSATION**

The information called for by this item is hereby incorporated by reference from our definitive Proxy Statement relating to the 2022 Annual Meeting of Stockholders, which Proxy Statement is anticipated to be filed with the Securities and Exchange Commission within 120 days of December 31, 2021.

#### **Item 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

The information called for by this item is hereby incorporated by reference from our definitive Proxy Statement relating to the 2022 Annual Meeting of Stockholders, which Proxy Statement is anticipated to be filed with the Securities and Exchange Commission within 120 days of December 31, 2021.

#### **Item 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

The information called for by this item is hereby incorporated by reference from our definitive Proxy Statement relating to the 2022 Annual Meeting of Stockholders, which Proxy Statement is anticipated to be filed with the Securities and Exchange Commission within 120 days of December 31, 2021.

#### **Item 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES**

The information called for by this item is hereby incorporated by reference from our definitive Proxy Statement relating to the 2022 Annual Meeting of Stockholders, which Proxy Statement is anticipated to be filed with the Securities and Exchange Commission within 120 days of December 31, 2021.

## PART IV

### Item 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) The following documents are filed as part of this report:

1. *Financial Statements.* The Company's Consolidated Financial Statements required to be filed in the Annual Report on the Form 10-K and the notes thereto, together with the report of the independent auditors on those Consolidated Financial Statements and the effectiveness of internal control over financial reporting of the Company, are hereby filed as part of this report, beginning on page F-1.
2. *Financial Statement Schedules.* Financial Statement Schedules other than those listed above have been omitted because they are either not applicable or the information is otherwise included in the consolidated financial statements or the notes thereto.

(b) Exhibits and Index to Exhibits, below.

#### (c) Exhibit Index

Exhibit No.	Description	Incorporated by Reference		
		Form	Exhibit	Filing Date
3.1	<a href="#">Amended and Restated Certificate of Incorporation, as amended, dated as of August 17, 2015.</a>	10-Q	3.1	8/3/2018
3.2	<a href="#">Amended and Restated Bylaws, dated as of November 6, 2014.</a>	10-Q	3.6	11/6/2014
3.3	<a href="#">Amendment to Amended and Restated Bylaws of B. Riley Financial, Inc., dated April 3, 2019.</a>	8-K	3.1	4/9/2019
3.4	<a href="#">Certificate of Designation designating the 6.875% Series A Cumulative Perpetual Preferred Stock of B. Riley Financial, Inc.</a>	8-K	3.1	10/7/2019
3.5	<a href="#">Certificate of Designation designating the 7.375% Series B Cumulative Perpetual Preferred Stock of B. Riley Financial, Inc.</a>	8-K	3.1	9/4/2020
4.1	<a href="#">Form of common stock certificate.</a>	10-K	4.1	3/30/2015
4.2	<a href="#">Base Indenture, dated as of November 2, 2016, by and between the registrant and U.S. Bank National Association, as Trustee.</a>	8-K	4.1	11/2/2016
4.3	<a href="#">Second Supplemental Indenture, dated as of May 31, 2017, by and between the registrant and U.S. Bank National Association, as Trustee.</a>	8-K	4.1	5/31/2017
4.4	<a href="#">Form of 7.50% Senior Note due 2027 (included in Exhibit 4.3).</a>	8-K	4.1	5/31/2017
4.5	<a href="#">Third Supplemental Indenture, dated as of December 13, 2017, by and between the registrant and U.S. Bank National Association, as Trustee.</a>	8-K	4.1	12/13/2017

Exhibit No.	Description	Incorporated by Reference		
		Form	Exhibit	Filing Date
4.6	<a href="#">Form of 7.25% Senior Note due 2027 (included in Exhibit 4.5).</a>	8-K	4.1	12/13/2017
4.7	<a href="#">Fourth Supplemental Indenture, dated as of May 17, 2018, by and between the registrant and U.S. Bank National Association, as Trustee.</a>	8-K	4.1	5/17/2018
4.8	<a href="#">Form of 7.375% Senior Note due 2023 (included in Exhibit 4.7).</a>	8-K	4.2	5/17/2018
4.9	<a href="#">Fifth Supplemental Indenture, dated as of September 11, 2018, by and between the registrant and U.S. Bank National Association, as Trustee.</a>	8-K	4.1	9/11/2018
4.10	<a href="#">Form of 6.875% Senior Note due 2023 (included in Exhibit 4.9).</a>	8-K	4.2	9/11/2018
4.11	<a href="#">Second Supplemental Indenture, dated as of September 23, 2019, by and between the Company and The Bank of New York Mellon Trust Company, N.A., as Trustee.</a>	8-K	4.3	9/23/2019
4.12	<a href="#">Form of 6.50% Senior Note due 2026 (included in Exhibit 4.11).</a>	8-K	4.4	9/23/2019
4.13	<a href="#">Deposit Agreement, dated October 7, 2019, among B. Riley Financial, Inc., Continental Stock Transfer &amp; Trust Company, as Depositary, and the holders of depositary receipts, with respect to B. Riley Financial, Inc.'s 6.875% Series A Cumulative Perpetual Preferred Stock.</a>	8-K	4.1	10/7/2019
4.14	<a href="#">Form of Specimen Certificate representing the 6.875% Series A Cumulative Perpetual Preferred Stock, par value \$0.0001 per share, of B. Riley Financial, Inc.</a>	8-K	4.2	10/7/2019
4.15	<a href="#">Form of Depositary Receipt.</a>	8-K	4.3	10/7/2019
4.16	<a href="#">Third Supplemental Indenture, dated as of February 12, 2020, by and between the Company and The Bank of New York Mellon Trust Company National Association, as Trustee.</a>	8-K	4.4	2/12/2020
4.17	<a href="#">Form of 6.375% Senior Note due 2025 (included in Exhibit 4.16).</a>	8-K	4.4	2/12/2020
4.18	<a href="#">Deposit Agreement, dated September 4, 2020, among B. Riley Financial, Inc., Continental Stock Transfer &amp; Trust Company, as Depositary, and the holders of depositary receipts, with respect to B. Riley Financial, Inc.'s 7.375% Series B Cumulative Perpetual Preferred Stock</a>	8-K	4.1	9/4/2020
4.19	<a href="#">Form of Specimen certificate representing the 7.375% Series B Cumulative Perpetual Preferred Stock, par value \$0.0001 per share, of B. Riley Financial, Inc.</a>	8-K	4.2	9/4/2020
4.20	<a href="#">Form of Depositary Receipt.</a>	8-K	4.3	9/4/2020
4.21	<a href="#">Fourth Supplemental Indenture, dated as of January 25, 2021, by and between the Company and The Bank of New York Mellon Trust Company, N.A., as trustee</a>	8-K	4.5	1/25/2021
4.22	<a href="#">Form of 6.00% Senior Note due 2028</a>	8-K	4.6	1/25/2021
4.23	<a href="#">Fifth Supplemental Indenture, dated as of March 29, 2021, by and between the Company and The Bank of New York Mellon Trust Company, N.A., as trustee</a>	8-K	4.6	3/29/2021

Exhibit No.	Description	Incorporated by Reference		
		Form	Exhibit	Filing Date
4.24	<a href="#">Form of 5.50% Senior Note due 2026</a>	8-K	4.7	3/29/2021
4.25	<a href="#">Sixth Supplemental Indenture, dated as of August 6, 2021, by and between the Company and The Bank of New York Mellon Trust Company, N.A., as trustee</a>	8-K	4.7	8/6/2021
4.26	<a href="#">Form of 5.25% Senior Note due 2028</a>	8-K	4.8	8/6/2021
4.27	<a href="#">Seventh Supplemental Indenture, dated as of December 3, 2021, by and between the Company and The Bank of New York Mellon Trust Company, N.A., as trustee</a>	8-K	4.8	12/3/2021
4.28	<a href="#">Form of 5.00% Senior Note due 2026</a>	8-K	4.9	12/3/2021
4.29*	<a href="#">Description of Registered Securities</a>			
10.1	<a href="#">Security Agreement, dated as of October 21, 2008, by and between Great American Group WF, LLC and Wells Fargo Bank, National Association (Successor to Wells Fargo Retail Finance, LLC).</a>	10-Q	10.8	8/31/2009
10.2	<a href="#">Escrow Agreement, dated as of July 31, 2009, by and among Alternative Asset Management Acquisition Corp., the registrant, Andrew Gumaer, as the Member Representative, and Continental Stock Transfer &amp; Trust Company.</a>	8-K	10.6	8/6/2009
10.3#	<a href="#">Form of Director and Officer Indemnification Agreement.</a>	8-K	10.11	8/6/2009
10.4	<a href="#">Loan and Security Agreement (Accounts Receivable &amp; Inventory Line of Credit), dated as of May 17, 2011, by and between BFI Business Finance and Great American Group Advisory &amp; Valuation Services, LLC.</a>	8-K	10.1	5/26/2011
10.5	<a href="#">Second Amended and Restated Credit Agreement, dated as of July 15, 2013, by and between Great American Group WF, LLC and Wells Fargo Bank, National Association.</a>	8-K	10.1	7/19/2013
10.6	<a href="#">Third Amended and Restated Guaranty, dated as of July 15, 2013, by and between the registrant and Great American Group, LLC, in favor of Wells Fargo Bank, National Association.</a>	8-K	10.2	7/19/2013
10.7	<a href="#">Uncommitted Liquidation Finance Agreement, dated as of March 19, 2014, by and among GA Asset Advisors Limited, each special purpose vehicle affiliated to GA Asset Advisors Limited which accedes to such agreement, and Burdale Financial Limited.</a>	8-K	10.1	3/25/2014
10.8	<a href="#">Master Guarantee and Indemnity, dated as of March 19, 2014, by and among GA Asset Advisors Limited, the registrant, Great American Group, LLC, Great American Group WF, LLC, Burdale Financial Limited and Wells Fargo Bank, National Association.</a>	8-K	10.2	3/25/2014
10.9	<a href="#">First Amendment to Credit Agreement and Limited Consent and Waiver, dated as of May 28, 2014, by and among Wells Fargo Bank, National Association, Great American Group WF, LLC, Great American Group, Inc. and Great American Group, LLC.</a>	10-Q	10.8	8/14/2014

Exhibit No.	Description	Incorporated by Reference		
		Form	Exhibit	Filing Date
10.10	<a href="#">Third Amendment to Credit Agreement, dated as of February 5, 2015, by and between Great American Group WF, LLC and Wells Fargo Bank, National Association.</a>	10-Q	10.7	5/7/2015
10.11	<a href="#">Fourth Amendment to Credit Agreement, dated as of February 19, 2015, by and between Great American Group WF, LLC, GA Retail, Inc. and Wells Fargo Bank, National Association.</a>	10-Q	10.8	5/7/2015
10.12#	<a href="#">Amended and Restated 2009 Stock Incentive Plan.</a>	10-Q	10.1	8/11/2015
10.13#	<a href="#">Amended and Restated 2009 Stock Incentive Plan – Form of Restricted Stock Unit Agreement.</a>	10-Q	10.2	8/11/2015
10.14#	<a href="#">Amended and Restated 2009 Stock Incentive Plan – Stock Bonus Program and Form of Stock Bonus Award Agreement.</a>	10-Q	10.3	8/11/2015
10.15#	<a href="#">B. Riley Financial, Inc. Management Bonus Plan.</a>	8-K	10.1	8/18/2015
10.16	<a href="#">Fifth Amendment to Credit Agreement, dated June 10, 2016, by and among Great American Group WF, LLC, GA Retail, Inc. and Wells Fargo Bank, National Association.</a>	10-Q	10.1	8/5/2016
10.17	<a href="#">Sixth Amendment and Joinder under Credit Facility among Great American Group WF, LLC and Wells Fargo Bank, National Association as Lender October 5, 2016.</a>	10-Q	10.1	11/14/2016
10.18	<a href="#">Seventh Amendment to Credit Agreement, dated as of April 21, 2017, by and among Great American Group WF, LLC, GA Retail, Inc., GA Retail Canada, ULC, Wells Fargo Bank, National Association and Wells Fargo Capital Finance Corporation Canada.</a>	8-K	10.1	4/27/2017
10.19	<a href="#">Warrant Agreement, dated as of July 3, 2017, by and between the registrant and Continental Stock Transfer &amp; Trust Company.</a>	8-K	10.1	7/5/2017
10.20#	<a href="#">Registration Rights Agreement, dated as of July 3, 2017, by and among the registrant and the persons listed on the signature pages thereto.</a>	8-K	10.4	7/5/2017
10.21#	<a href="#">Employment Agreement, dated as of January 1, 2018, by and between the registrant and Bryant R. Riley.</a>	8-K	10.1	1/5/2018
10.22#	<a href="#">Employment Agreement, dated as of January 1, 2018, by and between the registrant and Thomas J. Kelleher.</a>	8-K	10.2	1/5/2018
10.23#	<a href="#">Employment Agreement, dated as of January 1, 2018, by and between the registrant and Phillip J. Ahn.</a>	8-K	10.4	1/5/2018
10.24#	<a href="#">Employment Agreement, dated as of January 1, 2018, by and between the registrant and Alan N. Forman.</a>	10-K	10.42	3/14/2018

Exhibit No.	Description	Incorporated by Reference		
		Form	Exhibit	Filing Date
10.25	<a href="#">Debt Conversion and Purchase and Sale Agreement, dated January 12, 2018, by and among the registrant, bebe stores, inc. and The Manny Mashouf Living Trust.</a>	8-K	10.1	1/16/2018
10.26#	<a href="#">Employment Agreement, dated as of July 10, 2018, by and between the registrant and Kenneth M. Young.</a>	8-K	10.1	7/16/2018
10.27#	<a href="#">Employment Agreement, dated as of July 10, 2018, by and between B. Riley FBR, Inc. and Andrew Moore.</a>	8-K	10.2	7/16/2018
10.28#	<a href="#">Amendment No. 1 to Employment Agreement, dated as of July 10, 2018, by and between the registrant and Bryant R. Riley.</a>	8-K	10.3	7/16/2018
10.29#	<a href="#">Amendment No. 1 to Employment Agreement, dated as of July 10, 2018, by and between the registrant and Thomas Kelleher.</a>	8-K	10.4	7/16/2018
10.30#	<a href="#">2018 Employee Stock Purchase Plan.</a>	8-K	10.1	7/31/2018
10.31	<a href="#">Credit Agreement, dated December 19, 2018.</a>	8-K	10.1	12/27/2018
10.32	<a href="#">First Amendment to Credit Agreement and Joinder, dated February 1, 2019</a>	8-K	10.2	2/7/2019
10.33	<a href="#">Second Amendment to Credit Agreement, dated December 31, 2020</a>	8-K	10.1	1/6/2021
10.34	<a href="#">Security and Pledge Agreement, dated December 19, 2018.</a>	8-K	10.2	12/27/2018
10.35	<a href="#">Unconditional Guaranty and Pledge Agreement by B. Riley Principal Investments, LLC, dated December 19, 2018.</a>	8-K	10.3	12/27/2018
10.36	<a href="#">Unconditional Guaranty by the registrant, dated December 19, 2018.</a>	8-K	10.3	12/27/2018
10.37#	<a href="#">Amendment to Amended and Restated 2009 Stock Incentive Plan.</a>	10-Q	10.4	11/1/2019
10.38	<a href="#">Form of Restricted Stock Unit Award Agreement (Time-Vesting) under the B. Riley Financial, Inc. 2021 Stock Incentive Plan.</a>	8-K	10.01	5/28/2021
10.39	<a href="#">B. Riley Financial, Inc. 2021 Stock Incentive Plan, incorporated by reference to Appendix A to the Company's definitive proxy statement, dated April 20, 2021 filed with the Securities and Exchange Commission.</a>	8-K	10.01	6/3/2021

Exhibit No.	Description	Incorporated by Reference		
		Form	Exhibit	Filing Date
10.40	<a href="#">Credit agreement, dated June 23, 2021, among B. Riley Financial, Inc., BR Financial Holdings, LLC, BR Advisory &amp; Investments, LLC, each of the lenders from time to time parties thereto, Nomura Corporate Funding Americas, LLC, and Wells Fargo Bank, N.A.</a>	8-K	10.1	6/25/2021
10.41	<a href="#">Master Receivables Purchase Agreement, dated as of December 20, 2021, between B. Riley Receivables, LLC and W.S. Badcock Corporation</a>	8-K	10.1	12/22/2021
10.42	<a href="#">Servicing Agreement, dated as of December 20, 2021, between B. Riley Receivables, LLC and W.S. Badcock Corporation</a>	8-K	10.2	12/22/2021
10.43	<a href="#">Form of Director and Officer Indemnification Agreement</a>	8-K	10.3	12/22/2021
10.44*	<a href="#">Third Amendment to Credit Agreement, dated as of December 16, 2021.</a>			
10.45*	<a href="#">Second Incremental Amendment to Credit Agreement, dated as of December 17, 2021.</a>			
10.46*#	<a href="#">PRSU Grant Agreement</a>			
14.1	<a href="#">B. Riley – Code of Business Conduct and Ethics 022321</a>	8-K	14.1	3/01/2021
21.1*	<a href="#">Subsidiary List</a>			
23.1*	<a href="#">Consent of Marcum LLP</a>			
31.1*	<a href="#">Certification of Co-Chief Executive Officer pursuant to Rules 13a-14 and 15d-14 promulgated under the Securities Exchange Act of 1934</a>			
31.2*	<a href="#">Certification of Co-Chief Executive Officer pursuant to Rules 13a-14 and 15d-14 promulgated under the Securities Exchange Act of 1934</a>			
31.3*	<a href="#">Certification of Chief Financial Officer pursuant to Rules 13a-14 and 15d-14 promulgated under the Securities Exchange Act of 1934</a>			
32.1**	<a href="#">Certification of Co-Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>			
32.2**	<a href="#">Certification of Co-Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>			
32.3**	<a href="#">Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>			

Exhibit No.	Description	Incorporated by Reference		
		Form	Exhibit	Filing Date
101.INS*	Inline XBRL Instance Document			
101.SCH*	Inline XBRL Taxonomy Extension Schema Document			
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document			
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document			
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document			
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document			
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).			

\* Filed herewith.

\*\* Furnished herewith.

+ Schedules to this exhibit have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The registrant hereby agrees to furnish a copy of any omitted schedules to the Securities and Exchange Commission upon request.

# Management contract or compensatory plan or arrangement.

§ The Company has omitted certain information contained in this exhibit pursuant to Rule 601(b)(10) of Regulation S-K. The omitted information is not material and, if publicly disclosed, would likely cause competitive harm to the Company. Certain schedules and annexes to this exhibit have been omitted pursuant to Item 601(a)(5) of Regulation S-K. A copy of any omitted schedule and/or annex will be furnished to the U.S. Securities and Exchange Commission or its staff upon request.

^ Pursuant to Item 601(b)(10) of Regulation S-K, certain annexes to the agreement have not been filed herewith. The registrant agrees to furnish supplementally a copy of any omitted annex to the Securities and Exchange Commission upon request.

#### Item 16. FORM 10-K SUMMARY

None.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

B. Riley Financial, Inc.

Date: February 25, 2022

/s/ PHILLIP J. AHN

(Phillip J. Ahn, Chief Financial Officer and Chief Operating Officer)

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the date indicated:

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ BRYANT R. RILEY</u> (Bryant R. Riley)	Co-Chief Executive Officer Chairman of the Board (Principal Executive Officer)	February 25, 2022
<u>/s/ THOMAS J. KELLEHER</u> (Thomas J. Kelleher)	Co-Chief Executive Officer Director	February 25, 2022
<u>/s/ PHILLIP J. AHN</u> (Phillip J. Ahn)	Chief Financial Officer Chief Operating Officer (Principal Financial Officer)	February 25, 2022
<u>/s/ HOWARD E. WEITZMAN</u> (Howard E. Weitzman)	Chief Accounting Officer (Principal Accounting Officer)	February 25, 2022
<u>/s/ ROBERT L. ANTIN</u> (Robert L. Antin)	Director	February 25, 2022
<u>/s/ ROBERT D'AGOSTINO</u> (Robert D'Agostino)	Director	February 25, 2022
<u>/s/ TAMMY BRANDT</u> (Tammy Brandt)	Director	February 25, 2022
<u>/s/ RENÉE E. LABRAN</u> (Renée E. LaBran)	Director	February 25, 2022
<u>/s/ RANDALL E. PAULSON</u> (Randall E. Paulson)	Director	February 25, 2022
<u>/s/ MICHAEL J. SHELDON</u> (Michael J. Sheldon)	Director	February 25, 2022
<u>/s/ MIMI K. WALTERS</u> (Mimi K. Walters)	Director	February 25, 2022
<u>/s/ MIKEL H. WILLIAMS</u> (Mikel H. Williams)	Director	February 25, 2022

**B. RILEY FINANCIAL, INC.**

**INDEX TO CONSOLIDATED FINANCIAL STATEMENTS**

	<b>Page</b>
<a href="#">Report of Independent Registered Public Accounting Firm (PCAOB ID Number 688)</a>	F-2
<a href="#">Report of Independent Registered Public Accounting Firm on Internal Control Over Financial Reporting</a>	F-4
<a href="#">Consolidated Balance Sheets</a>	F-5
<a href="#">Consolidated Statements of Income</a>	F-6
<a href="#">Consolidated Statements of Comprehensive Income</a>	F-7
<a href="#">Consolidated Statements of Equity</a>	F-8
<a href="#">Consolidated Statements of Cash Flows</a>	F-9
<a href="#">Notes to Consolidated Financial Statements</a>	F-10

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Shareholders and Board of Directors of  
B. Riley Financial, Inc.

### **Opinion on the Financial Statements**

We have audited the accompanying consolidated balance sheets of B. Riley Financial, Inc. and Subsidiaries (the "Company") as of December 31, 2021 and 2020, the related consolidated statements of income, comprehensive income, equity and cash flows for each of the three years in the period ended December 31, 2021, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2021 and 2020, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2021, in conformity with accounting principles generally accepted in the United States of America.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) ("PCAOB"), the Company's internal control over financial reporting as of December 31, 2021, based on the criteria established in Internal Control - Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in 2013 and our report dated February 25, 2022, expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

### **Basis for Opinion**

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

### **Critical Audit Matters**

The critical audit matters communicated below are matters arising from the current period audit of the financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

#### Accounting for acquisition of National Holdings Corporation ("National")

##### Description of the Matter

As discussed in Note 1 of the financial statements, the Company completed an acquisition of the remaining 55% of National outstanding shares that the Company did not previously own and settlement of outstanding share based awards amounting to approximately \$35,314,000. The transaction was accounted for using the acquisition method of accounting whereby the total purchase price was allocated to tangible and intangible assets acquired and liabilities assumed based on their respective fair values. Auditing the Company's accounting for the acquisition of National was complex due to the significant estimates in determining the fair value of its identifiable intangible assets, which principally consisted of customer relationships and trademarks. The uncertainty of significant estimates was primarily due to the sensitivity of the underlying assumptions related to future performance of the acquired business. The significant assumptions used to estimate the fair value of the customer relationships included the future operating performance and cash flows generated by the customer relationships and a discount rate. The significant assumptions used to estimate the fair value of the trademarks included the projected revenues generated by the trademarks, a royalty rate, and a discount rate. These significant assumptions are forward looking and could be affected by future economic and market conditions.

##### How We Addressed the Matter in Our Audit

Our audit procedures related to the accounting for the acquisition of National to address this critical audit matter included the following:

- We obtained an understanding, evaluated the design, and tested the operating effectiveness of controls over the Company's accounting for acquisitions, including the valuation of identifiable intangible assets
- We tested the Company's controls over management's review of the identifiable intangible asset valuation models, as well as the significant assumptions used in the valuation models.
- Additionally we read the purchase agreement to identify the significant terms, and tested management's process for estimating the fair value of customer relationships and trademarks including:
  - We involved our valuation specialists to assist in our evaluation of the methodologies used by the Company and the significant assumptions included in the fair value estimates, which included guideline companies, discount rates, internal rate of return, weighted average cost of capital, weighted average return on assets.
  - We evaluated the reasonableness of management's forecasts of future cash flows by comparing projections to historical results and applying a reasonable growth rate.
  - We compared the significant assumptions to the historical results of the acquired business and performed retrospective review of the actual results compared to the projected cash flows.

### Valuation of Certain Level 3 Investments

#### *Description of the Matter*

The Company estimates the fair value of certain investments and loans receivable utilizing valuation models with unobservable inputs. Unlike Level 1 and 2 inputs, Level 3 inputs are unobservable, supported by little or no market activity, and are significant to the fair value of certain investments and loans receivable. As of December 31, 2021, the Company had equity securities of \$377,549,000 and loan receivables recorded at fair value of \$873,186,000 utilizing Level 3 inputs.

Subjective and challenging judgment is required by management to determine the assumptions and valuation methodology to record financial assets at their fair value using Level 3 inputs. Auditing management's models to determine the fair value of certain investments and loans receivable was complex and required judgment, particularly when evaluating inputs such as discount rates, projected EBITDA, multiples of EBITDA, projected revenue, multiples of revenue, multiple of PV-10, expected annualized volatility rates and market interest rates. These assumptions are affected by expectations about future economic and industry factors as well as estimates of the investee's future growth.

#### *How We Addressed the Matter in Our Audit*

Our audit procedures related to the valuation of certain Level 3 Investments to address this critical audit matter included the following:

- We obtained an understanding of the control environment, evaluating the design effectiveness, and testing the operating effectiveness of controls over the Company's process to establish a valuation methodology and determine assumptions used in valuation models to record financial assets at their fair value. For example, we tested management's review controls over the significant assumptions described above as well as over the data used in the valuation models.
- With assistance from our valuation specialists, we evaluated the reasonableness of the valuation methodology and significant assumptions; tested inputs for reasonableness, including discount rates, multiples of revenue, multiple of PV-10, expected annualized volatility rates and market interest rates; and corroborated with audit evidence from external sources or comparisons to other companies in the industry.
- We tested the Company's process used to develop the revenue, projected EBITDA, multiples of EBITDA, projected revenue, multiple of PV-10 and EBITDA projections evaluated audit evidence from events or transactions occurring after the measurement date for comparison to management's estimate.

### Accounting for investments in variable interest entities

#### *Description of the Matter*

As discussed in Note 2 (ab) to the consolidated financial statements, the Company holds interests in various entities that meet the characteristics of a variable interest entity ("VIE"). The Company determines whether it is the primary beneficiary of a VIE at the time it becomes involved with a VIE, which requires consolidation based upon the following criteria:

- a) the power to direct the activities of the entity that most significantly impact its economic success,
- b) the obligation to absorb the expected losses of the entity, or
- c) the right to receive the expected residual returns of the entity; or
- d) the voting rights of some investors in the entity are not proportional to their economic interests and the activities of the entity involve or are conducted on behalf of an investor with a disproportionately small voting interest.

We identified the accounting for investments in variable interest entities to be a critical audit matter. Evaluating the Company's judgments in determining whether an entity is a VIE and the primary beneficiary of each VIE required a high degree of complex auditor judgment.

#### *How We Addressed the Matter in Our Audit*

Our audit procedures related to the accounting for investments in variable interest entities to address this critical audit matter included the following:

- We tested certain internal controls over the Company's process to identify and account for a VIE. These included controls related to the consideration of various interests in an entity, and determining whether the Company is the primary beneficiary of the VIE.
- We obtained and read the agreements in which the Company evaluated and compared the terms of the agreements to the Company's assessment.
- We reviewed the Company's VIE analyses to determine if the VIE meets the criteria for consolidation in accordance with Accounting Standards Codification ("ASC") 810, Consolidations.
- We evaluated the factors considered to determine whether the Company omitted any significant potential variable interests in their analyses.

/s/ Marcum LLP

Marcum LLP

We have served as the Company's auditor since 2009.

New York, NY

February 25, 2022

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**  
**ON INTERNAL CONTROL OVER FINANCIAL REPORTING**

To the Shareholders and Board of Directors of  
B. Riley Financial, Inc.

**Opinion on Internal Control over Financial Reporting**

We have audited B. Riley Financial, Inc.'s (the "Company") internal control over financial reporting as of December 31, 2021, based on criteria established in *Internal Control-Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2021, based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) ("PCAOB"), the consolidated balance sheets as of December 31, 2021 and 2020 and the related consolidated statements of income, comprehensive income, equity, and cash flows and the related notes for each of the three years in the period ended December 31, 2021 of the Company, and our report dated February 25, 2022 expressed an unqualified opinion on those financial statements.

**Basis for Opinion**

The Company's management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying "Management Annual Report on Internal Control over Financial Reporting". Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

**Definition and Limitations of Internal Control over Financial Reporting**

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of the inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that degree of compliance with the policies or procedures may deteriorate.

/s/ Marcum LLP

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Marcum LLP

New York, NY

February 25, 2022

PART IV. FINANCIAL INFORMATION

Item 15. Financial Statements.

**B. RILEY FINANCIAL, INC. AND SUBSIDIARIES**  
**Consolidated Balance Sheets**  
(Dollars in thousands, except par value)

Assets	December 31, 2021	December 31, 2020
<b>Assets:</b>		
Cash and cash equivalents	\$ 278,933	\$ 103,602
Restricted cash	927	1,235
Due from clearing brokers	29,657	7,089
Securities and other investments owned, at fair value	1,532,095	777,319
Securities borrowed	2,090,966	765,457
Accounts receivable, net	49,673	40,806
Due from related parties	2,074	986
Loans receivable, at fair value (includes \$167,744 and \$295,809 from related parties as of December 31, 2021 and 2020, respectively)	873,186	390,689
Prepaid expenses and other assets	463,502	93,174
Operating lease right-of-use assets	56,969	48,799
Property and equipment, net	12,870	11,685
Goodwill	250,568	227,046
Other intangible assets, net	207,651	190,745
Deferred tax assets, net	2,848	4,098
Total assets	<u>\$ 5,851,919</u>	<u>\$ 2,662,730</u>
<b>Liabilities and Equity</b>		
<b>Liabilities:</b>		
Accounts payable	\$ 6,326	\$ 2,722
Accrued expenses and other liabilities	343,750	173,178
Deferred revenue	69,507	68,651
Deferred tax liabilities, net	93,055	34,248
Due to related parties and partners	—	327
Due to clearing brokers	69,398	13,672
Securities sold not yet purchased	28,623	10,105
Securities loaned	2,088,685	759,810
Operating lease liabilities	69,072	60,778
Notes payable	357	37,967
Loan participations sold	—	17,316
Revolving credit facility	80,000	—
Term loans	346,385	74,213
Senior notes payable, net	1,606,560	870,783
Total liabilities	<u>4,801,718</u>	<u>2,123,770</u>
<b>Commitments and contingencies (Note 17)</b>		
Redeemable noncontrolling interests in equity of subsidiaries	345,000	—
<b>B. Riley Financial, Inc. stockholders' equity:</b>		
Preferred stock, \$0.0001 par value; 1,000,000 shares authorized; 4,512 and 3,971 shares issued and outstanding as of December 31, 2021 and 2020, respectively; liquidation preference of \$112,790 and \$99,260 as of December 31, 2021 and 2020, respectively.	—	—
Common stock, \$0.0001 par value; 100,000,000 shares authorized; 27,591,028 and 25,777,796 shares issued and outstanding as of December 31, 2021 and 2020, respectively.	3	3
Additional paid-in capital	413,486	310,326
Retained earnings	248,862	203,080
Accumulated other comprehensive loss	(1,080)	(823)
Total B. Riley Financial, Inc. stockholders' equity	<u>661,271</u>	<u>512,586</u>
Noncontrolling interests	43,930	26,374
Total equity	<u>705,201</u>	<u>538,960</u>
Total liabilities and equity	<u>\$ 5,851,919</u>	<u>\$ 2,662,730</u>

The accompanying notes are an integral part of these consolidated financial statements.

**B. RILEY FINANCIAL, INC. AND SUBSIDIARIES**  
**Consolidated Statements of Income**  
(Dollars in thousands, except share data)

	Year Ended December 31,		
	2021	2020	2019
Revenues:			
Services and fees	\$ 1,172,957	\$ 667,069	\$ 460,493
Trading income and fair value adjustments on loans	386,676	104,018	106,463
Interest income - Loans and securities lending	122,723	102,499	77,221
Sale of goods	58,205	29,135	7,935
Total revenues	<u>1,740,561</u>	<u>902,721</u>	<u>652,112</u>
Operating expenses:			
Direct cost of services	54,390	60,451	58,824
Cost of goods sold	26,953	12,460	7,575
Selling, general and administrative expenses	906,196	428,537	385,219
Restructuring charge	—	1,557	1,699
Impairment of tradenames	—	12,500	—
Interest expense - Securities lending and loan participations sold	52,631	42,451	32,144
Total operating expenses	<u>1,040,170</u>	<u>557,956</u>	<u>485,461</u>
Operating income	700,391	344,765	166,651
Other income (expense):			
Interest income	229	564	1,577
Gain on extinguishment of loans and other	3,796	—	—
Income (loss) from equity investments	2,801	(623)	(1,431)
Interest expense	(92,455)	(65,249)	(50,205)
Income before income taxes	614,762	279,457	116,592
Provision for income taxes	(163,960)	(75,440)	(34,644)
Net income	450,802	204,017	81,948
Net income (loss) attributable to noncontrolling interests	5,748	(1,131)	337
Net income attributable to B. Riley Financial, Inc.	445,054	205,148	81,611
Preferred stock dividends	7,457	4,710	264
Net income available to common shareholders	<u>\$ 437,597</u>	<u>\$ 200,438</u>	<u>\$ 81,347</u>
Basic income per common share			
Basic income per common share	\$ 15.99	\$ 7.83	\$ 3.08
Diluted income per common share			
Diluted income per common share	\$ 15.09	\$ 7.56	\$ 2.95
Weighted average basic common shares outstanding			
Weighted average basic common shares outstanding	27,366,292	25,607,278	26,401,036
Weighted average diluted common shares outstanding			
Weighted average diluted common shares outstanding	29,005,602	26,508,397	27,529,157

The accompanying notes are an integral part of these consolidated financial statements.

**B. RILEY FINANCIAL, INC. AND SUBSIDIARIES**  
**Consolidated Statements of Comprehensive Income**  
(Dollars in thousands)

	Year Ended December 31,		
	2021	2020	2019
Net income	\$ 450,802	\$ 204,017	\$ 81,948
Other comprehensive income (loss):			
Change in cumulative translation adjustment	(257)	1,165	173
Other comprehensive income (loss), net of tax	(257)	1,165	173
Total comprehensive income	450,545	205,182	82,121
Comprehensive income (loss) attributable to noncontrolling interests	5,748	(1,131)	337
Comprehensive income attributable to B. Riley Financial, Inc.	\$ 444,797	\$ 206,313	\$ 81,784

*The accompanying notes are an integral part of these consolidated financial statements.*

**B. RILEY FINANCIAL, INC. AND SUBSIDIARIES**  
**Consolidated Statements of Equity**  
(Dollars in thousands, except share data)

	<u>Preferred Stock</u>		<u>Common Stock</u>		<u>Additional</u>	<u>Retained</u>	<u>Accumulated</u>	<u>Noncontrolling</u>	<u>Total</u>
	<u>Shares</u>	<u>Amount</u>	<u>Shares</u>	<u>Amount</u>	<u>Paid-in</u> <u>Capital</u>	<u>Earnings</u>	<u>Other</u> <u>Comprehensive</u> <u>Loss</u>	<u>Interests</u>	<u>Equity</u>
Balance, January 1, 2019	-	\$ -	26,603,355	\$ 2	\$ 258,638	\$ 1,579	\$ (2,161)	\$ 602	\$ 258,660
Common stock issued	—	—	2,248	—	63	—	—	—	63
Preferred stock issued	2,349	—	—	—	56,566	—	—	—	56,566
Issuance of common stock warrant for purchase of BR Brand Holdings, LLC	—	—	—	—	990	—	—	—	990
ESPP shares issued and vesting of restricted stock, net of shares withheld for employer taxes	—	—	604,661	1	(2,014)	—	—	—	(2,013)
Common stock repurchased and retired	—	—	(237,932)	—	(4,273)	—	—	—	(4,273)
Warrants repurchased and retired	—	—	—	—	(2,777)	—	—	—	(2,777)
Share based payments	—	—	—	—	15,916	—	—	—	15,916
Dividends on common stock (\$1.49 per share)	—	—	—	—	—	(43,390)	—	—	(43,390)
Dividends on preferred stock	—	—	—	—	—	(264)	—	—	(264)
Net income	—	—	—	—	—	81,611	—	337	81,948
Distributions to noncontrolling interests	—	—	—	—	—	—	—	(721)	(721)
Noncontrolling interest from purchase of BR Brand Holdings, LLC	—	—	—	—	—	—	—	29,373	29,373
Foreign currency translation adjustment	—	—	—	—	—	—	173	—	173
Balance, December 31, 2019	<u>2,349</u>	<u>\$ —</u>	<u>26,972,332</u>	<u>\$ 3</u>	<u>\$ 323,109</u>	<u>\$ 39,536</u>	<u>\$ (1,988)</u>	<u>\$ 29,591</u>	<u>\$ 390,251</u>
Preferred stock issued	1,622	—	—	—	39,455	—	—	—	39,455
ESPP shares issued and vesting of restricted stock, net of shares withheld for employer taxes	—	—	1,358,212	—	(22,578)	—	—	—	(22,578)
Common stock repurchased and retired	—	—	(2,552,748)	—	(48,248)	—	—	—	(48,248)
Share based payments	—	—	—	—	18,588	—	—	—	18,588
Dividends on common stock (\$1.325 per share)	—	—	—	—	—	(36,894)	—	—	(36,894)
Dividends on preferred stock	—	—	—	—	—	(4,710)	—	—	(4,710)
Net income (loss)	—	—	—	—	—	205,148	—	(1,131)	204,017
Distributions to	—	—	—	—	—	—	—	(2,690)	(2,690)

noncontrolling interests										
Contributions from noncontrolling interests	—	—	—	—	—	—	—	—	604	604
Foreign currency translation adjustment	—	—	—	—	—	—	1,165	—	—	1,165
Balance, December 31, 2020	<u>3,971</u>	<u>\$ —</u>	<u>25,777,796</u>	<u>\$ 3</u>	<u>\$ 310,326</u>	<u>\$ 203,080</u>	<u>\$ (823)</u>	<u>\$ 26,374</u>	<u>\$ 538,960</u>	
Common stock issued, net of offering costs	—	—	1,413,045	\$ —	64,713	—	—	—	—	64,713
Preferred stock issued	541	—	—	—	14,712	—	—	—	—	14,712
ESPP shares issued and vesting of restricted stock and other, net of shares withheld for employer taxes	—	—	433,182	—	(9,620)	—	—	—	—	(9,620)
Common stock repurchased and retired	—	—	(44,650)	—	(2,656)	—	—	—	—	(2,656)
Warrants exercised	—	—	11,655	—	—	—	—	—	—	—
Share based payments	—	—	—	—	36,011	—	—	—	—	36,011
Dividends on common stock (\$12.50 per share)	—	—	—	—	—	(373,633)	—	—	—	(373,633)
Dividends on preferred stock	—	—	—	—	—	(7,457)	—	—	—	(7,457)
Net income	—	—	—	—	—	445,054	—	5,748	—	450,802
Remeasurement of B. Riley Principal 150 and 250 Merger Corporations subsidiary temporary equity	—	—	—	—	—	(18,182)	—	—	—	(18,182)
Distributions to noncontrolling interests	—	—	—	—	—	—	—	(15,497)	—	(15,497)
Contributions from noncontrolling interests	—	—	—	—	—	—	—	—	13,680	13,680
Acquisition of noncontrolling interests	—	—	—	—	—	—	—	—	13,625	13,625
Other comprehensive loss	—	—	—	—	—	—	(257)	—	—	(257)
Balance, December 31, 2021	<u>4,512</u>	<u>\$ —</u>	<u>27,591,028</u>	<u>\$ 3</u>	<u>\$ 413,486</u>	<u>\$ 248,862</u>	<u>\$ (1,080)</u>	<u>\$ 43,930</u>	<u>\$ 705,201</u>	

The accompanying notes are an integral part of these consolidated financial statements.

**B. RILEY FINANCIAL, INC. AND SUBSIDIARIES**  
**Consolidated Statements of Cash Flows**  
(Dollars in thousands)

	Year Ended December 31,		
	2021	2020 (Revised - See Note 23)	2019 (Revised - See Note 23)
Cash flows from operating activities:			
Net income	\$ 450,802	\$ 204,017	\$ 81,948
Adjustments to reconcile net income to net cash provided by (used in) operating activities:			
Depreciation and amortization	25,871	19,369	19,048
Provision for doubtful accounts	1,453	3,385	2,126
Share-based compensation	36,011	18,588	15,916
Fair value adjustments, non-cash	(7,562)	21,954	12,258
Non-cash interest and other	(22,322)	(16,810)	(12,267)
Effect of foreign currency on operations	127	(460)	(78)
(Income) loss from equity investments	(2,801)	623	1,431
Dividends from equity investments	2,136	1,343	3,194
Deferred income taxes	61,770	61,619	10,874
Impairment of leaseholds and intangibles, lease loss accrual and gain on disposal of fixed assets	(137)	14,107	(286)
Gain on extinguishment of loans	(6,509)	—	—
Loss (gain) on extinguishment of debt	6,131	(1,556)	—
Gain on equity investment	(3,544)	—	—
Income allocated and fair value adjustment for mandatorily redeemable noncontrolling interests	857	1,230	1,220
Change in operating assets and liabilities:			
Amounts due to/from clearing brokers	40,628	30,401	13,920
Securities and other investments owned	(581,785)	(331,759)	(178,023)
Securities borrowed	(1,325,509)	48,873	117,015
Accounts receivable and advances against customer contracts	(715)	18,776	(37,637)
Prepaid expenses and other assets	(3,737)	10,135	13,298
Accounts payable, accrued payroll and related expenses, accrued expenses and other liabilities	37,798	31,301	32,553
Amounts due to/from related parties and partners	(1,415)	3,423	(4,781)
Securities sold, not yet purchased	18,011	(31,715)	4,197
Deferred revenue	(3,540)	1,530	(3,098)
Securities loaned	1,328,875	(50,685)	(120,026)
Net cash provided by (used in) operating activities	<u>50,894</u>	<u>57,689</u>	<u>(27,198)</u>
Cash flows from investing activities:			
Purchases of loans receivable	(738,909)	(207,466)	(343,811)
Repayments of loans receivable	172,119	90,083	159,186
Sale of loan receivable to related party	—	1,800	—
Proceeds from loan participations sold	—	6,900	31,806
Repayment of loan participations sold	(15,216)	(2,233)	(18,911)
Asset acquisition - BR Brand, net of cash acquired \$2,160	—	—	(114,912)
Acquisition of businesses, net of \$34,942 cash acquired in 2021	(28,254)	(1,500)	—
Proceeds from sale of division of magicJack	—	—	6,196
Purchases of property, equipment and intangible assets	(676)	(2,045)	(3,461)
Proceeds from sale of property, equipment and intangible assets	14	1	513
Funds received from trust account of subsidiary	—	320,500	—
Investment of subsidiaries initial public offering proceeds into trust account	(345,000)	(176,750)	(143,750)
Purchases of equity investments	(612)	(7,500)	(28,757)
Distributions from equity investments	—	—	18,195
Net cash (used in) provided by investing activities	<u>(956,534)</u>	<u>21,790</u>	<u>(437,706)</u>
Cash flows from financing activities:			
Proceeds from revolving line of credit, net	80,000	—	—
Proceeds from asset based credit facility	—	—	140,439
Repayment of asset based credit facility	—	(37,096)	(103,343)
Repayment of notes payable	(37,610)	(357)	(478)
Payment of participating note payable and contingent consideration	(3,714)	(4,250)	(4,250)
Proceeds from term loan	300,000	75,000	10,000
Repayment of term loan	(20,684)	(67,266)	(22,734)
Proceeds from issuance of senior notes	1,249,083	186,796	281,924
Redemption of senior notes	(507,348)	(1,829)	(52,154)
Payment of debt issuance and offering costs	(33,377)	(9,845)	(8,059)
Payment of employment taxes on vesting of restricted stock	(9,620)	(22,578)	(2,022)
Common dividends paid	(347,135)	(38,792)	(41,138)
Preferred dividends paid	(7,457)	(4,710)	(264)
Repurchase of common stock	(2,656)	(48,248)	(4,273)
Repurchase of warrants	—	—	(2,777)
Distribution to noncontrolling interests	(16,542)	(3,826)	(1,958)
Contributions from noncontrolling interests	13,680	604	—
Redemption of subsidiary temporary equity and distributions	—	(318,750)	—
Proceeds from initial public offering of subsidiaries	345,000	175,000	143,750
Proceeds from offering common stock	64,713	—	63

Proceeds from offering preferred stock	14,712	39,455	56,566
Net cash provided by (used in) financing activities	1,081,045	(80,692)	389,292
Increase (decrease) in cash, cash equivalents and restricted cash	175,405	(1,213)	(75,612)
Effect of foreign currency on cash, cash equivalents and restricted cash	(382)	1,311	73
Net increase (decrease) in cash, cash equivalents and restricted cash	175,023	98	(75,539)
Cash, cash equivalents and restricted cash, beginning of year	104,837	104,739	180,278
Cash, cash equivalents and restricted cash, end of year	\$ 279,860	\$ 104,837	\$ 104,739
Supplemental disclosures:			
Interest paid	\$ 138,369	\$ 98,595	\$ 75,625
Taxes paid	\$ 88,153	\$ 2,368	\$ 8,649

*The accompanying notes are an integral part of these consolidated financial statements.*

**B. RILEY FINANCIAL, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(Dollars in thousands, except share data)**

**NOTE 1 — ORGANIZATION AND NATURE OF BUSINESS OPERATIONS**

B. Riley Financial, Inc. and its subsidiaries (collectively, the “Company”) provide investment banking and financial services to corporate, institutional and high net worth clients, and asset disposition, financial consulting, appraisal and capital advisory services to a wide range of retail, wholesale and industrial clients, as well as lenders, capital providers, private equity investors and professional services firms throughout the United States, Australia, Canada, and Europe and consumer Internet access and cloud communication services through its wholly-owned subsidiaries United Online, Inc. (“UOL” or “United Online”) and magicJack VocalTec Ltd. (“magicJack”). The Company also has a majority ownership interest in BR Brands Holding, LLC (“BR Brands” or “Brands”), which provides licensing of trademarks.

On February 25, 2021, the Company completed the acquisition of all of the outstanding shares of National Holdings Corporation (“National”) not already owned by the Company. The total cash consideration for the approximately 55% of National outstanding shares that the Company did not previously own and settlement of outstanding share based awards amounted to \$35,314. The Company used the acquisition method of accounting for this acquisition. The acquisition expands the Company’s investment banking, wealth management and financial planning offerings by adding National’s brokerage, insurance, tax preparation and advisory services. As a result of the National acquisition, the Company realigned its segment reporting structure in the first quarter of 2021 to reflect organizational management changes for its wealth management business. Under the new structure, the wealth management business previously reported in the Capital Markets segment are now reported in the Wealth Management segment. In conjunction with the new reporting structure, the Company recast its segment presentation for all periods presented.

The Company operates in six operating segments: (i) Capital Markets, through which the Company provides investment banking, corporate finance, securities lending, restructuring, research, sales and trading services to corporate and institutional clients; (ii) Wealth Management, through which the Company provides wealth management and tax services to corporate, institutional and high net worth clients; (iii) Auction and Liquidation, through which the Company provides auction and liquidation services to help clients dispose of assets that include multi-location retail inventory, wholesale inventory, trade fixtures, machinery and equipment, intellectual property and real property; (iv) Financial Consulting, through which the Company provides bankruptcy, financial advisory, forensic accounting, operations management consulting, real estate consulting and valuation and appraisal services; (v) Principal Investments - Communications, through which the Company provides consumer Internet access and related subscription services from United Online and cloud communication services primarily through the magicJack devices; and (vi) Brands, which is focused on generating revenue through the licensing of trademarks.

On January 30, 2020, the World Health Organization (“WHO”) announced a global health emergency because of a new strain of coronavirus (the “COVID-19 outbreak”). In March 2020, the WHO classified the COVID-19 outbreak as a pandemic, based on the rapid increase in exposure globally. During the fourth quarter of 2021, the full impact of the COVID-19 outbreak continues to evolve, with the emergence of variant strains and breakthrough infections becoming prevalent both in the U.S. and worldwide. As the U.S. economy recovers, aided by additional stimulus packages, inflation has been rising at historically high rates, and the Federal Reserve has signaled that it will begin increasing the target federal funds effective rate and positive momentum in the domestic vaccine rollout, countries across the world continue to manage repeated waves of the pandemic, including variant strains of COVID-19, amid uneven progress toward vaccination. The impact of the COVID-19 outbreak on our results of operations, financial position and cash flows will depend on future developments, including the duration and spread of the outbreak and related advisories and restrictions and the success of vaccines and natural immunity in controlling slowing or halting the pandemic. These developments and the impact of the COVID-19 outbreak on the financial markets and the overall economy continue to be highly uncertain and cannot be predicted. If the financial markets and/or the overall economy continue to be impacted, our results of operations, financial position and cash flows may be materially adversely affected.

## NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

### **(a) Principles of Consolidation and Basis of Presentation**

The consolidated financial statements include the accounts of B. Riley Financial, Inc. and its wholly-owned and majority-owned subsidiaries. The consolidated financial statements also include the accounts of Great American Global Partners, LLC which is controlled by the Company as a result of its ownership of a 50% member interest, appointment of two of the three executive officers and significant influence over the funding of operations. All intercompany accounts and transactions have been eliminated upon consolidation.

The accounting guidance requires an enterprise to perform an analysis to determine whether the enterprise's variable interest or interests give it a controlling financial interest in a variable interest entity; to require ongoing reassessments of whether an enterprise is the primary beneficiary of a Variable Interest Entity ("VIE"); to eliminate the solely quantitative approach previously required for determining the primary beneficiary of a VIE; to add an additional reconsideration event for determining whether an entity is a VIE when any changes in facts and circumstances occur such that holders of the equity investment at risk, as a group, lose the power from voting rights or similar rights of those investments to direct the activities of the entity that most significantly impact the entity's economic performance; and to require enhanced disclosures that will provide users of financial statements with more transparent information about an enterprise's involvement in a VIE.

### *Revision of Prior Period Financial Statements*

In connection with the preparation of the Company's consolidated financial statements during the year ended December 31, 2021, the Company identified an error that was not material related to the consolidation of certain VIE which primarily resulted in a gross up between investing activities and financing activities in the consolidated statements of cash flows. In accordance with SAB No. 99, "Materiality," and SAB No. 108, "Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements," the Company evaluated the error and determined that the related impact did not, either individually or in the aggregate, materially misstate previously issued consolidated financial statements. A summary of revisions to certain previously reported financial information presented herein is included in Note 23.

### **(b) Use of Estimates**

The preparation of the consolidated financial statements in accordance with accounting principles generally accepted in the United States of America ("GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the consolidated financial statements and reported amounts of revenue and expense during the reporting period. Estimates are used when accounting for certain items such as valuation of securities, allowance for doubtful accounts, the fair value of loans receivables, intangible assets and goodwill, share based arrangements, and accounting for income tax valuation allowances, recovery of contract assets and sales returns and allowances. Estimates are based on historical experience, where applicable, and assumptions that management believes are reasonable under the circumstances. Due to the inherent uncertainty involved with estimates, actual results may differ.

### **(d) Revenue Recognition**

The Company recognizes revenues under Accounting Standards Codification ("ASC") 606 – *Revenue from Contracts with Customers*. Revenues are recognized when control of the promised goods or performance obligations for services is transferred to the Company's customers, in an amount that reflects the consideration the Company expects to be entitled to in exchange for the goods or services.

Revenues from contracts with customers in the Capital Markets segment, Wealth Management segment, Auction and Liquidation segment, Financial Consulting segment, Principal Investments – Communications segment and Brands segment are primarily comprised of the following:

**Capital Markets segment** – Fees earned from corporate finance and investment banking services are derived from debt, equity and convertible securities offerings in which the Company acted as an underwriter or placement agent. Fees from underwriting activities are recognized as revenues when the performance obligation for the services related to the underwriting transaction is satisfied under the terms of the engagement and is not subject to any other contingencies. Fees are also earned from financial advisory and consulting services rendered in connection with client mergers, acquisitions, restructurings, recapitalizations and other strategic transactions. The performance obligation for financial advisory services is satisfied over time as work progresses on the engagement and services are delivered to the client. The performance obligation for financial advisory services may also include success and performance based fees which are recognized as revenue when the performance obligation is no longer constrained and it is not probable that the revenue recognized would be subject to significant reversal in a future period. Generally, it is probable that the revenue recognized is no longer subject to significant reversal upon the closing of the investment banking transaction.

Fees from asset management services are recognized over the period the performance obligation for the services are provided. Asset management fees are primarily comprised of fees for asset management services and are generally based on the dollar amount of the assets being managed.

Revenues from sales and trading are recognized when the performance obligation is satisfied and include commissions resulting from equity securities transactions executed as agent or principal and are recorded on a trade date basis and fees paid for equity research.

Revenues from other sources in the Capital Markets segment is primarily comprised of (i) interest income from loans receivable and securities lending activities, (ii) related net trading gains and losses from market making activities, the commitment of capital to facilitate customer orders and fair value adjustments on loans, (iii) trading activities from the Company's principal investments in equity and other securities for the Company's account, and (iv) other income.

Interest income from securities lending activities consists of interest income from equity and fixed income securities that are borrowed from one party and loaned to another. The Company maintains relationships with a broad group of banks and broker-dealers to facilitate the sourcing, borrowing and lending of equity and fixed income securities in a "matched book" to limit the Company's exposure to fluctuations in the market value of securities borrowed and securities loaned.

Other revenues include (i) net trading gains and losses from market making activities in the Company's fixed income group, (ii) carried interest from the Company's asset management recognized as earnings from financial assets within the scope of ASC 323 - *Investments - Equity Method and Joint Ventures*, and therefore will not be in the scope of ASC 606 - *Revenue from Contracts with Customers*. In accordance with ASC 323 - *Investments - Equity Method and Joint Ventures*, the Company will record equity method income (losses) as a component of investment income based on the change in the Company's proportionate claim on net assets of the investment fund, including performance-based capital allocations, assuming the investment fund was liquidated as of each reporting date pursuant to each fund's governing agreements, and (iii) other miscellaneous income.

**Wealth Management segment** – Fees from wealth management asset advisory services consist primarily of investment advisory fees that are recognized over the period the performance obligation for the services is provided. Investment advisory and asset management fees are primarily comprised of fees for investment services and are generally based on the dollar amount of the assets being managed. Investment advisory fee revenues as a principal registered investment advisor (RIA) are recognized on a gross basis. Asset management fee revenues as an agent are recognized on a net basis.

Revenues from sales and trading are recognized when the performance obligation is satisfied and include commissions resulting from equity securities transactions executed as agent and are recorded on a trade date basis.

**Auction and Liquidation segment** – Commission and fees earned on the sale of goods at Auction and Liquidation sales are recognized when evidence of a contract or arrangement exists, the transaction price has been determined, and the performance obligation has been satisfied when control of the product and risks of ownership has been transferred to the buyer. The commission and fees earned for these services are included in revenues in the accompanying consolidated statements of income. Under these types of arrangements, revenues also include contractual reimbursable costs.

Revenues earned from Auction and Liquidation services contracts where the Company guarantees a minimum recovery value for goods being sold at auction or liquidation are recognized over time when the performance obligation is satisfied. The Company generally uses the cost-to-cost measure of progress for the Company's contracts because it best depicts the transfer of services to the customer which occurs as the Company incurs costs on its contracts. Under the cost-to-cost measure of progress, the extent of progress towards completion is measured based on the ratio of costs incurred to date to the total estimated costs at completion of the performance obligation. Revenues, including estimated fees or profits, are recorded proportionally as costs are incurred. Costs to fulfill the contract include labor and other direct costs incurred by the company related to the contract. Due to the nature of the guarantees and performance obligations under these contracts, the estimation of revenue that is ultimately earned is complex and subject to many variables and requires significant judgment. It is common for these contracts to contain provisions that can either increase or decrease the transaction price upon completion of the Company's performance obligations under the contract. Estimated amounts are included in the transaction price at the most likely amount it is probable that a significant reversal of revenue will not occur. The Company estimates of variable consideration and determination of whether or not to include estimated amounts in the transaction price are based on an assessment of the Company's anticipated performance under the contract taking into consideration all historical, current and forecasted information that is reasonably available to the Company. Costs that directly relate to the contract and expected to be recoverable are capitalized as an asset and included in advances against customer contracts in the accompanying consolidated balance sheets. These costs are amortized as the services are transferred to the customer over the contract period, which generally does not exceed six months, and the expense is recognized as a component of direct cost of services. If, during the auction or liquidation sale, the Company determines that the total costs to be incurred on a performance obligation under a contract exceeds the total estimated revenues to be earned, a provision for the entire loss on the performance obligation is recognized in the period the loss is determined.

If the Company determines that the variable consideration used in the initial determination of the transaction price for the contract is such that the total recoveries from the auction or liquidation will not exceed the guaranteed recovery values or advances made in accordance with the contract, the transaction price will be reduced and a loss or negative revenue could result from the performance obligation. A provision for the entire loss as negative revenue on the performance obligation is recognized in the period the loss is determined.

**Financial Consulting segment** – Revenues in the Financial Consulting segment are primarily comprised of fees earned from providing bankruptcy, financial advisory, forensic accounting, real estate consulting and valuation and appraisal services. Fees earned from bankruptcy, financial advisory, forensic accounting and real estate consulting services are rendered to clients over time as work progresses on the engagement and services are delivered to the client. Fees may also include success and performance based fees which are recognized as revenue when the performance obligation is no longer constrained and it is not probable that the revenue recognized would be subject to significant reversal in a future period. Revenues for valuation and appraisal services are recognized when the performance obligation is completed and is generally at the point in time upon delivery of the report to the customer. Revenues in the Financial Consulting segment also include contractual reimbursable costs.

**Principal Investments – Communications segment** – Revenues in the Principal Investments - Communications segment are primarily comprised of subscription services revenues which consist of fees charged to United Online pay accounts; revenues from the sale of the magicJack access rights; revenues from access rights renewals and mobile apps; prepaid minutes revenues; revenues from access and wholesale charges; service revenue from UCaaS hosting services; and revenues from mobile phone voice, text, and data services. Products revenues consist of revenues from the sale of magicJack, mobile phone, and mobile broadband service devices, including the related shipping and handling and installation fees, if applicable. This segment's revenues also include advertising revenues which consist primarily of amounts from the Company's Internet search partner that are generated as a result of users utilizing the partner's Internet search services and amounts generated from display advertisements. The Company recognizes such advertising revenues in the period in which the advertisement is displayed or, for performance-based arrangements, when the related performance criteria are met.

Subscription service revenues are recognized over time in the service period in which the transaction price has been determinable and the related performance obligations for services are provided to the customer. Fees charged to customers in advance are initially recorded in the consolidated balance sheets as deferred revenue and then recognized ratably over the service period as the performance obligations are provided.

Product revenues for hardware and shipping are recognized at the time of delivery. Revenues from sales of devices and services represent revenues recognized from sales of the magicJack devices to retailers, wholesalers, or direct to customers, net of returns, and rights to access the Company's servers over the period associated with the access right period, and from sales of mobile phones and voice, text, and data services. The transaction price for devices is allocated between equipment and service based on stand-alone selling prices. Revenues allocated to devices are recognized upon delivery (when control transfers to the customer), and service revenue is recognized ratably over the service term. The Company estimates the return of magicJack device direct sales as part of the transaction price using a six month rolling average of historical returns.

**Brands segment** – Licensing revenue results from various license agreements that provide revenue based on guaranteed minimum royalty amounts and advertising/marketing fees with additional royalty revenue based on a percentage of defined sales. Guaranteed minimum royalty amounts are recognized as revenue on a straight-line basis over the full contract term. Royalty payments exceeding the guaranteed minimum amounts in a specific contract year are recognized only subsequent to when the guaranteed minimum amount has been achieved. Other licensing fees are recognized at a point in time once the performance obligations have been satisfied.

Payments received as consideration for the grant of a license are recorded as deferred revenue at the time payment is received and recognized ratably as revenue over the term of the license agreement. Advanced royalty payments are recorded as deferred revenue at the time payment is received and recognized as revenue when earned. Revenue is not recognized unless collectability is probable.

***(d) Direct Cost of Services***

Direct cost of services relates to service and fee revenues. Direct costs of services include participation in profits under collaborative arrangements in which the Company is a majority participant. Direct costs of services also include the cost of consultants and other direct expenses related to Auction and Liquidation contracts pursuant to commission and fee based arrangements in the Auction and Liquidation segment. Direct cost of services in the Principal Investments - Communications segment include cost of telecommunications and data center costs, personnel and overhead-related costs associated with operating the Company's networks, servers and data centers, sales commissions associated with multi-year service plans, depreciation of network computers and equipment, amortization expense, third party advertising sales commissions, license fees, costs related to providing customer support, costs related to customer billing and processing of customer credit cards and associated bank fees. Direct cost of services does not include an allocation of the Company's overhead costs.

***(e) Interest Expense - Securities Lending Activities and Loan Participations Sold***

Interest expense from securities lending activities is included in operating expenses related to operations in the Capital Markets segment. Interest expense from securities lending activities is incurred from equity and fixed income securities that are loaned to the Company and totaled \$51,753, \$40,490, and \$30,739 during the years ended December 31, 2021, 2020, and 2019, respectively. There were no loan participations sold outstanding as of December 31, 2021 and the loan participation sold totaled \$17,316, as of December 31, 2020. Interest expense from loan participations sold totaled \$878, \$1,961, and \$1,405 during the years ended December 31, 2021, 2020, and 2019, respectively.

***(f) Concentration of Risk***

Revenues in the Capital Markets, Financial Consulting, Wealth Management, Principal Investments - Communications and Brands segments are currently primarily generated in the United States. Revenues in the Auction and Liquidation segment are primarily generated in the United States, Australia, Canada and Europe.

The Company's activities in the Auction and Liquidation segment are executed frequently with, and on behalf of, distressed customers and secured creditors. Concentrations of credit risk can be affected by changes in economic, industry, or geographical factors. The Company seeks to control its credit risk and potential risk concentration through risk management activities that limit the Company's exposure to losses on any one specific liquidation services contract or concentration within any one specific industry. To mitigate the exposure to losses on any one specific liquidations services contract, the Company sometimes conducts operations with third parties through collaborative arrangements.

The Company maintains cash in various federally insured banking institutions. The account balances at each institution periodically exceed the Federal Deposit Insurance Corporation's ("FDIC") insurance coverage, and as a result, there is a concentration of credit risk related to amounts in excess of FDIC insurance coverage. The Company has not experienced any losses in such accounts. The Company also has substantial cash balances from proceeds received from auctions and liquidation engagements that are distributed to parties in accordance with the collaborative arrangements.

***(g) Advertising Expenses***

The Company expenses advertising costs, which consist primarily of costs for printed materials, as incurred. Advertising costs totaled \$3,681, \$3,013, and \$1,903 during the years ended December 31, 2021, 2020, and 2019, respectively. Advertising expense is included as a component of selling, general and administrative expenses in the accompanying consolidated statements of income.

***(h) Share-Based Compensation***

The Company's share-based payment awards principally consist of grants of restricted stock, restricted stock units and costs associated with the Company's employee stock purchase plan. In accordance with the applicable accounting guidance, share-based payment awards are classified as either equity or liabilities. For equity-classified awards, the Company measures compensation cost for the grant of membership interests at fair value on the date of grant and recognizes compensation expense in the consolidated statements of income over the requisite service or performance period the award is expected to vest.

In June 2018, the Company adopted the 2018 Employee Stock Purchase Plan ("Purchase Plan") which allows eligible employees to purchase common stock through payroll deductions at a price that is 85% of the market value of the common stock on the last day of the offering period. In accordance with the provisions of ASC 718 - *Compensation - Stock Compensation*, the Company is required to recognize compensation expense relating to shares offered under the Purchase Plan. During the years ended December 31, 2021, 2020, and 2019, the Company recognized compensation expense of \$758, \$377, and \$322 respectively, related to the Purchase Plan. As of December 31, 2021 and 2020, there were 450,717 and 502,326 shares reserved for issuance under the Purchase Plan, respectively.

**(i) Income Taxes**

The Company recognizes deferred tax liabilities and assets for the expected future tax consequences of events that have been included in the consolidated financial statements or tax returns. Deferred tax liabilities and assets are determined based on the difference between the financial statement basis and tax basis of assets and liabilities using enacted tax rates in effect during the year in which the differences are expected to reverse. The Company estimates the degree to which tax assets and credit carryforwards will result in a benefit based on expected profitability by tax jurisdiction. A valuation allowance for such tax assets and loss carryforwards is provided when it is determined to be more likely than not that the benefit of such deferred tax asset will not be realized in future periods. Tax benefits of operating loss carryforwards are evaluated on an ongoing basis, including a review of historical and projected future operating results, the eligible carryforward period, and other circumstances. If it becomes more likely than not that a tax asset will be used, the related valuation allowance on such assets would be reduced.

The Company recognizes tax benefits from uncertain tax positions only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. Once this threshold has been met, the Company's measurement of its expected tax benefits is recognized in its financial statements. The Company accrues interest on unrecognized tax benefits as a component of income tax expense. Penalties, if incurred, would be recognized as a component of income tax expense.

**(j) Cash and Cash Equivalents**

The Company considers all highly liquid investments with a maturity of three months or less when purchased to be cash equivalents.

**(k) Restricted Cash**

As of December 31, 2021, restricted cash included \$927 of cash collateral for leases. As of December 31, 2020, restricted cash included \$764 of cash collateral for foreign exchange contracts and \$471 of collateral related to one of the Company's telecommunication suppliers.

Cash, cash equivalents and restricted cash consist of the following:

	<b>December 31, 2021</b>	<b>December 31, 2020</b>
Cash and cash equivalents	\$ 278,933	\$ 103,602
Restricted cash	927	1,235
<b>Total cash, cash equivalents and restricted cash</b>	<b>\$ 279,860</b>	<b>\$ 104,837</b>

**(l) Securities Borrowed and Securities Loaned**

Securities borrowed and securities loaned are recorded based upon the amount of cash advanced or received. Securities borrowed transactions facilitate the settlement process and require the Company to deposit cash or other collateral with the lender. With respect to securities loaned, the Company receives collateral in the form of cash. The amount of collateral required to be deposited for securities borrowed, or received for securities loaned, is an amount generally in excess of the market value of the applicable securities borrowed or loaned. The Company monitors the market value of the securities borrowed and loaned on a daily basis, with additional collateral obtained, or excess collateral recalled, when deemed appropriate.

The Company accounts for securities lending transactions in accordance with ASC 210 - *Balance Sheet*, which requires companies to report disclosures of offsetting assets and liabilities. The Company does not net securities borrowed and securities loaned and these items are presented on a gross basis in the consolidated balance sheets.

**(m) Due from/to Brokers, Dealers, and Clearing Organizations**

The Company clears all of its proprietary and customer transactions through other broker-dealers on a fully disclosed basis. The amount receivable from or payable to the clearing brokers represents the net of proceeds from unsettled securities sold, the Company's clearing deposits and amounts receivable for commissions less amounts payable for unsettled securities purchased by the Company and amounts payable for clearing costs and other settlement charges. This amount also includes the cash collateral received for securities loaned less cash collateral for securities borrowed. Any amounts payable would be fully collateralized by all of the securities owned by the Company and held on deposit at the clearing broker.

**(n) Accounts Receivable**

Accounts receivable represents amounts due from the Company's Auction and Liquidation, Financial Consulting, Capital Markets, Wealth Management, Principal Investments - Communications and Brands customers. The Company maintains an allowance for doubtful accounts for estimated losses inherent in its accounts receivable portfolio. In establishing the required allowance, management utilizes the expected loss model. Management also considers historical losses adjusted for current market conditions and the customers' financial condition and the current receivables aging and current payment patterns. Account balances are charged off against the allowance after all means of collection have been exhausted and the potential for recovery is considered remote. The Company does not have any off-balance sheet credit exposure related to its customers. The Company's bad debt expense and changes in the allowance for doubtful accounts are included in Note 5.

**(o) Leases**

The Company determines if an arrangement is, or contains, a lease at the inception date. Operating leases are included in right-of-use assets, with the related liabilities included in operating lease liabilities in the consolidated balance sheets.

Operating lease assets represent our right to use an underlying asset for the lease term and lease liabilities represent our obligation to make lease payments arising from the lease. Operating lease assets and liabilities are recognized at the lease commencement date based on the estimated present value of lease payments over the lease term. We use our estimated incremental borrowing rate in determining the present value of lease payments. Variable components of the lease payments such as fair market value adjustments, utilities, and maintenance costs are expensed as incurred and not included in determining the present value. Our lease terms include options to extend or terminate the lease when it is reasonably certain that we will exercise that option. Lease expense is recognized on a straight-line basis over the lease term. We have lease agreements with lease and non-lease components which are accounted for as a single lease component. See Note 9 for additional information on leases.

**(p) Property and Equipment**

Property and equipment are stated at cost. Depreciation is computed using the straight-line method over the estimated useful lives of the assets. Property and equipment held under finance leases are amortized on a straight-line basis over the shorter of the lease term or estimated useful life of the asset. Depreciation expense on property and equipment was \$3,865, \$3,632, and \$5,202 during the years ended December 31, 2021, 2020, and 2019, respectively.

**(q) Loans Receivable**

Under ASC 326 - *Financial Instruments – Credit Losses*, the Company elected the irrevocable fair value option for all outstanding loans receivable that were previously measured at amortized cost. Under the fair value option, loans receivables are measured at each reporting period based upon their exit value in an orderly transaction and unrealized gains or losses from changes in fair value are recorded in the consolidated statements of income. These loans are no longer subject to evaluation for impairment through an allowance for loan loss as such losses will be captured through fair value changes.

Loans receivable, at fair value totaled \$873,186 and \$390,689 as of December 31, 2021 and 2020, respectively. The loans have various maturities through March 2027. As of December 31, 2021 and 2020, the historical cost of loans receivable accounted for under the fair value option was \$877,527 and \$405,064, respectively, which included principal balances of \$886,831 and \$416,401, respectively, and unamortized costs, origination fees, premiums and discounts, totaling \$9,304 and \$11,337, respectively. During the years ended December 31, 2021 and 2020, the Company recorded net unrealized gains of \$10,035 and net unrealized losses of \$22,033, respectively, on loans receivable, at fair value, which is included in trading income and fair value adjustments on loans on the consolidated statements of income.

The Company may periodically provide limited guarantees to third parties for loans that are made to investment banking and lending customers. As of December 31, 2021, the Company has provided limited guarantees with respect to Babcock & Wilcox Enterprises, Inc. ("B&W") as further described in Note 17(b). In accordance with the credit loss standard, the Company evaluates the need to record an allowance for credit losses for these loan guarantees since they have off-balance sheet credit exposures. As of December 31, 2021, the Company has not recorded any provision for credit losses on the B&W guarantees since the Company believes that there is sufficient collateral to protect the Company from any credit loss exposure.

Interest income on loans receivable is recognized based on the stated interest rate of the loan on the unpaid principal balance plus the amortization of any costs, origination fees, premiums and discounts and is included in interest income - loans and securities lending on the consolidated statements of income. Loan origination fees and certain direct origination costs are deferred and recognized as adjustments to interest income over the lives of the related loans. Unearned income, discounts, and premiums are amortized to interest income using a level yield methodology.

#### *Badcock Loan Receivable*

On December 20, 2021, the Company entered into a Master Receivables Purchase Agreement (“Receivables Purchase Agreement” with W.S. Badcock Corporation, a Florida corporation (“WSBC”), an indirect wholly owned subsidiary of Franchise Group, Inc., a Delaware corporation (“FRG”). The Company paid \$400,000 in cash to WSBC for the purchase of certain consumer credit receivables of WSBC. The Company recognized the \$400,000 as part of its loans receivable, at fair value on the consolidated balance sheets, which is collateralized by the performance of the consumer credit receivables of WSBC. In connection with the Receivables Purchase Agreement, the Company entered into a Servicing Agreement (the “Servicing Agreement”) with WSBC pursuant to which WSBC will provide to the Company certain customary servicing and account management services in respect of the receivables purchased by the Company under the Receivables Purchase Agreement. In addition, subject to certain terms and conditions, FRG has agreed to guarantee the performance by WSBC of its obligations under the Receivables Purchase Agreement and the Servicing Agreement.

#### **(r) Securities and Other Investments Owned and Securities Sold Not Yet Purchased**

Securities owned consist of equity securities including, common and preferred stocks, warrants, and options; corporate bonds; other fixed income securities including, government and agency bonds; loans receivable valued at fair value; and investments in partnerships. Securities sold, but not yet purchased represent obligations of the Company to deliver the specified security at the contracted price and thereby create a liability to purchase the security in the market at prevailing prices. Changes in the value of these securities are reflected currently in the results of operations.

As of December 31, 2021 and 2020, the Company’s securities and other investments owned and securities sold not yet purchased at fair value consisted of the following securities:

	<u>December 31,</u> <u>2021</u>	<u>December 31,</u> <u>2020</u>
<b>Securities and other investments owned:</b>		
Equity securities	\$ 1,444,474	\$ 697,288
Corporate bonds	7,632	3,195
Other fixed income securities	2,606	1,913
Partnership interests and other	77,383	74,923
	<u>\$ 1,532,095</u>	<u>\$ 777,319</u>
<b>Securities sold not yet purchased:</b>		
Equity securities	\$ 20,302	\$ 4,575
Corporate bonds	6,327	4,288
Other fixed income securities	1,994	1,242
	<u>\$ 28,623</u>	<u>\$ 10,105</u>

### **(s) Goodwill and Other Intangible Assets**

The Company accounts for goodwill and intangible assets in accordance with the accounting guidance which requires that goodwill and other intangibles with indefinite lives be tested for impairment annually or on an interim basis if events or circumstances indicate that the fair value of an asset has decreased below its carrying value.

Goodwill includes the excess of the purchase price over the fair value of net assets acquired in business combinations and the acquisition of noncontrolling interests. ASC 350 – *Intangibles - Goodwill and Other* requires that goodwill be tested for impairment at the reporting unit level (operating segment or one level below an operating segment). Application of the goodwill impairment test requires judgment, including the identification of reporting units, assigning assets and liabilities to reporting units, assigning goodwill to reporting units, and determining the fair value. The Company operates six reporting units, which are the same as its reporting segments described in Note 22. Significant judgment is required to estimate the fair value of reporting units which includes estimating future cash flows, determining appropriate discount rates and other assumptions. Changes in these estimates and assumptions could materially affect the determination of fair value and/or goodwill impairment.

When testing goodwill for impairment, in accordance with ASC 350, the Company made a qualitative assessment of the impact of the COVID-19 outbreak on goodwill and other intangible assets during the years ended December 31, 2021 and 2020. Based on the Company's qualitative assessments, the Company concluded that a positive assertion could be made from the qualitative assessments that it is more likely than not that the fair value of the reporting units exceeded their carrying values. There were no impairments of goodwill identified during the years ended December 31, 2021, 2020, and 2019.

During the years ended December 31, 2021 and 2019, the Company recognized no impairment of indefinite-lived intangibles. During the year ended December 31, 2020, the Company determined that the COVID-19 outbreak was a triggering event for testing the indefinite-lived tradenames in the Brands segment during the first quarter and again in the second quarter and determined that the indefinite-lived tradenames in the Brands segment were impaired. As a result, the Company recognized impairment charges of \$12,500, during the year ended December 31, 2020, which were included as an impairment of tradenames in the Company's consolidated statements of income.

The Company reviews the carrying value of its finite-lived amortizable intangibles and other long-lived assets for impairment at least annually or whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of long-lived assets is measured by comparing the carrying amount of the asset or asset group to the undiscounted cash flows that the asset or asset group is expected to generate. If the undiscounted cash flows of such assets are less than the carrying amount, the impairment to be recognized is measured by the amount by which the carrying amount of the asset or asset group, if any, exceeds its fair market value. During the years ended December 31, 2021, 2020, and 2019, the Company recognized no impairment of finite-lived intangibles.

### **(t) Fair Value Measurements**

The Company's assessment of the significance of a particular input to the fair value measurement in its entirety requires judgment and considers factors specific to the asset or liability. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. A fair value measurement assumes that the transaction to sell the asset or transfer the liability occurs in the principal market for the asset or liability or, in the absence of a principal market, the most advantageous market. In general, fair values determined by Level 1 inputs utilize quoted prices (unadjusted) for identical instruments that are highly liquid, observable, and actively traded in over-the-counter markets. Fair values determined by Level 2 inputs utilize inputs other than quoted prices included in Level 1 that are observable for the asset or liability, either directly or indirectly. Level 2 inputs include quoted prices for similar instruments in active markets, quoted prices for identical or similar instruments in markets that are not active and model-derived valuations whose inputs are observable and can be corroborated by market data. Level 3 inputs are unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities. In certain cases, the inputs used to measure fair value may fall into different levels of the fair value hierarchy. In such cases, the level in the fair value hierarchy within which the fair value measurement in its entirety has been determined based on the lowest level input that is significant to the fair value measurement in its entirety. The Company's assessment of the significance of a particular input to the fair value measurement in its entirety requires judgment and considers factors specific to the asset or liability.

The Company's securities and other investments owned and securities sold and not yet purchased are comprised of common and preferred stocks and warrants, corporate bonds, and investments in partnerships. Investments in common stocks that are based on quoted prices in active markets are included in Level 1 of the fair value hierarchy. The Company also holds loans receivable valued at fair value, nonpublic common and preferred stocks and warrants for which there is little or no public market and fair value is determined by management on a consistent basis. For investments where little or no public market exists, management's determination of fair value is based on the best available information which may incorporate management's own assumptions and involves a significant degree of judgment, taking into consideration various factors including earnings history, financial condition, recent sales prices of the issuer's securities and liquidity risks. These investments are included in Level 3 of the fair value hierarchy. Investments in partnership interests include investments in private equity partnerships that primarily invest in equity securities, bonds, and direct lending funds. The Company also invests in priority investment funds and the underlying securities held by these funds are primarily corporate and asset-backed fixed income securities and restrictions exist on the redemption of amounts invested by the Company. The Company's partnership and investment fund interests are valued based on the Company's proportionate share of the net assets of the partnerships and funds; the value for these investments is derived from the most recent statements received from the general partner or fund administrator. These partnership and investment fund interests are valued at net asset value ("NAV") and are excluded from the fair value hierarchy in the table below in accordance with ASC 820 - *Fair Value Measurements*. As of December 31, 2021 and 2020, partnership and investment fund interests valued at NAV of \$77,383 and \$74,923, respectively, and are included in securities and other investments owned in the accompanying consolidated balance sheets.

Securities and other investments owned also include investments in nonpublic entities that do not have a readily determinable fair value and do not report NAV per share. These investments are accounted for using a measurement alternative under which they are measured at cost and adjusted for observable price changes and impairments. Observable price changes result from, among other things, equity transactions for the same issuer executed during the reporting period, including subsequent equity offerings or other reported equity transactions related to the same issuer. For these transactions to be considered observable price changes of the same issuer, we evaluate whether these transactions have similar rights and obligations, including voting rights, distribution preferences, conversion rights, and other factors, to the investments we hold. Any investments adjusted to their fair value by applying the measurement alternative are disclosed as nonrecurring fair value measurements, including the level in the fair value hierarchy that was used. As of December 31, 2021 and 2020, investments in nonpublic entities valued using a measurement alternative of \$59,745 and \$26,948, respectively, are included in securities and other investments owned in the accompanying consolidated balance sheets.

Funds held in trust represents U.S. treasury bills that were purchased with funds raised through the initial public offerings of B. Riley Principal 150 Merger Corporation ("BRPM 150") and B. Riley Principal 250 Merger Corporation ("BRPM 250"), consolidated special purpose acquisition corporations ("SPACs"). The funds raised are held in trust accounts that are restricted for use and may only be used for purposes of completing an initial business combination or redemption of the class A public common shares of the SPAC's as set forth in their respective trust agreements. The funds held in trust are included within Level 1 of the fair value hierarchy and included in prepaid expenses and other assets in the accompanying consolidated balance sheets.

The Company has warrant liabilities related to warrants of the SPAC's that are held by investors in BRPM 150 and BRPM 250. The warrants are accounted for as liabilities in accordance with ASC 815 - *Derivatives and Hedging* and are measured at fair value at inception and on a recurring basis using quoted prices in over-the-counter markets. Warrant liabilities are included in accrued expenses and other liabilities in the accompanying consolidated balance sheets with changes in fair value that amounted to a loss of \$2,473 during the year ended December 31, 2021 included within gain on extinguishment of loans and other as part of other income (expense) in the consolidated statements of income. The fair value of mandatorily redeemable noncontrolling interests is determined based on the issuance of similar interests for cash, references to industry comparables, and relied, in part, on information obtained from appraisal reports and internal valuation models.

The following tables present information on the financial assets and liabilities measured and recorded at fair value on a recurring basis as of December 31, 2021 and 2020.

**Financial Assets and Liabilities Measured at Fair Value  
on a Recurring Basis at December 31, 2021 Using**

	Fair value at December 31 2021	Quoted prices in active markets for identical assets (Level 1)	Other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
<b>Assets:</b>				
Funds held in trust account	\$ 345,024	\$ 345,024	\$ —	\$ —
Securities and other investments owned:				
Equity securities	1,384,729	1,007,180	—	377,549
Corporate bonds	7,632	—	7,632	—
Other fixed income securities	2,606	—	2,606	—
Total securities and other investments owned	1,394,967	1,007,180	10,238	377,549
Loans receivable, at fair value	873,186	—	—	873,186
Total assets measured at fair value	<u>\$ 2,613,177</u>	<u>\$ 1,352,204</u>	<u>\$ 10,238</u>	<u>\$ 1,250,735</u>
<b>Liabilities:</b>				
Securities sold not yet purchased:				
Equity securities	\$ 20,302	\$ 20,302	\$ —	\$ —
Corporate bonds	6,327	—	6,327	—
Other fixed income securities	1,994	—	1,994	—
Total securities sold not yet purchased	28,623	20,302	8,321	—
Mandatorily redeemable noncontrolling interests issued after November 5, 2003	4,506	—	—	4,506
Warrant liabilities	12,938	12,938	—	—
Total liabilities measured at fair value	<u>\$ 46,067</u>	<u>\$ 33,240</u>	<u>\$ 8,321</u>	<u>\$ 4,506</u>

**Financial Assets and Liabilities Measured at Fair Value  
on a Recurring Basis at December 31, 2020 Using**

	Fair value at December 31 2020	Quoted prices in active markets for identical assets (Level 1)	Other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
<b>Assets:</b>				
Securities and other investments owned:				
Equity securities	\$ 670,340	\$ 521,048	\$ —	\$ 149,292
Corporate bonds	3,195	—	3,195	—
Other fixed income securities	1,913	—	1,913	—
Total securities and other investments owned	675,448	521,048	5,108	149,292
Loans receivable, at fair value	390,689	—	—	390,689
Total assets measured at fair value	<u>\$ 1,066,137</u>	<u>\$ 521,048</u>	<u>\$ 5,108</u>	<u>\$ 539,981</u>
<b>Liabilities:</b>				
Securities sold not yet purchased:				
Equity securities	\$ 4,575	\$ 4,575	\$ —	\$ —
Corporate bonds	4,288	—	4,288	—
Other fixed income securities	1,242	—	1,242	—
Total securities sold not yet purchased	10,105	4,575	5,530	—
Mandatorily redeemable noncontrolling interests issued after November 5, 2003	4,700	—	—	4,700
Total liabilities measured at fair value	<u>\$ 14,805</u>	<u>\$ 4,575</u>	<u>\$ 5,530</u>	<u>\$ 4,700</u>

As of December 31, 2021 and 2020, financial assets measured and reported at fair value on a recurring basis and classified within Level 3 were \$1,250,735 and \$539,981, respectively, or 21.4% and 20.3%, respectively, of the Company's total assets. In determining the fair value for these Level 3 financial assets, the Company analyzes various financial, performance and market factors to estimate the value, including where applicable, over-the-counter market trading activity.

The following table summarizes the significant unobservable inputs in the fair value measurement of level 3 financial assets and liabilities by category of investment and valuation technique as of December 31, 2021:

	<b>Fair value at December 31, 2021</b>	<b>Valuation Technique</b>	<b>Unobservable Input</b>	<b>Range</b>	<b>Weighted Average</b>
<b>Assets:</b>					
Equity securities	\$ 291,178	Market approach	Multiple of EBITDA	3.25x - 17.50x	6.67x
			Multiple of PV-10	0.60x - 0.65x	0.61x
			Multiple of Sales	1.45x - 1.60x	1.48x
			Market price of related security	\$0.84 - \$51.43	\$42.13
	74,157	Discounted cash flow	Market interest rate	14.8%	14.8%
	12,214	Option pricing model	Annualized volatility	0.30 - 2.80	0.74
Loans receivable at fair value	873,186	Discounted cash flow	Market interest rate	6.0% - 38.0%	26.3%
Total level 3 assets measured at fair value	<u>\$ 1,250,735</u>				
<b>Liabilities:</b>					
Mandatorily redeemable noncontrolling interests issued after November 5, 2003	\$ 4,506	Market approach	Operating income multiple	6.0x	6.0x

The changes in Level 3 fair value hierarchy during the year ended December 31, 2021 and 2020 are as follows:

	<b>Level 3 Balance at Beginning of Year</b>	<b>Level 3 Changes During the Period</b>				<b>Level 3 Balance at End of Period</b>
		<b>Fair Value Adjustments</b>	<b>Relating to Undistributed Earnings</b>	<b>Purchases, Sales and Settlements</b>	<b>Transfer in and/or out of Level 3</b>	
<b>Year Ended December 31, 2021</b>						
Equity securities	\$ 149,292	88,804	—	138,766	687	377,549
Loans receivable at fair value	390,689	10,035	10,952	461,510	—	873,186
Mandatorily redeemable noncontrolling interests issued after November 5, 2003	4,700	—	(194)	—	—	4,506
Warrant liabilities	—	—	—	10,466	(10,466)	—
<b>Year Ended December 31, 2020</b>						
Equity securities	\$ 109,251	\$ (4,358)	\$ —	\$ 54,178	\$ (9,779)	\$ 149,292
Loans receivable at fair value	43,338	(22,033)	4,409	139,127	225,848	390,689
Mandatorily redeemable noncontrolling interests issued after November 5, 2003	4,616	—	84	—	—	4,700

Under ASC 326, the Company elected the irrevocable fair value option for all outstanding loans receivable that were measured at amortized cost. The loans receivable, at fair value are included in transfers into level 3 fair value assets in the above table.

The amounts reported in the table above during the years ended December 31, 2021 and 2020 include the amount of undistributed earnings attributable to the noncontrolling interests that is distributed on a quarterly basis. The carrying amounts reported in the consolidated financial statements for cash and cash equivalents, restricted cash, accounts receivable, accounts payable and accrued expenses and other liabilities approximate fair value based on the short-term maturity of these instruments.

Changes in the Level 3 fair value hierarchy during the year ended December 31, 2021 included the fair value of warrant liabilities associated with BRPM 150 and BRPM 250. The value of these warrants transferred from Level 3 to Level 1 of the fair value hierarchy when the public warrants started trading in the over-the-counter markets after the initial public offering.

As of December 31, 2021 and 2020, the senior notes payable had a carrying amount of \$1,606,560 and \$870,783, respectively, and a fair value of \$1,661,189 and \$898,606, respectively. The carrying amount of the term loan approximates fair value because the effective yield of such instrument is consistent with current market rates of interest for instruments of comparable credit risk.

The investments in nonpublic entities that do not report NAV are measured at cost, adjusted for observable price changes and impairments, with changes recognized in trading income (losses) and fair value adjustments on loans on the consolidated statements of income. These investments are evaluated on a nonrecurring basis based on the observable price changes in orderly transactions for the identical or similar investment of the same issuer. Further adjustments are not made until another observable transaction occurs. Therefore, the determination of fair values of these investments in nonpublic entities that do not report NAV does not involve significant estimates and assumptions or subjective and complex judgments. Investments in nonpublic entities that do not report NAV are subject to a qualitative assessment for indicators of impairment. If indicators of impairment are present, the Company is required to estimate the investment's fair value and immediately recognize an impairment charge in an amount equal to the investment's carrying value in excess of its estimated fair value.

As of December 31, 2021 and 2020, except for the impact of the intangible impairment charge in 2020 as described in Note 8 – Goodwill and Intangible Assets, there were no additional assets or liabilities measured at fair value on a non-recurring basis.

#### ***(u) Derivative and Foreign Currency Translation***

The Company periodically uses derivative instruments, which primarily consist of the purchase of forward exchange contracts, for certain loans receivable and Auction and Liquidation engagements with operations outside the United States. During the year ended December 31, 2020, the Company's use of derivatives consisted of the purchase of forward exchange contracts in the amount of 12,700 Euros, of which 6,700 Euros were settled. As of December 31, 2021 and 2020, forward exchange contracts in the amount of 6,000 Euros were outstanding.

The forward exchange contracts were entered into to improve the predictability of cash flows related to a retail store liquidation engagement and a loan receivable. The net gain from forward exchange contracts was \$1,052 and net loss was \$285 during the years ended December 31, 2021 and 2020, respectively. This amount is reported as a component of selling, general and administrative expenses in the consolidated statements of income.

The Company transacts business in various foreign currencies. In countries where the functional currency of the underlying operations has been determined to be the local country's currency, revenues and expenses of operations outside the United States are translated into United States dollars using average exchange rates while assets and liabilities of operations outside the United States are translated into United States dollars using period-end exchange rates. The effects of foreign currency translation adjustments are included in stockholders' equity as a component of accumulated other comprehensive income in the accompanying consolidated balance sheets. Transaction gains (losses) were \$1,256, (\$639), and (\$238), during the years ended December 31, 2021, 2020, and 2019, respectively. These amounts are included in selling, general and administrative expenses in the Company's consolidated statements of income.

As disclosed in Note 2(ab) below, the Company has consolidated two VIE's, BRPM 150 and BRPM 250, which have outstanding warrants that were issued in their respective initial public offerings. The warrants have been recorded as a liability since the warrants contain a provision to be settled in cash in the event of a qualifying cash tender offer, which is outside the control of the Company, for both BRPM 150 and BRPM 250. The outstanding warrants are considered derivative instruments with the warrant liability measured at fair value at each reporting date until exercised, with changes in fair value reported in other income in the consolidated statements of income. As of December 31, 2021, the warrant liability totaled \$12,938 which is included in accrued expenses and other liabilities in the consolidated balance sheets.

**(v) Redeemable Noncontrolling Interests in Equity of Subsidiaries**

The Company records redeemable noncontrolling interests in equity of subsidiaries to reflect the economic interests of the class A ordinary shareholders in BRPM 150 and BRPM 250 sponsored SPACs. These interests are presented as redeemable noncontrolling interests in equity of subsidiaries within the consolidated balance sheets, outside of the permanent equity section. The class A ordinary shareholders of BRPM 150 and BRPM 250 have redemption rights that are considered to be outside of the Company's control. As of December 31, 2021, the carrying amount of the redeemable noncontrolling interest in equity of subsidiaries was recorded at its redemption value of 345,000. Remeasurements to the redemption value of the redeemable noncontrolling interest in equity of subsidiaries are recorded within retained earnings. Such remeasurements totaled \$18,182, comprising of offering costs incurred in connection with the sale of class A shares of SPAC 150 and SPAC 250 in the amount of \$7,716 and initial valuation of the public warrants of SPAC 150 and SPAC 250 in the amount of \$10,466.

**(w) Common Stock Warrants**

The Company issued 821,816 warrants to purchase common stock of the Company (the "Wunderlich Warrants") in connection with the acquisition of Wunderlich Securities, Inc. ("Wunderlich") on July 3, 2017. The Wunderlich Warrants entitle the holders of the warrants to acquire shares of the Company's common stock from the Company at an exercise price of \$17.50 per share, subject to, among other matters, the proper completion of an exercise notice and payment. The exercise price and the number of shares of Company common stock issuable upon exercise are subject to customary anti-dilution and adjustment provisions, which include stock splits, subdivisions or reclassifications of the Company's common stock. On May 16, 2019, the Company repurchased 638,311 warrants for \$2,777 (\$4.35 per warrant). On June 11, 2020, 167,352 warrants held in escrow from the acquisition of Wunderlich were cancelled in accordance with the terms of the escrow instructions. The Wunderlich Warrants expire on July 3, 2022. All warrants were exercised in the third quarter of fiscal year 2021. As of December 31, 2021 and 2020, zero and 16,153 Wunderlich Warrants to purchase shares of common stock, respectively, were outstanding.

On October 28, 2019, the Company issued 200,000 warrants to purchase common stock of the Company (the "BR Brands Warrants") in connection with the acquisition of a majority ownership interest in BR Brand Holdings LLC. The BR Brands Warrants entitle the holders of the warrants to acquire shares of the Company's common stock from the Company at an exercise price of \$26.24 per share. One-third of the BR Brands Warrants immediately vested and became exercisable upon issuance, and the remaining two-thirds of warrants will vest and become exercisable following the first and/or second anniversaries of the closing, subject to BR Brands' (or another related joint venture with Bluestar Alliance LLC) satisfaction of specified financial performance targets. The BR Brands warrants expire three years after the last vesting event occurs. As of December 31, 2021 and 2020, 200,000 BR Brands warrants were outstanding.

**(x) Equity Investment**

As of December 31, 2021 and 2020, equity investments of \$39,190 and \$54,953, respectively, were included in prepaid expenses and other assets in the accompanying consolidated balance sheets. The Company's share of earnings or losses from equity method investees is included in gain (loss) from equity investments in the accompanying consolidated statements of income.

*bebe stores, inc.*

As of December 31, 2021 and 2020, the Company had a 40.1% and 39.5% ownership interest, respectively, in bebe stores, inc. ("bebe"). In December 2021, the Company purchased an additional 71,970 shares of newly issued common stock of bebe for \$612 and increased its ownership interest from 39.5% to 40.1%. The equity ownership in bebe is accounted for under the equity method of accounting and is included in prepaid expenses and other assets in the consolidated balance sheets.

*National Holdings Corporation*

As of December 31, 2020, the Company owned approximately 45% of the common stock of National which was included in prepaid expenses and other assets in the consolidated balance sheets. The equity ownership in National is accounted for under the equity method of accounting for periods prior to February 25, 2021. On February 25, 2021, the Company completed the acquisition of National by acquiring the 55% of common stock not previously owned by the Company pursuant to an agreement and plan of merger dated January 10, 2021, following the successful completion of a tender offer commenced by us on January 27, 2021. The cash consideration for the purchase of the 55% of common stock not previously owned by the Company and settlement of outstanding share based awards was \$35,314. National's operating results subsequent to February 25, 2021 is included in the Company's consolidated financial statements.

### *Other Equity Investments*

The Company has other equity investments over which the Company exercises significant influence but do not meet the requirements for consolidation, the largest ownership interest being a 40% ownership interest in Lingo Management, LLC (“Lingo”) which was acquired in November 2020. The equity ownership in these other investments was accounted for under the equity method of accounting and is included in prepaid expenses and other assets in the consolidated balance sheets.

#### ***(y) Loan Participations Sold***

As of December 31, 2021, the Company has sold investments (“Loan Participations Sold”) to third parties (“Participants”) that are accounted for as secured borrowings under ASC 860 - *Transfers and Servicing*. Under ASC 860, a partial loan transfer does not qualify for sale accounting. A participation or other partial loan transfer that meets the definition of a participating interest is classified as loan receivable and the portion transferred is recorded as a secured borrowing under loan participations sold in the consolidated balance sheets. The Participants are entitled to payments made by the borrower of the related loan equal to the current Loan Participations Sold outstanding at the interest rates for the respective investment. In the event that the borrower defaults, the Participants have rights to payments from such borrower, but do not have recourse to the Company. The terms of the Loan Participations Sold are commensurate with the terms of the related loan.

As of December 31, 2021, there were no outstanding loan participations. As of December 31, 2020, the Company had entered into participation agreements for a total of \$17,316. In addition, the interest income and interest expense related to the Loan Participations Sold resulted in interest income and interest expense which is presented gross on the consolidated statements of income.

#### ***(z) Supplemental Non-cash Disclosures***

During the year ended December 31, 2021, non-cash investing activities included: the repayment of a loan receivable in full in the amount of \$133,453 with equity securities, a \$51,000 note receivable issued for the sale of equity securities to a third party, \$35,000 of loans receivable exchanged for newly issued debt securities, the repayment of a \$2,800 loan with equity securities, and \$200 of loans receivable were converted to equity. During the year ended December 31, 2021, other non-cash activities included the recognition of new operating lease right-of-use assets of \$18,862 and the recognition of new operating lease liabilities of \$20,137.

During the year ended December 31, 2020, non-cash investing activities included \$11,133 non-cash conversions of equity method investments and \$26,238 conversion of loans receivable to shares of stock. In connection with the purchase of a loan receivable in the amount of \$61,687, the Company funded \$24,434 in cash and the remaining \$37,253 remains payable as a note payable as of December 31, 2020. During the year ended December 31, 2020, other non-cash activities included the recognition of new operating lease right-of-use assets of \$8,915 and the recognition of new operating lease liabilities of \$8,915.

During the year ended December 31, 2019, non-cash activities included the conversion of loans receivable in the amount of \$12,209 into securities and other investments owned, the recognition of new operating right-of-use assets of \$1,032, the recognition of new operating lease liabilities of \$1,032 and the issuance of warrants to purchase the Company’s stock in the amount of \$990 related to the purchase of BR Brand.

#### ***(aa) Reclassifications***

Certain prior period amounts have been reclassified to conform with the current period presentation. Such reclassifications consist of a reclass of unbilled receivables from accounts receivables, net, to contract assets that is included in prepaid expenses and other assets and a reclass of advances against customer contracts to contract assets that is included in prepaid expenses and other assets on the consolidated balance sheets. Certain amounts reported in the Capital Markets segment during the years ended December 31, 2020 and 2019 have been reclassified and reported in the Financial Consulting and Wealth Management segments during the years ended December 31, 2020 and 2019 as a result of the organizational changes that created the new Financial Consulting segment in the fourth quarter of 2020 and Wealth Management segment in the first quarter of 2021.

**(ab) Variable Interest Entity**

The Company holds interests in various entities that meet the characteristics of a VIE but are not consolidated as the Company is not the primary beneficiary. Interests in these entities are generally in the form of equity interests, loans receivable, or fee arrangements.

The Company determines whether it is the primary beneficiary of a VIE at the time it becomes involved with a VIE and reconsiders that conclusion at each reporting date. In evaluating whether the Company is the primary beneficiary, the Company evaluates its economic interests in the entity held either directly by the Company or indirectly through related parties. The consolidation analysis can generally be performed qualitatively; however, if it is not readily apparent that the Company is not the primary beneficiary, a quantitative analysis may also be performed.

In November 2020, the Company invested in Lingo Management, LLC (“Lingo”), a joint venture with an unaffiliated third party. On March 10, 2021, the Company also extended a promissory note to Lingo Communications, LLC (a wholly owned subsidiary of Lingo). Lingo is a VIE because the entity does not have enough equity at risk to finance its activities without additional subordinated financial support. The Company has determined that it is not the primary beneficiary because it does not have the power to direct the activities of the VIE that most significantly impact the entity’s financial performance. The Company’s variable interests in Lingo include loans receivable at fair value and an equity investment accounted for under the equity method of accounting.

The Company, through its newly acquired subsidiary, National, has entered into agreements to provide investment banking and advisory services to numerous investment funds (the “Funds”) that are considered variable interest entities under the accounting guidance.

The Company earns fees from the Funds in the form of placement agent fees and carried interest. For placement agent fees, the Company receives a cash fee of generally 7% to 10% of the amount of raised capital for the Funds and the fee is recognized at the time the placement services occurred. The Company receives carried interest as a percentage allocation (8% to 15%) of the profits of the Funds as compensation for asset management services provided to the Funds and it is recognized under the ownership model of ASC “Topic 323: Investments – Equity Method and Joint Ventures” as an equity method investment with changes in allocation recorded currently in the results of operations. As the fee arrangements under such agreements are arm’s length and contain customary terms and conditions and represent compensation that is considered fair value for the services provided, the fee arrangements are not considered variable interests and accordingly, the Company does not consolidate such VIEs.

Placement agent fees attributable to such arrangements during the year ended December 31, 2021 were \$66,263 and are included in services and fees in the consolidated statements of income.

The carrying amounts for the Company’s variable interests in VIEs that were not consolidated is shown below.

	<b>December 31, 2021</b>
Securities and other investments owned, at fair value	\$ 27,445
Loans receivable, at fair value	205,265
Other assets	4,956
Maximum exposure to loss	<u>\$ 237,666</u>

## *B. Riley Principal 150 and 250 Merger Corporations*

During the year ended December 31, 2021, the Company along with BRPM 150 and BRPM 250, both newly formed SPACs incorporated as Delaware corporations, consummated the initial public offerings of 17,250,000 units of BRPM 150 and 17,250,000 units of BRPM 250. Each Unit of BRPM 150 and BRPM 250 consisted of one share of class A common stock and one-third of one redeemable warrant, each whole warrant entitling the holder thereof to purchase one share of BRPM 150 or BRPM 250 class A common stock at an exercise price of \$11.50 per share. The BRPM 150 and BRPM 250 Units were each sold at a price of \$10.00 per unit, generating gross proceeds to BRPM 150 of \$172,500 and BRPM 250 of \$172,500. These proceeds which totaled \$345,000 were deposited in a trust account established for the benefit of the BRPM 150 and BRPM 250 class A public shareholders and is included in prepaid expenses and other assets in the consolidated balance sheets as of December 31, 2021. These proceeds are invested only in U.S. treasury securities in accordance with the governing documents of BRPM 150 and BRPM 250. Under the terms of the BRPM 150 and BRPM 250 initial public offerings, BRPM 150 and BRPM 250 are required to consummate a business combination transaction within 24 months (or 27 months under certain circumstances) of the completion of their respective initial public offerings.

In connection with the completion of the initial public offerings of BRPM 150 and BRPM 250, the Company invested in the private placement units of BRPM 150 and BRPM 250. Both BRPM 150 and BRPM 250 are determined to be VIE's because each of the entities do not have enough equity at risk to finance their activities without additional subordinated financial support. The Company has determined that the class A shareholders of BRPM 150 and BRPM 250 do not have substantive rights as shareholders of BRPM 150 and BRPM 250 since these equity interests are determined to be temporary equity. As such, the Company has determined that it is the primary beneficiary of BRPM 150 and BRPM 250 as it has the right to receive benefits or the obligation to absorb losses of each entity, as well as the power to direct a majority of the activities that significantly impact BRPM 150 and BRPM 250's economic performance. Since the Company is determined to be the primary beneficiary, BRPM 150 and BRPM 250 are consolidated into the Company's financial statements.

### ***(ac) Recent Accounting Standards***

*Not yet adopted*

In March 2020, FASB issued ASU No. 2020-04, *Reference Rate Reform (Topic 848)*, which provided optional guidance for a limited period of time to ease potential accounting impacts associated with transitioning away from reference rates that are expected to be discontinued, such as the London Interbank Offered Rate ("LIBOR"). The amendments applied only to contracts, hedging relationships, and other transactions that reference LIBOR or another reference rate expected to be discontinued. In January 2021, the FASB issued ASU 2021-01, *Reference Rate Reform (Topic 848)*, which refined the scope of Topic 848 through optional expedients and exceptions when accounting for derivative contracts and certain hedging relationships. The amendments were effective through December 31, 2022. The Company is currently assessing the potential impacts of this ASU and does not expect it to have any material impact on its consolidated results of operations, cash flows, financial position or disclosures.

In October 2021, the Financial Accounting Standards Board (the "FASB") issued Accounting Standards Update ("ASU") 2021-08, *Business Combinations (Topic 805): Accounting for Contract Assets and Contract Liabilities from Contracts with Customers* to require acquiring entities to apply Topic 606 when recognizing and measuring contract assets and contract liabilities instead of only recognizing such items at fair value on the acquisition date. The update addressed diversity in practice related to the acquired contract liability and payment terms and their effect on subsequent revenue recognized by the acquirer. The amendments in this update are effective the Company beginning with fiscal year 2023, with early adoption permitted, and should be applied prospectively to business combinations after the adoption date. The Company is currently assessing the potential impacts of this ASU and does not expect it to have any material impact on its consolidated results of operations, cash flows, financial position or disclosures.

### Recently adopted

In December 2019, the FASB issued ASU 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*. This standard simplifies the accounting for income taxes by removing certain exceptions for recognizing deferred taxes on investments, performing intra-period allocations, and calculating income taxes in interim periods. The ASU also adds guidance to reduce the complexity in certain areas, including recognizing deferred taxes for tax goodwill and allocating taxes to members of a consolidated group. Most amendments within the standard are required to be applied on a prospective basis, while certain amendments must be applied on a retrospective or modified retrospective basis. The Company adopted the ASU effective January 1, 2021. The impact of adopting the ASU was immaterial to the consolidated results of operations, cash flows, financial position, and disclosures.

In January 2020, the FASB issued ASU 2020-01, *Investments—Equity Securities (Topic 321), Investments—Equity Method and Joint Ventures (Topic 323), and Derivatives and Hedging (Topic 815)—Clarifying the Interactions between Topic 321, Topic 323, and Topic 815* to address accounting for the transition into and out of the equity method and measuring certain purchased options and forward contracts to acquire investments. Entities are required to remeasure its investment immediately before the transition from the measurement alternative for an equity investment under ASC 321 to the equity method due to an observable transaction. Similarly, entities are required to remeasure its investment immediately after the transition from the equity method to ASC 321 due to an observable transaction. The amendments in this update should be applied prospectively and at the beginning of the period that includes the adoption date. The Company adopted the ASU effective January 1, 2020. The impact of adopting the ASU was immaterial to the consolidated results of operations, cash flows, financial position, and disclosures.

In August 2020, the FASB issued ASU 2020-06, *Debt – Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging-Contracts in Entity’s Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity’s Own Equity* to simplify the accounting for certain financial instruments with characteristics of liabilities and equity, including convertible instruments and contracts on an entity’s own equity. The Company adopted the ASU effective January 1, 2021. The amendments in this update can be applied through either a modified retrospective method or fully retrospective method of transition. The impact of adopting the ASU was immaterial to the consolidated results of operations, cash flows, financial position, and disclosures.

In October 2020, the FASB issued ASU 2020-08, *Codification Improvements to Subtopic 310-20, Receivables-Nonrefundable Fees and Other Costs*. The amendments in this update clarify that an entity should reevaluate whether a callable debt security is within the scope of paragraph 310-20-35-33 for each reporting period. The Company adopted the ASU effective January 1, 2021. The amendments in this update should be applied prospectively and at the beginning of the period that includes the adoption date. The impact of adopting the ASU was immaterial to the consolidated results of operations, cash flows, financial position, and disclosures.

In October 2020, the FASB issued ASU 2020-09, *Debt (Topic 470): Amendments to SEC Paragraphs Pursuant to SEC Release No. 33-10762*. The amendments mostly apply to Topic 470 and relate to financial disclosure requirements for SEC registrants and other entities required to furnish information with the SEC. The Company adopted the ASU effective January 4, 2021. The impact of adopting the ASU was immaterial to the consolidated results of operations, cash flows, financial position, and disclosures.

In October 2020, the FASB issued ASU 2020-10, *Codification Improvements* to make incremental improvements to GAAP and address stakeholder suggestions, including, among other things, clarifying that the requirement to provide comparative information in the financial statements extends to the corresponding disclosures section. The Company adopted the ASU effective January 1, 2021. The amendments in this update should be applied retrospectively and at the beginning of the period that includes the adoption date. The impact of adopting the ASU was immaterial to the consolidated results of operations, cash flows, financial position, and disclosures.

In August 2021, the FASB issued ASU 2021-06, *Presentation of Financial Statements (Topic 205) Financial Services—Depositary and Lending (Topic 942), and Financial Services— Investment Companies (Topic 946)*. This update amends certain SEC paragraphs from the Codification in response to the issuance of SEC Final Rule Nos. 33-10786, *Amendments to Financial Disclosures About Acquired and Disposed Businesses*, which modified the significance test and improved disclosure requirements for acquired businesses and pro forma financial information. The Company adopted the SEC Final Rule effective January 1, 2021, and the ASU was adopted immediately. The impact of adopting the ASU was immaterial to the consolidated results of operations, cash flows, financial position, and disclosures.

### NOTE 3 — RESTRUCTURING CHARGE

The Company did not record any restructuring charges during the year ended December 31, 2021. The Company recorded restructuring charges in the amount of \$1,557 and \$1,699 during the years ended December 31, 2020 and 2019, respectively. The restructuring charges during the year ended December 31, 2020 were primarily related to impairment of certain acquired tradename intangibles associated with the Company's brand realignment across its subsidiary companies to provide greater external consistency and affiliation. The restructuring charges during the year ended December 31, 2019 were primarily related to severance costs for magicJack employees from a reduction in workforce and lease termination costs in the Principal Investments – Communications segment.

The following tables summarize the changes in accrued restructuring charge during the years ended December 31, 2021, 2020, and 2019:

	Year Ended December 31,		
	2021	2020	2019
Balance, beginning of year	\$ 727	\$ 1,600	\$ 3,855
Restructuring charge	—	1,557	1,699
Cash paid	(114)	(901)	(4,150)
Non-cash items	11	(1,529)	196
Balance, end of year	\$ 624	\$ 727	\$ 1,600

The following tables summarize the restructuring activities by reportable segment during the years ended December 31, 2020 and 2019:

	Capital Markets	Wealth Management	Auction and Liquidation	Financial Consulting	Principal Investments - Communications	Total
Restructuring charges for the year ended December 31, 2020:						
Impairment of intangible assets	\$ 917	\$ —	\$ 140	\$ 500	\$ —	\$ 1,557
Total restructuring charge	\$ 917	\$ —	\$ 140	\$ 500	\$ —	\$ 1,557
Restructuring charges for the year ended December 31, 2019:						
Employee termination costs	\$ —	\$ —	\$ —	\$ —	\$ 1,594	\$ 1,594
Facility closure and consolidation charge (recovery)	—	(4)	—	—	109	105
Total restructuring charge	\$ —	\$ (4)	\$ —	\$ —	\$ 1,703	\$ 1,699

#### NOTE 4 — SECURITIES LENDING

The following table presents the contractual gross and net securities borrowing and lending balances and the related offsetting amount as of December 31, 2021 and 2020:

	Gross amounts recognized	Gross amounts offset in the consolidated balance sheets <sup>(1)</sup>	Net amounts included in the consolidated balance sheets	Amounts not offset in the consolidated balance sheets but eligible for offsetting upon counterparty default <sup>(2)</sup>	Net amounts
<b>As of December 31, 2021</b>					
Securities borrowed	\$ 2,090,966	\$ —	\$ 2,090,966	\$ 2,090,966	\$ —
Securities loaned	\$ 2,088,685	\$ —	\$ 2,088,685	\$ 2,088,685	\$ —
<b>As of December 31, 2020</b>					
Securities borrowed	\$ 765,457	\$ —	\$ 765,457	\$ 765,457	\$ —
Securities loaned	\$ 759,810	\$ —	\$ 759,810	\$ 759,810	\$ —

(1) Includes financial instruments subject to enforceable master netting provisions that are permitted to be offset to the extent an event of default has occurred.

(2) Includes the amount of cash collateral held/posted.

#### NOTE 5 — ACCOUNTS RECEIVABLE

The components of accounts receivable, net, include the following:

	December 31, 2021	December 31, 2020
Accounts receivable	\$ 39,045	\$ 33,604
Investment banking fees, commissions and other receivables	14,286	10,316
Total accounts receivable	53,331	43,920
Allowance for doubtful accounts	(3,658)	(3,114)
Accounts receivable, net	<u>\$ 49,673</u>	<u>\$ 40,806</u>

Additions and changes to the allowance for doubtful accounts consist of the following:

	Year Ended December 31,		
	2021	2020	2019
Balance, beginning of period	\$ 3,114	\$ 1,514	\$ 696
Add: Additions to reserve	1,453	3,385	2,126
Less: Write-offs	(1,074)	(1,785)	(1,151)
Less: Recovery	165	—	(157)
Balance, end of period	<u>\$ 3,658</u>	<u>\$ 3,114</u>	<u>\$ 1,514</u>

**NOTE 6 — PREPAID EXPENSES AND OTHER ASSETS**

Prepaid expenses and other assets consist of the following:

	<b>December 31, 2021</b>	<b>December 31, 2020</b>
Funds held in trust account	\$ 345,024	\$ —
Equity investments	39,190	54,953
Prepaid expenses	14,965	7,371
Unbilled receivables	12,315	5,712
Other receivables	40,483	16,230
Other assets	11,525	8,908
Prepaid expenses and other assets	<u>\$ 463,502</u>	<u>\$ 93,174</u>

Unbilled receivables represent the amount of contractual reimbursable costs and fees for services performed in connection with fee and service based contracts in the Auction and Liquidation segment, mobile handsets in the Principal Investments – Communications segment, and consulting related engagements in the Financial Consulting segment.

**NOTE 7 — PROPERTY AND EQUIPMENT**

Property and equipment, net, consists of the following:

	<b>Estimated Useful Lives</b>	<b>December 31, 2021</b>	<b>December 31, 2020</b>
Leasehold improvements	Shorter of the remaining lease term or estimated useful life	\$ 13,766	\$ 10,737
Machinery, equipment and computer software	1.8 to 15 years	16,624	15,650
Furniture and fixtures	5 years	4,724	4,128
Total		<u>35,114</u>	<u>30,515</u>
Less: Accumulated depreciation and amortization		<u>(22,244)</u>	<u>(18,830)</u>
		<u>\$ 12,870</u>	<u>\$ 11,685</u>

Depreciation expense was \$3,865, \$3,632, and \$5,202 during the years ended December 31, 2021, 2020, and 2019, respectively.

## NOTE 8 — GOODWILL AND OTHER INTANGIBLE ASSETS

Goodwill was \$250,568 and \$227,046 as of December 31, 2021 and 2020, respectively.

The changes in the carrying amount of goodwill during the years ended December 31, 2021 and 2020 were as follows:

	Capital Markets Segment	Wealth Management Segment	Auction and Liquidation Segment	Financial Consulting Segment	Principal Investments- Communications Segment	Total
Balance as of December 31, 2019	\$ 50,806	\$ 28,396	\$ 1,975	\$ 20,331	\$ 122,189	\$ 223,697
Goodwill acquired during the year:						
Acquisition of other business	—	—	—	3,349	—	3,349
Balance as of December 31, 2020	50,806	28,396	1,975	23,680	122,189	227,046
Goodwill acquired during the year:						
Acquisition of other business	532	22,799	—	—	191	23,522
Balance as of December 31, 2021	\$ 51,338	\$ 51,195	\$ 1,975	\$ 23,680	\$ 122,380	\$ 250,568

Intangible assets consisted of the following:

	Useful Life	As of December 31, 2021			As of December 31, 2020		
		Gross Carrying Value	Accumulated Amortization	Intangibles Net	Gross Carrying Value	Accumulated Amortization	Intangibles Net
Amortizable assets:							
Customer relationships	0.1 to 16 Years	\$ 130,801	\$ 59,671	\$ 71,130	\$ 98,898	\$ 40,281	\$ 58,617
Domain names	7 Years	185	143	42	235	148	87
Advertising relationships	8 Years	100	69	31	100	56	44
Internally developed software and other intangibles	0.5 to 5 Years	15,275	8,820	6,455	11,775	6,913	4,862
Trademarks	6 to 10 Years	6,369	1,652	4,717	2,850	991	1,859
Total		152,730	70,355	82,375	113,858	48,389	65,469
Non-amortizable assets:							
Tradenames		125,276	—	125,276	125,276	—	125,276
Total intangible assets		\$ 278,006	\$ 70,355	\$ 207,651	\$ 239,134	\$ 48,389	\$ 190,745

Amortization expense was \$22,006, \$15,737, and \$13,846, during the years ended December 31, 2021, 2020, and 2019, respectively. As of December 31, 2021, estimated future amortization expense was \$20,116, \$17,769, \$13,832, \$10,386, \$10,410 during the years ended December 31, 2022, 2023, 2024, 2025 and 2026, respectively. The estimated future amortization expense after December 31, 2026 was \$9,861.

In the first quarter of 2020, in accordance with ASC 350, the Company made a qualitative assessment of the impact of the COVID-19 outbreak on goodwill and other intangible assets. The Company determined that the COVID-19 outbreak was a triggering event for testing the indefinite-lived tradenames in the Brands segment and made a determination that the indefinite-lived tradenames in the Brands segment were impaired and the Company recognized an impairment charge of \$4,000. As a result of the continuing impact and duration of the COVID-19 outbreak on the operations of the Brands segment, the Company determined that there was another triggering event for testing the indefinite-lived tradenames in the Brands segment and made a determination that the indefinite-lived tradenames in the Brands segment were impaired and the Company recognized an additional impairment charge of \$8,500 in the second quarter of 2020. There have been no triggering events subsequent to the second quarter of 2020 for testing indefinite-lived tradenames in the Brands segment. The Company will continue to monitor the impacts of the COVID-19 outbreak in future quarters. Changes in our forecasts could cause the book values of indefinite-lived tradenames to exceed fair values which may result in additional impairment charges in future periods.

## NOTE 9 — LEASING ARRANGEMENTS

The Company's operating lease assets primarily represent the lease of office space where the Company conducts its operations with the weighted average lease term of 7.4 years and 7.2 years as of December 31, 2021 and 2020, respectively. The operating leases have lease terms up to 10 and 11 years as of December 31, 2021 and 2020, respectively. The weighted average discount rate used to calculate the present value of lease payments was 5.25% and 5.55% as of December 31, 2021 and 2020, respectively. During the years ended December 31, 2021, 2020, and 2019, the total operating lease expense was \$15,230, \$13,434, and \$12,582, respectively. During the years ended December 31, 2021, 2020, and 2019, \$1,377, \$1,225, and \$1,289, respectively, of operating lease expense were attributable to variable lease expenses. Operating lease expense is included in selling, general and administrative expenses in the consolidated statements of income.

During the years ended December 31, 2021, 2020, and 2019, cash payments against operating lease liabilities totaled \$15,509, \$12,901, and \$12,934 respectively, and non-cash lease expense transactions totaled \$3,750, \$3,314, and \$3,679, respectively. Cash flows from operating leases are classified as net cash flows from operating activities in the accompanying consolidated statements of cash flows.

As of December 31, 2021, maturities of operating lease liabilities were as follows:

	<b>Operating Leases</b>
Year ending December 31:	
2022	\$ 16,125
2023	12,629
2024	12,232
2025	11,417
2026	7,977
Thereafter	21,517
Total lease payments	81,897
Less: imputed interest	(12,825)
Total operating lease liability	<u>\$ 69,072</u>

As of December 31, 2021 and 2020, the Company did not have any significant leases executed but not yet commenced.

## NOTE 10 — NOTES PAYABLE

### Asset Based Credit Facility

On April 21, 2017, the Company amended its credit agreement (as amended, the “Credit Agreement”) governing its asset based credit facility with Wells Fargo Bank, National Association (“Wells Fargo Bank”) to increase the maximum borrowing limit from \$100,000 to \$200,000. Such amendment, among other things, also extended the expiration date of the credit facility from July 15, 2018 to April 21, 2022. The Credit Agreement continues to allow for borrowings under the separate credit agreement (a “UK Credit Agreement”) which was dated March 19, 2015 with an affiliate of Wells Fargo Bank which provides for the financing of transactions in the United Kingdom. Such facility allows the Company to borrow up to 50 million British Pounds. Any borrowings on the UK Credit Agreement reduce the availability on the asset based \$200,000 credit facility. The UK Credit Agreement is cross collateralized and integrated in certain respects with the Credit Agreement. Cash advances and the issuance of letters of credit under the credit facility are made at the lender’s discretion. The letters of credit issued under this facility are furnished by the lender to third parties for the principal purpose of securing minimum guarantees under liquidation services contracts more fully described in Note 2(e). All outstanding loans, letters of credit, and interest are due on the expiration date which is generally within 180 days of funding. The credit facility is secured by the proceeds received for services rendered in connection with liquidation service contracts pursuant to which any outstanding loan or letters of credit are issued and the assets that are sold at liquidation related to such contract. The Company paid Wells Fargo Bank a closing fee in the amount of \$500 in connection with the April 2017 amendment to the Credit Agreement. The interest rate for each revolving credit advance under the Credit Agreement is, subject to certain terms and conditions, equal to the LIBOR plus a margin of 2.25% to 3.25% depending on the type of advance and the percentage such advance represents of the related transaction for which such advance is provided. The credit facility also provides for success fees in the amount of 2.5% to 17.5% of the net profits, if any, earned on the liquidation engagements funded under the Credit Agreement as set forth therein. Interest expense totaled \$435, \$639, and \$1,503 during the years ended December 31, 2021, 2020, and 2019, respectively. There is no outstanding balance on this credit facility as of December 31, 2021 and 2020. As of December 31, 2021 and 2020, there were no open letters of credit outstanding.

We are in compliance with all financial covenants in the asset based credit facility as of December 31, 2021.

### Paycheck Protection Program

On April 10, 2020, NSC (a subsidiary of National) entered into a Promissory Note (the “NSC Note”) with Axos Bank as the lender (the “Lender”), pursuant to which the Lender agreed to make a loan to NSC under the Paycheck Protection Program (the “NSC Loan”) offered by the U.S. Small Business Administration (the “SBA”) pursuant to the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act to qualified small businesses (the “PPP”) in a principal amount of \$5,524. On April 15, 2020, WEC (another subsidiary of National) also entered into a Promissory Note (the “WEC Note” and together with the NSC Note, the “PPP Notes”) with the Lender, pursuant to which the Lender agreed to make a loan to WEC under the PPP (the “WEC Loan” and together with the NSC Loan, the “PPP Loans”) in a principal amount of \$973.

The full amount of the Company’s PPP loans and accrued interest were forgiven in the amount of \$6,509 in June 2021, and the Company recorded a gain on extinguishment of loans and other for this amount in the accompanying consolidated statements of income.

### Other Notes Payable

Notes payable include notes payable to a clearing organization for one of the Company’s broker dealers. The notes payable accrue interest at the prime rate plus 2.0% (5.25% as of December 31, 2021) payable annually, maturing January 31, 2022. As of December 31, 2021 and 2020, the outstanding balance for the notes payable was \$357 and \$714, respectively. Interest expense was \$21, \$51, and \$87 during the years ended December 31, 2021, 2020, and 2019, respectively.

Also included in notes payable as of December 31, 2020, was a \$37,253 note payable to Garrison TNCI LLC which was assumed as part of the Company’s investment in Lingo Management LLC. The note accrued interest at 12.5% per annum and had a maturity date of March 31, 2021. During the years ended December 31, 2021 and 2020, interest expense on the note was \$238 and \$447, respectively. The note was paid in full in January 2021.

## NOTE 11 — TERM LOANS AND REVOLVING CREDIT FACILITY

### Nomura Credit Agreement

On June 23, 2021, the Company, and its wholly owned subsidiaries, BR Financial Holdings, LLC (the “Primary Guarantor”), and BR Advisory & Investments, LLC (the “Borrower”) entered into a credit agreement (as amended prior to the Second Amendment (as defined below) the “Credit Agreement”) with Nomura Corporate Funding Americas, LLC, as administrative agent (the “Administrative Agent”), and Wells Fargo Bank, N.A., as collateral agent (the “Collateral Agent”), for a four-year \$200,000 secured term loan credit facility (the “Term Loan Facility”) and a four-year \$80,000 secured revolving loan credit facility (the “Revolving Credit Facility”).

On December 17, 2021 (the “Amendment Date”), the Company, the Primary Guarantor, and the Borrower entered into a Second Incremental Amendment to Credit Agreement (the “Second Amendment”), by and among the Company, the Primary Guarantor, the Borrower, each of the subsidiary guarantors signatory thereto, each of the lenders party thereto, the Administrative Agent and the Collateral Agent, pursuant to which the Borrower established an incremental facility in an aggregate principal amount of \$100,000 (the “Incremental Facility” and the incremental term loans made thereunder, the “Incremental Term Loans”) of secured term loans under the Credit Agreement on terms identical to those applicable to the Term Loan Facility. The Borrower borrowed the full amount of the Incremental Term Loans on the Amendment Date. The Term Loan Facility, Revolving Credit Facility, and Incremental Facility, together, (“Credit Facilities”), mature on June 23, 2025, subject to acceleration or prepayment.

Eurodollar loans under the Credit Facilities accrue interest at the Eurodollar Rate plus an applicable margin of 4.50%. Base rate loans accrue interest at the Base Rate plus an applicable margin of 3.50%. In addition to paying interest on outstanding borrowings under the Revolving Credit Facility, the Company is required to pay a quarterly commitment fee based on the unused portion of the Revolving Credit Facility, which is determined by the average utilization of the facility for the immediately preceding fiscal quarter.

Subject to certain eligibility requirements, the assets of certain subsidiaries of the Company that hold credit assets, private equity assets, and public equity assets are placed into a borrowing base, which serves to limit the borrowings under the Credit Facilities. If borrowings under the facilities exceed the borrowing base, the Company is obligated to prepay the loans in an aggregate amount equal to such excess. The Credit Agreement and the Second Amendment contain certain representations and warranties (subject to certain agreed qualifications) that are customary for financings of this kind.

The Credit Agreement and the Second Amendment contain certain affirmative and negative covenants customary for financings of this type that, among other things, limit the Company’s, the Primary Guarantor’s, the Borrower’s, and the Borrower’s subsidiaries’ ability to incur additional indebtedness or liens, to dispose of assets, to make certain fundamental changes, to enter into restrictive agreements, to make certain investments, loans, advances, guarantees and acquisitions, to prepay certain indebtedness and to pay dividends or to make other distributions or redemptions/repurchases in respect of their respective equity interests. In addition, the Credit Agreement and the Second Amendment contain a financial covenant that requires the Company to maintain Operating EBITDA of at least \$135,000 and the Primary Guarantor to maintain net asset value of at least \$1,100,000. The Credit Agreement and the Second Amendment contain customary events of default, including with respect to a failure to make payments under the credit facilities, cross-default, certain bankruptcy and insolvency events and customary change of control events.

Commencing on September 30, 2022, the Term Loan Facility and Incremental Facility will amortize in equal quarterly installments of 1.25% of the aggregate principal amount of the term loan as of the closing date with the remaining balance due at final maturity. Quarterly installments from September 30, 2022 to March 31, 2025 are in the amount of \$3,750 per quarter.

As of December 31, 2021, the outstanding balance on the Term Loan Facility and Incremental Facility was \$292,650 (net of unamortized debt issuance costs of \$7,350). Interest on the term loan during the year ended December 31, 2021, was \$5,907 (including amortization of deferred debt issuance costs of \$766). The interest rate on the term loan as of December 31, 2021 was 4.72%.

The Company had an outstanding balance of \$80,000 under the Revolving Credit Facility as of December 31, 2021. Interest on the revolving facility during the year ended December 31, 2021 was \$1,915 (including unused commitment fees of \$76 and amortization of deferred financing costs of \$305). The interest rate on the revolving facility as of December 31, 2021 was 4.67%.

The Company is in compliance with all financial covenants in the Nomura Credit Agreement as of December 31, 2021.

## BRPAC Credit Agreement

On December 19, 2018, BRPI Acquisition Co LLC (“BRPAC”), a Delaware limited liability company, UOL, and YMAX Corporation, Delaware corporations (collectively, the “Borrowers”), indirect wholly owned subsidiaries of the Company, in the capacity as borrowers, entered into a credit agreement (the “BRPAC Credit Agreement”) with the Banc of California, N.A. in the capacity as agent (the “Agent”) and lender and with the other lenders party thereto (the “Closing Date Lenders”). Certain of the Borrowers’ U.S. subsidiaries are guarantors of all obligations under the BRPAC Credit Agreement and are parties to the BRPAC Credit Agreement in such capacity (collectively, the “Secured Guarantors”; and together with the Borrowers, the “Credit Parties”). In addition, the Company and B. Riley Principal Investments, LLC, the parent corporation of BRPAC and a subsidiary of the Company, are guarantors of the obligations under the BRPAC Credit Agreement pursuant to standalone guaranty agreements pursuant to which the shares outstanding membership interests of BRPAC are pledged as collateral.

The obligations under the BRPAC Credit Agreement are secured by first-priority liens on, and first priority security interest in, substantially all of the assets of the Credit Parties, including a pledge of (a) 100% of the equity interests of the Credit Parties, (b) 65% of the equity interests in United Online Software Development (India) Private Limited, a private limited company organized under the laws of India; and (c) 65% of the equity interests in magicJack VocalTec LTD., a limited company organized under the laws of Israel. Such security interests are evidenced by pledge, security and other related agreements.

The BRPAC Credit Agreement contains certain covenants, including those limiting the Credit Parties’, and their subsidiaries’ ability to incur indebtedness, incur liens, sell or acquire assets or businesses, change the nature of their businesses, engage in transactions with related parties, make certain investments or pay dividends. In addition, the BRPAC Credit Agreement requires the Credit Parties to maintain certain financial ratios. The BRPAC Credit Agreement also contains customary representations and warranties, affirmative covenants and events of default, including payment defaults, breach of representations and warranties, covenant defaults and cross defaults. If an event of default occurs, the agent would be entitled to take various actions, including the acceleration of amounts due under the outstanding BRPAC Credit Agreement.

Under BRPAC Credit Agreement, the Company borrowed \$80,000 due December 19, 2023. Pursuant to the terms of the BRPAC Credit Agreement, the Company may request additional optional term loans in an aggregate principal amount of up to \$10,000 at any time prior to the first anniversary of the agreement date (the “Option Loan”) with a final maturity date of December 19, 2023. On February 1, 2019, the Credit Parties, the Closing Date Lenders, the Agent and City National Bank, as a new lender (the “New Lender”), entered into the First Amendment to the Credit Agreement and Joinder (the “First Amendment”) pursuant to which, among other things, (i) New Lender became a party to the BRPAC Credit Agreement, (ii) the New Lender extended to Borrowers the Option Loan in the amount of \$10,000, (iii) the aggregate outstanding principal amount of the term loans was increased from \$80,000 to \$90,000; and (iv) the amortization schedule under the BRPAC was amended as set forth in the First Amendment. Additionally, in connection with the Option Loan, the Borrowers executed a term note in favor of New Lender dated February 1, 2019 in the amount of \$10,000.

On December 31, 2020, the Borrowers, the Secured Guarantors, the Agent and the Closing Date Lenders, entered into the Second Amendment to Credit Agreement (the “Second Amendment”) pursuant to which, among other things, (i) the Lenders agreed to make a new \$75,000 term loan to the Borrowers, the proceeds of which the Borrowers’ used to repay the outstanding principal amount of the existing Terms Loans and Optional Loans and will use for other general corporate purposes, (ii) the Borrowers were permitted to make a one-time Permitted Distribution (as defined in the Second Amendment) in the amount of \$30,000 on the date of the Second Amendment, (iii) the maturity date of the new Term Loans is five (5) years from the date of the Second Amendment, (iv) the interest rate margin was increased by 25 basis points as set forth in the Second Amendment, (v) the Borrowers agreed to make mandatory prepayments of the Term Loans from a portion of the Consolidated Excess Cash Flow (as defined in the Credit Agreement), (vi) the maximum Consolidated Total Funded Debt Ratio (as defined in the Credit Agreement) was increased as set forth in the Second Amendment and (vii) the Company and B. Riley Principal Investments, LLC entered into a reaffirmation of their guarantees of the Borrowers’ obligations under the Credit Agreement. Additionally, the Borrowers paid a commitment fee and an arrangement fee, each based on a percentage of the aggregate commitments, in each case upon the closing of the Second Amendment.

On December 16, 2021, the Borrowers, the Secured Guarantors, the Agent and the Closing Date Lenders, entered into the Third Amendment to Credit Agreement (the “Third Amendment”) pursuant to which, among other things, replaced LIBOR with the Secured Overnight Financing Rate (“SOFR”) reference rate, and the Borrowers were permitted to make a one-time Permitted Distribution (as defined in the Third Amendment) in the amount of \$30,000 on the date of the Third Amendment.

Borrowings under the amended BRPAC Credit Agreement bear interest at a rate equal to (a) the SOFR rate for loans, plus (b) the applicable margin rate, which ranges from 2.75% to 3.25% per annum, based upon the Borrowers’ ratio of consolidated funded indebtedness to adjusted earnings before interest, taxes, depreciation, and amortization (EBITDA) for the preceding four fiscal quarters or other applicable period. As of December 31, 2021 and 2020, the interest rate on the amended BRPAC Credit Agreement was 3.17% and 3.40%, respectively.

Principal outstanding under the amended BRPAC Credit Agreement is due in quarterly installments. Quarterly installments from March 31, 2022 to December 31, 2022 are in the amount of \$4,116 per quarter, from March 31, 2023 to December 31, 2023 are in the amount of \$3,631 per quarter, from March 31, 2024 to December 31, 2024 are in the amount of \$3,147 per quarter, from March 31, 2025 to December 31, 2025 are \$2,663 per quarter, and the remaining principal balance is due at final maturity on December 31, 2025.

As of December 31, 2021, and 2020, the outstanding balance on the term loan was \$53,735 (net of unamortized debt issuance costs of \$582) and \$74,213 (net of unamortized debt issuance costs of \$787), respectively. Interest expense on the term loan during the years ended December 31, 2021, 2020, and 2019, was \$2,468 (including amortization of deferred debt issuance costs of \$300), \$2,369 (including amortization of deferred debt issuance costs of \$278) and \$4,609 (including amortization of deferred debt issuance costs of \$350), respectively.

We are in compliance with all financial covenants in the amended BRPAC Credit Agreement as of December 31, 2021.

**NOTE 12 — SENIOR NOTES PAYABLE**

Senior notes payable, net, is comprised of the following as of December 31, 2021 and 2020:

	<b>December 31, 2021</b>	<b>December 31, 2020</b>
7.500% Senior notes due May 31, 2027	\$ —	\$ 128,156
7.250% Senior notes due December 31, 2027	—	122,793
7.375% Senior notes due May 31, 2023	—	137,454
6.875% Senior notes due September 30, 2023	—	115,168
6.750% Senior notes due May 31, 2024	111,170	111,170
6.500% Senior notes due September 30, 2026	178,787	134,657
6.375% Senior notes due February 28, 2025	144,521	130,942
6.000% Senior notes due January 31, 2028	259,347	—
5.500% Senior notes due March 31, 2026	214,243	—
5.250% Senior notes due August 31, 2028	397,302	—
5.000% Senior notes due December 31, 2026	322,679	—
	<u>1,628,049</u>	<u>880,340</u>
Less: Unamortized debt issuance costs	<u>(21,489)</u>	<u>(9,557)</u>
	<u>\$ 1,606,560</u>	<u>\$ 870,783</u>

During the year ended December 31, 2021, the Company issued \$233,416 of senior notes with maturity dates ranging from May 2023 to August 2028 pursuant to At the Market Issuance Sales Agreements with B. Riley Securities, Inc., which governs the program of at-the-market sales of the Company's senior notes.

On January 25, 2021, the Company issued \$230,000 of senior notes due in January 2028 ("6.0% 2028 Notes") pursuant to a prospectus supplement dated February 12, 2020. Interest on the 6.0% 2028 Notes is payable quarterly at 6.0%. The 6.0% 2028 Notes are unsecured and due and payable in full on January 31, 2028. In connection with the issuance of the 6.0% 2028 Notes, the Company received net proceeds of \$225,723 (after underwriting commissions, fees, and other issuance costs of \$4,277). The 6.0% 2028 Notes bear interest at the rate of 6.0% per annum.

On March 29, 2021, the Company issued \$159,493 of senior notes due in March 2026 ("5.5% 2026 Notes") pursuant to a prospectus supplement dated January 28, 2021. Interest on the 5.5% 2026 Notes is payable quarterly at 5.5%. The 5.5% 2026 Notes are unsecured and due and payable in full on March 31, 2026. In connection with the issuance of the 5.5% 2026 Notes, the Company received net proceeds of \$156,260 (after underwriting commissions, fees, and other issuance costs of \$3,233). The 5.5% 2026 Notes bear interest at the rate of 5.5% per annum.

On March 31, 2021, the Company exercised its option for early redemption at par \$128,156 of senior notes due in May 2027 ("7.50% 2027 Notes") pursuant to the second supplemental indenture dated May 31, 2017. The total redemption payment included \$1,602 in accrued interest.

On July 26, 2021, the Company redeemed, in full, \$122,793 aggregate principal amount of its 7.25% Senior Notes due 2027 ("7.25% 2027 Notes") pursuant to the third supplemental indenture dated December 31, 2017. The 7.25% Notes had an aggregate principal amount of \$122,793. The redemption price was equal to 100% of the aggregate principal amount, plus accrued and unpaid interest up to, but excluding, the redemption date. The total redemption payment included approximately \$2,127 in accrued interest. In connection with the full redemption, the 7.25% 2027 Notes, which were listed on NASDAQ under the ticker symbol "RILYG," were delisted from NASDAQ and ceased trading on the redemption date.

On August 4, 2021, the Company issued \$316,250 of senior notes due in August 2028 ("5.25% 2028 Notes") pursuant to a prospectus supplement dated January 28, 2021. Interest on the 5.25% 2028 Notes is payable quarterly at 5.25%. The 5.25% 2028 Notes are unsecured and due and payable in full on August 31, 2028. In connection with the issuance of the 5.25% 2028 Notes, the Company received net proceeds of \$308,659 (after underwriting commissions, fees, and other issuance costs of \$7,591). The 5.25% 2028 Notes bear interest at the rate of 5.25% per annum.

On September 4, 2021, the Company redeemed, in full, \$137,454 aggregate principal amount of its 7.375% Senior Notes due 2023 (“7.375% 2023 Notes”) pursuant to the fifth supplemental indenture dated September 11, 2018. The redemption price was equal to 101.5% of the aggregate principal amount, plus any accrued and unpaid interest up to, but excluding, the redemption date. The total redemption payment included approximately \$957 in accrued interest and \$2,062 in premium. In connection with the full redemption, the 7.375% 2023 Notes, which were listed on NASDAQ under the ticker symbol “RILYH,” were delisted from NASDAQ and ceased trading on the redemption date.

On October 22, 2021, the Company redeemed, in full, \$115,726 aggregate principal amount of its 6.875% Senior Notes due 2023 (the “6.875% 2023 Notes”) pursuant to the fifth supplemental indenture dated September 11, 2018. The redemption price was equal to 101.0% of the aggregate principal amount, plus accrued and unpaid interest, up to, but excluding, the redemption date. The total redemption payment included approximately \$1,812 in accrued interest and \$1,157 in premium. In connection with the full redemption, the 6.875% 2023 Notes under the ticker symbol “RILYI,” were delisted from NASDAQ and ceased trading on the redemption date.

On December 3, 2021, the Company issued \$322,679 of senior notes due in December 2026 (“5.00% 2026 Notes”) pursuant to a prospectus supplement dated November 29, 2021. Interest on the 5.00% 2026 Notes is payable quarterly at 5.00%. The 5.00% 2026 Notes are unsecured and due and payable in full on December 31, 2026. In connection with the issuance of the 5.00% 2026 Notes, the Company received net proceeds of \$317,633 (after underwriting commissions, fees, and other issuance costs of \$5,046). The 5.00% 2026 Notes bear interest at the rate of 5.00% per annum.

As of December 31, 2021 and 2020, the total senior notes outstanding was \$1,606,560 (net of unamortized debt issue costs of \$21,489) and \$870,783 (net of unamortized debt issue costs of \$9,557) with a weighted average interest rate of 5.69% and 6.95%, respectively. Interest on senior notes is payable on a quarterly basis. Interest expense on senior notes totaled \$81,475, \$61,233, and \$43,823 during the years ended December 31, 2021, 2020, and 2019, respectively.

#### ***Sales Agreement Prospectus to Issue Up to \$250,000 of Senior Notes***

The most recent sales agreement prospectus was filed by us with the SEC on January 5, 2022 (the “January 2022 Sales Agreement Prospectus”) superseding the prospectus filed with the SEC on August 11, 2021, the prospectus filed with the SEC on April 6, 2021, and the prospectus filed with the SEC on January 28, 2021. This program provides for the sale by the Company of up to \$250,000 of certain of the Company’s senior notes. As of December 31, 2021, the Company had \$111,911 remaining availability under the January 2022 Sales Agreement.

**NOTE 13 — REVENUE FROM CONTRACTS WITH CUSTOMERS**

Revenue from contracts with customers by reportable segment during the years ended December 31, 2021, 2020, and 2019 is as follows:

	<u>Capital Markets</u>	<u>Wealth Management</u>	<u>Auction and Liquidation</u>	<u>Financial Consulting</u>	<u>Principal Investments - Communications</u>	<u>Brands</u>	<u>Total</u>
Revenues for the year ended December 31, 2021:							
Corporate finance, consulting and investment banking fees	\$ 484,247	\$ —	\$ —	\$ 56,439	\$ —	\$ —	\$ 540,686
Wealth and asset management fees	6,769	282,711	—	—	—	—	289,480
Commissions, fees and reimbursed expenses	48,382	75,776	19,079	37,873	—	—	181,110
Subscription services	—	—	—	—	79,149	—	79,149
Service contract revenues	—	—	1,090	—	—	—	1,090
Advertising, licensing and other (1)	—	—	53,348	—	14,198	20,308	87,854
Total revenues from contracts with customers	539,398	358,487	73,517	94,312	93,347	20,308	1,179,369
Interest income - Loans and securities							
lending	122,722	—	—	—	—	—	122,722
Trading gains on investments	368,537	7,623	—	—	—	—	376,160
Fair value adjustment on loans	10,516	—	—	—	—	—	10,516
Other	35,920	15,874	—	—	—	—	51,794
Total revenues	\$ 1,077,093	\$ 381,984	\$ 73,517	\$ 94,312	\$ 93,347	\$ 20,308	\$ 1,740,561

(1) Includes sale of goods of \$53,348 in Auction Liquidation and \$4,857 in Principal Investments - Communications.

Revenues for the year ended December 31, 2020:

Corporate finance, consulting and investment banking fees	\$ 255,023	\$ —	\$ —	\$ 54,051	\$ —	\$ —	\$ 309,074
Wealth and asset management fees	7,391	71,204	—	—	—	—	78,595
Commissions, fees and reimbursed expenses	48,416	—	50,035	36,855	—	—	135,306
Subscription services	—	—	—	—	72,666	—	72,666
Service contract revenues	—	—	13,066	—	—	—	13,066
Advertising, licensing and other (1)	—	—	25,663	—	14,472	16,458	56,593
Total revenues from contracts with customers	310,830	71,204	88,764	90,906	87,138	16,458	665,300
Interest income - Loans and securities							
lending	102,499	—	—	—	—	—	102,499
Trading gains on investments	125,247	804	—	—	—	—	126,051
Fair value adjustment on loans	(22,033)	—	—	—	—	—	(22,033)
Other	29,047	1,141	—	716	—	—	30,904
Total revenues	\$ 545,590	\$ 73,149	\$ 88,764	\$ 91,622	\$ 87,138	\$ 16,458	\$ 902,721

(1) Includes sale of goods of \$25,663 in Auction Liquidation and \$3,472 in Principal Investments - Communications.

Revenues for the year ended December 31,  
2019:

Corporate finance, consulting and investment banking fees	\$ 129,477	\$ 2	\$ —	\$ 37,471	\$ —	\$ —	\$ 166,950
Wealth and asset management fees	18,421	64,357	—	—	—	—	82,778
Commissions, fees and reimbursed expenses	42,503	—	49,849	38,821	—	—	131,173
Subscription services	—	—	—	—	82,088	—	82,088
Service contract revenues	—	—	(31,553)	—	—	—	(31,553)
Advertising, licensing and other (1)	—	—	4,220	—	18,774	4,055	27,049
<b>Total revenues from contracts with customers</b>	<b>190,401</b>	<b>64,359</b>	<b>22,516</b>	<b>76,292</b>	<b>100,862</b>	<b>4,055</b>	<b>458,485</b>
Interest income - Loans and securities lending	77,221	—	—	—	—	—	77,221
Trading gains on investments	92,379	1,826	—	—	—	—	94,205
Fair value adjustment on loans	12,258	—	—	—	—	—	12,258
Other	9,229	714	—	—	—	—	9,943
<b>Total revenues</b>	<b>\$ 381,488</b>	<b>66,899</b>	<b>22,516</b>	<b>76,292</b>	<b>100,862</b>	<b>4,055</b>	<b>652,112</b>

(1) Includes sale of goods of \$4,220 in Auction Liquidation and \$3,715 in Principal Investments - Communications.

Revenues are recognized when control of the promised goods or performance obligations for services is transferred to the Company's customers, in an amount that reflects the consideration the Company expects to be entitled to in exchange for the goods or services. A performance obligation may be satisfied over time or at a point in time. Revenue from a performance obligation satisfied over time is recognized by measuring the Company's progress in satisfying the performance obligation in a manner that depicts the transfer of the goods or services to the customer. Revenue from a performance obligation satisfied at a point in time is recognized at the point in time that we determine the customer obtains control over the promised good or service. The amount of revenue recognized reflects the consideration we expect to be entitled to in exchange for those promised goods or services (i.e., the "transaction price"). In determining the transaction price, the Company considers multiple factors, including the effects of variable consideration. Variable consideration is included in the transaction price only to the extent it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur when the uncertainties with respect to the amount are resolved. In determining when to include variable consideration in the transaction price, the Company considers the range of possible outcomes, the predictive value of the Company's past experiences, the time period of when uncertainties expect to be resolved and the amount of consideration that is susceptible to factors outside of our influence, such as market volatility or the judgment and actions of third parties. Revenues by geographic region by segment is included in Note 22 – Business Segments.

The following provides detailed information on the recognition of the Company's revenues from contracts with customers:

**Corporate finance, consulting and investment banking fees.** Fees earned from corporate finance and investment banking services are derived from debt, equity and convertible securities offerings in which the Company acted as an underwriter or placement agent. Fees from underwriting activities are recognized as revenues when the performance obligation for the services related to the underwriting transaction is satisfied under the terms of the engagement and is not subject to any other contingencies. Fees are also earned from financial advisory and consulting services rendered in connection with client mergers, acquisitions, restructurings, recapitalizations and other strategic transactions. The performance obligation for financial advisory services is satisfied over time as work progresses on the engagement and services are delivered to the client. Fees earned from bankruptcy, financial advisory, forensic accounting and real estate consulting services are rendered to clients over time as work progresses on the engagement and services are delivered to the client. Fees may also include success and performance based fees which are recognized as revenue when the performance obligation is no longer constrained and it is not probable that the revenue recognized would be subject to significant reversal in a future period. The performance obligation for financial advisory services may also include success and performance based fees which are recognized as revenue when the performance obligation is no longer constrained and it is not probable that the revenue recognized would be subject to significant reversal in a future period. Generally, it is probable that the revenue recognized is no longer subject to significant reversal upon the closing of the investment banking transaction.

**Wealth and asset management fees.** Fees from wealth and asset management services consist primarily of investment management fees that are recognized over the period the performance obligation for the services are provided. Investment management fees are primarily comprised of fees for investment management services and are generally based on the dollar amount of the assets being managed.

**Commissions, fees and reimbursed expenses.** Commissions and other fees from clients for trading activities are earned from equity securities transactions executed as agent or principal are recorded at a point in time on a trade date basis. Commission, fees and reimbursed expenses earned on the sale of goods at Auction and Liquidation sales are recognized when evidence of a contract or arrangement exists, the transaction price has been determined, and the performance obligation has been satisfied when control of the product and risks of ownership has been transferred to the buyer. Revenues from fees and reimbursed expenses for valuation services to clients are recognized when the performance obligation is completed and is generally at the point in time upon delivery of the report to the customer.

**Subscription services.** Subscription service revenues are primarily earned from Principal Investments – Communication service contracts and are recognized in the period in which the transaction price has been determinable and the related performance obligations for services are provided to the customer. UOL pay accounts generally pay in advance for their internet access services and revenues are then recognized ratably over the service period. Subscription service revenues from magicJack include (a) revenues for initial access rights, which are recognized ratably over the service term, (b) revenues from access rights renewal, which are recognized ratably over the extended access right period; (c) revenues from access and wholesale charges, which are recognized as calls are terminated to the network; (d) revenues from UCaaS services, which are recognized in the period the services are provided over the term of the customer agreements; and (e) prepaid international long distance minutes, which are recognized as the minutes are used or expired. Subscription service revenues from our mobile phone business include revenues from mobile voice, text, and data services and are recognized ratably over the service period. Voice, text, and data overage charges are recognized over time as the consumer simultaneously receives and consumes the benefits each period as the Company performs.

**Service contract revenues.** Service contract revenues are primarily earned from Auction and Liquidation services contracts where the Company guarantees a minimum recovery value for goods being sold at auction or liquidation are recognized over time when the performance obligation is satisfied. The Company generally uses the cost-to-cost measure of progress for its contracts because it best depicts the transfer of services to the customer which occurs as the Company incurs costs on its contracts. Under the cost-to-cost measure of progress, the extent of progress towards completion is measured based on the ratio of costs incurred to date to the total estimated costs at completion of the performance obligation. Revenues, including estimated fees or profits, are recorded proportionally as costs are incurred. Costs to fulfill the contract include labor and other direct costs incurred by the Company related to the contract. Due to the nature of the guarantees and performance obligations under these contracts, the estimation of revenue that is ultimately earned is complex and subject to many variables and requires significant judgment. It is common for these contracts to contain provisions that can either increase or decrease the transaction price upon completion of our performance obligations under the contract. Estimated amounts are included in the transaction price at the most likely amount it is probable that a significant reversal of revenue will not occur. The Company's estimates of variable consideration and determination of whether or not to include estimated amounts in the transaction price are based on an assessment of its anticipated performance under the contract taking into consideration all historical, current and forecasted information that is reasonably available to the Company.

If the Company determines that the variable consideration used in the initial determination of the transaction price for the contract is such that the total recoveries from the auction or liquidation will not exceed the guaranteed recovery values or advances made in accordance with the contract, the transaction price will be reduced and a loss or negative revenue could result from the performance obligation. A provision for the entire loss as negative revenue on the performance obligation is recognized in the period the loss is determined. Negative revenue from one retail liquidation engagement contributed to the Company reporting negative service contract revenues of \$31,553 in the Auction and Liquidation segment during the year ended December 31, 2019.

**Advertising, licensing and other.** Advertising and other revenues consist primarily of amounts from UOL's Internet search partner that are generated as a result of users utilizing the partner's Internet search services and amounts generated from display advertisements, the portion of revenues from the sale of magicJack devices that is allocated to hardware, as well as revenues from magicJack ancillary products and mobile broadband service devices to customers, and amounts from the sale of goods acquired in Auction and Liquidation asset purchase agreements. Advertising revenues are recognized in the period in which the advertisement is displayed or, for performance-based arrangements, when the related performance criteria are met. In determining whether an arrangement exists, the Company ensures that a written contract is in place, such as a standard insertion order or a customer-specific agreement. The Company assesses whether performance criteria have been met and whether the transaction price is determinable based on a reconciliation of the performance criteria and the payment terms associated with the transaction. The reconciliation of the performance criteria generally includes a comparison of customer-provided performance data to the contractual performance obligation and to internal or third-party performance data in circumstances where that data is available. Revenues from the hardware portion of the sale of magicJack devices are recognized upon delivery (when control transfers to the customer). Revenues from the sale of other magicJack related products are recognized at the time of sale. Sale of product revenues also include the related shipping and handling and installment fees, if applicable. Revenues from the sale of goods acquired in Auction and Liquidation asset purchase agreements are recognized when control of the product and risks of ownership has been transferred to the buyer.

Licensing revenue results from various license agreements that provide revenue based on guaranteed minimum royalty amounts and advertising/marketing fees with additional royalty revenue based on a percentage of defined sales. Guaranteed minimum royalty amounts are recognized as revenue on a straight-line basis over the full contract term. Royalty payments exceeding the guaranteed minimum amounts in a specific contract year are recognized only subsequent to when the guaranteed minimum amount has been achieved. Other licensing fees are recognized at a point in time once the performance obligations have been satisfied.

Payments received as consideration for the grant of a license are recorded as deferred revenue at the time payment is received and recognized ratably as revenue over the term of the license agreement. Advanced royalty payments are recorded as deferred revenue at the time payment is received and recognized as revenue when earned. Revenue is not recognized unless collectability is probable.

#### **Information on Remaining Performance Obligations and Revenue Recognized from Past Performance**

The Company does not disclose information about remaining performance obligations pertaining to contracts that have an original expected duration of one year or less. The transaction price allocated to remaining unsatisfied or partially unsatisfied performance obligation(s) with an original expected duration exceeding one year was not material as of December 31, 2021. Corporate finance and investment banking fees and retail liquidation engagement fees that are contingent upon completion of a specific milestone and fees associated with certain distribution services are also excluded as the fees are considered variable and not included in the transaction price as of December 31, 2021.

#### **Contract Balances**

The timing of the Company's revenue recognition may differ from the timing of payment by its customers. The Company records a receivable when revenue is recognized prior to payment and the Company has an unconditional right to payment. Alternatively, when payment precedes the provision of the related services, the Company records deferred revenue until the performance obligation(s) are satisfied. Receivables related to revenues from contracts with customers totaled \$49,673 and \$40,806 as of December 31, 2021 and 2020, respectively. The Company had no significant impairments related to these receivables during the years ended December 31, 2021 and 2020. The Company also has \$12,315 and \$5,712 of unbilled receivables included in prepaid expenses and other assets as of December 31, 2021 and 2020, respectively, and advances against customer contracts of \$200 included in prepaid expenses and other assets as of December 31, 2021 and 2020, respectively. The Company's deferred revenue primarily relates to retainer and milestone fees received from corporate finance and investment banking advisory engagements, asset management agreements, financial consulting engagements, subscription services where the performance obligation has not yet been satisfied and license agreements with guaranteed minimum royalty payments and advertising/marketing fees with additional royalty revenue based on a percentage of defined sales. Deferred revenue as of December 31, 2021 and 2020 was \$69,507 and \$68,651, respectively. The Company expects to recognize the deferred revenue of \$69,507 as of December 31, 2021 as service and fee revenues when the performance obligation is met during the years December 31, 2022, 2023, 2024, 2025 and 2026 in the amount of \$39,181, \$11,364, \$7,936, \$5,265, and \$2,745, respectively. The Company expects to recognize the deferred revenue of \$3,016 after December 31, 2026.

During the years ended December 31, 2021, 2020, and 2019, the Company recognized revenue of \$39,906, \$38,330, and \$39,885 that was recorded as deferred revenue, respectively.

#### **Contract Costs**

Contract costs include: (1) costs to fulfill contracts associated with corporate finance and investment banking engagements are capitalized where the revenue is recognized at a point in time and the costs are determined to be recoverable; (2) costs to fulfill Auction and Liquidation services contracts where the Company guarantees a minimum recovery value for goods being sold at auction or liquidation where the revenue is recognized over time when the performance obligation is satisfied; and (3) commissions paid to obtain magicJack contracts which are recognized ratably over the contract term and third party support costs for magicJack and related equipment purchased by customers which are recognized ratably over the service period.

The capitalized costs to fulfill a contract were \$1,605 and \$279 as of December 31, 2021 and 2020, respectively, and are recorded in prepaid expenses and other assets in the consolidated balance sheets. During the years ended December 31, 2021, 2020, and 2019, the Company recognized expenses of \$580, \$405, and \$2,755 related to capitalized costs to fulfill a contract, respectively. There were no significant impairment charges recognized in relation to these capitalized costs during years ended December 31, 2021, 2020, and 2019.

**NOTE 14 — INCOME TAXES**

The Company's provision for income taxes consists of the following during the years ended December 31, 2021, 2020, and 2019:

	Year Ended December 31,		
	2021	2020	2019
<b>Current:</b>			
Federal	\$ 67,322	\$ 4,730	\$ 16,499
State	30,036	3,297	6,176
Foreign	4,796	5,344	1,092
Total current provision	102,154	13,371	23,767
<b>Deferred:</b>			
Federal	42,734	41,979	10,702
State	17,824	18,518	175
Foreign	1,248	1,572	—
Total deferred	61,806	62,069	10,877
Total provision for income taxes	\$ 163,960	\$ 75,440	\$ 34,644

A reconciliation of the federal statutory rate of 21% to the effective tax rate for income before income taxes is as follows during the years ended December 31, 2021, 2020, and 2019:

	Year Ended December 31,		
	2021	2020	2019
Provision for income taxes at federal statutory rate	21.0%	21.0%	21.0%
State income taxes, net of federal benefit	6.5%	6.3%	5.9%
Noncontrolling interest tax differential	0.1%	(0.1%)	(0.1%)
Employee stock based compensation	(1.1%)	(2.2%)	(0.9%)
Other	0.2%	2.0%	3.8%
Effective income tax rate	26.7%	27.0%	29.7%

Deferred income tax assets (liabilities) consisted of the following as of December 31, 2021 and 2020:

	December 31,	
	2021	2020
<b>Deferred tax assets:</b>		
Accrued liabilities and other	\$ 8,286	\$ 2,066
Mandatorily redeemable noncontrolling interests	1,190	1,190
Other	649	—
State taxes	5,321	237
Share based payments	6,871	—
Foreign tax and other tax credit carryforwards	490	1,558
Capital loss carryforward	62,539	61,315
Net operating loss carryforward	32,445	33,185
Total deferred tax assets	117,791	99,551
<b>Deferred tax liabilities:</b>		
Deductible goodwill and other intangibles	(5,129)	(2,333)
Share based payments	—	(434)
Depreciation	(1,592)	(112)
Deferred revenue	(116,631)	(43,631)
Other	(6,483)	(4,902)
Total deferred tax liabilities	(129,835)	(51,412)
Net deferred tax assets	(12,044)	48,139
Valuation allowance	(78,163)	(78,289)
Net deferred tax liabilities	\$ (90,207)	\$ (30,150)
Deferred tax assets, net	\$ 2,848	\$ 4,098
Deferred tax liabilities, net	(93,055)	(34,248)
Net deferred tax liabilities	\$ (90,207)	\$ (30,150)

The Company's income before income taxes of \$614,762 during the year ended December 31, 2021 includes a United States component of income before income taxes of \$598,882 and a foreign component comprised of income before income taxes of \$15,880. As of December 31, 2021, the Company had federal net operating loss carryforwards of \$48,869 and state net operating loss carryforwards of \$52,548. The Company's federal net operating loss carryforwards will expire in the tax years commencing in December 31, 2031 through December 31, 2038, the state net operating loss carryforwards will expire in tax years commencing in December 31, 2025.

The Company establishes a valuation allowance if, based on the weight of available evidence, it is more likely than not that some portion or all of the deferred tax assets will not be realized. Tax benefits of operating loss, capital loss, and tax credit carryforwards are evaluated on an ongoing basis, including a review of historical and projected future operating results, the eligible carryforward period, and other circumstances. The Company's net operating losses are subject to annual limitations in accordance with Internal Revenue Code Section 382. Accordingly, the Company is limited to the amount of net operating loss that may be utilized in future taxable years depending on the Company's actual taxable income. As of December 31, 2021, the Company believes that the existing net operating loss carryforwards will be utilized in future tax periods before the loss carryforwards expire and it is more-likely-than-not that future taxable earnings will be sufficient to realize its deferred tax assets and has not provided a valuation allowance. The Company does not believe that it is more likely than not that it will be able to utilize the benefits related to capital loss carryforwards and has provided a valuation allowance in the amount of \$65,900 against these deferred tax assets.

As of December 31, 2021, the Company had gross unrecognized tax benefits totaling \$10,826 all of which would have an impact on the Company's effective income tax rate, if recognized. A reconciliation of the amounts of gross unrecognized tax benefits (before federal impact of state items), excluding interest and penalties, was as follows:

	<b>Year Ended December 31, 2021</b>
Beginning balance	\$ 10,561
Additions for current year tax positions	15
Additions for prior year tax positions	331
Reductions for prior year tax positions	(4)
Reductions due to lapse in statutes of limitations	(77)
Ending balance	<u>\$ 10,826</u>

The Company files income tax returns in the U.S., various state and local jurisdictions, and certain other foreign jurisdictions. The Company is currently under audit by certain federal, state and local, and foreign tax authorities. The audits are in varying stages of completion. The Company evaluates its tax positions and establishes liabilities for uncertain tax positions that may be challenged by tax authorities. Uncertain tax positions are reviewed on an ongoing basis and are adjusted in light of changing facts and circumstances, including progress of tax audits, case law developments, and closing of statutes of limitations. Such adjustments are reflected in the provision for income taxes, as appropriate. The Company is currently open to audit under the statute of limitations by the Internal Revenue Service for the calendar years ended December 31, 2018 to 2021.

As of December 31, 2021, the Company believes it is reasonably possible that its gross liabilities for unrecognized tax benefits may decrease by approximately \$43 within the next 12 months due to expiration of statute of limitations.

During the year ended December 31, 2021, the Company had accrued interest and penalties relating to uncertain tax positions of \$551 and \$5,345 for UOL and magicJack, respectively, all of which was included in income taxes payable. During the year ended December 31, 2021, the Company recorded a benefit of \$103 for UOL related to interest and penalties for uncertain tax positions primarily due to the lapse in statute of limitations.

**NOTE 15 — EARNINGS PER SHARE**

Basic earnings per share is calculated by dividing net income by the weighted-average number of shares outstanding during the period. Diluted earnings per share is calculated by dividing net income by the weighted-average number of common shares outstanding, after giving effect to all dilutive potential common shares outstanding during the period. Remeasurements to the carrying value of the redeemable noncontrolling interests in equity of subsidiaries are not deemed to be a dividend (see Note 2(v)). According to ASC 480 - *Distinguishing Liabilities from Equity*, there is no impact on earnings per share in the computation of basic and diluted earnings per share to common shareholders for changes in the carrying value of the redeemable noncontrolling interests in equity, when such changes in carrying value which in substance approximates fair value.

Basic common shares outstanding exclude 387,365 common shares in 2019 that were held in escrow and subject to forfeiture. The 387,365 common shares held in escrow were forfeited and cancelled on June 11, 2020 to indemnify the Company for certain representations and warranties and related claims pursuant to a related acquisition agreement.

Securities that could potentially dilute basic net income per share in the future that were not included in the computation of diluted net income per share were 1,639,310, 1,445,301, and 1,334,810 during the years ended December 31, 2021, 2020, and 2019, respectively, because to do so would have been anti-dilutive.

Basic and diluted earnings per share were calculated as follows:

	<b>Year Ended December 31,</b>		
	<b>2021</b>	<b>2020</b>	<b>2019</b>
Net income attributable to B. Riley Financial, Inc.	\$ 445,054	\$ 205,148	\$ 81,611
Preferred stock dividends	(7,457)	(4,710)	(264)
Net income applicable to common shareholders	<u>\$ 437,597</u>	<u>\$ 200,438</u>	<u>\$ 81,347</u>
Weighted average common shares outstanding:			
Basic	27,366,292	25,607,278	26,401,036
Effect of dilutive potential common shares:			
Restricted stock units and warrants	1,514,728	901,119	1,082,700
Contingently issuable shares	124,582	—	45,421
Diluted	<u>29,005,602</u>	<u>26,508,397</u>	<u>27,529,157</u>
Basic income per common share	\$ 15.99	\$ 7.83	\$ 3.08
Diluted income per common share	\$ 15.09	\$ 7.56	\$ 2.95

**NOTE 16 — ACCRUED EXPENSES AND OTHER LIABILITIES**

Accrued expenses and other liabilities consist of the following:

	<b>December 31,</b>	<b>December 31,</b>
	<b>2021</b>	<b>2020</b>
Accrued payroll and related expenses	\$ 107,904	\$ 67,333
Dividends payable	28,486	1,987
Income taxes payable	39,776	29,177
Other tax liabilities	20,106	18,047
Accrued expenses	96,250	28,210
Other liabilities	51,228	28,424
Accrued expenses and other liabilities	<u>\$ 343,750</u>	<u>\$ 173,178</u>

Other tax liabilities primarily consist of uncertain tax positions, sales and VAT taxes payable, and other non-income tax liabilities. Accrued expenses primarily consist of accrued trade payables, investment banking payables and legal settlements. Other liabilities primarily consist of interest payables, customer deposits, and accrued legal fees.

## NOTE 17 — COMMITMENTS AND CONTINGENCIES

### (a) Legal Matters

The Company is subject to certain legal and other claims that arise in the ordinary course of its business. In particular, the Company and its subsidiaries are named in and subject to various proceedings and claims arising primarily from the Company's securities business activities, including lawsuits, arbitration claims, class actions, and regulatory matters. Some of these claims seek substantial compensatory, punitive, or indeterminate damages. The Company and its subsidiaries are also involved in other reviews, investigations, and proceedings by governmental and self-regulatory organizations regarding the Company's business, which may result in adverse judgments, settlements, fines, penalties, injunctions, and other relief. In view of the number and diversity of claims against the Company, the number of jurisdictions in which litigation is pending, and the inherent difficulty of predicting the outcome of litigation and other claims, the Company cannot state with certainty what the eventual outcome of pending litigation or other claims will be. Notwithstanding this uncertainty, the Company does not believe that the results of these claims are likely to have a material effect on its financial position or results of operations.

### (b) Babcock & Wilcox Commitments and Guarantee

On June 30, 2021, the Company agreed to guaranty (the "B. Riley Guaranty") up to \$110,000 of obligations that Babcock & Wilcox Enterprises, Inc. ("B&W") may owe to providers of cash collateral pledged in connection with B&W's debt financing. The B. Riley Guaranty is enforceable in certain circumstances, including, among others, certain events of default and the acceleration of B&W's obligations under a reimbursement agreement with respect to such cash collateral. B&W will pay the Company \$935 per annum in connection with the B. Riley Guaranty. B&W has agreed to reimburse the Company to the extent the B. Riley Guaranty is called upon.

On August 10, 2020, the Company entered into a project specific indemnity rider to a general agreement of indemnity made by B&W in favor of one of its sureties. Pursuant to the indemnity rider, the Company agreed to indemnify the surety in connection with a default by B&W under the underlying indemnity agreement relating to a \$29,970 payment and performance bond issued by the surety in connection with a construction project undertaken by B&W. In consideration for providing the indemnity rider, B&W paid the Company fees in the amount of \$600 on August 26, 2020.

On December 22, 2021, the Company entered into a general agreement of indemnity in favor of one of B&W's sureties. Pursuant to this indemnity agreement, the Company agreed to indemnify the surety in connection with a default by B&W under a EUR 30,000 payment and performance bond issued by the surety in connection with a construction project undertaken by B&W. In consideration for providing the indemnity, B&W paid the Company fees in the amount of \$1,694 on January 20, 2022.

### (c) Other Commitments

On June 19, 2020, the Company participated in a loan facility agreement to provide a total loan commitment up to 33,000 EUROS to a retailer in Europe. The Company made an initial funding of 6,600 EUROS in July 2020 and no additional borrowings were made after the initial funding. On December 29, 2021, the availability period under the loan expired, leaving no outstanding commitments under the facility as of December 31, 2021. As of December 31, 2020, unused commitments of 26,400 EUROS were outstanding under the facility.

In the normal course of business, the Company enters into commitments to its clients in connection with capital raising transactions, such as firm commitment underwritings, equity lines of credit, or other commitments to provide financing on specified terms and conditions. These commitments require the Company to purchase securities at a specified price or otherwise provide debt or equity financing on specified terms. Securities underwriting exposes the Company to market and credit risk, primarily in the event that, for any reason, securities purchased by the Company cannot be distributed at the anticipated price and to balance sheet risk in the event that debt or equity financing commitments cannot be syndicated.

**NOTE 18 — SHARE-BASED PAYMENTS****(a) 2021 Stock Incentive Plan**

The 2021 Stock Incentive Plan (the “2021 Plan”) replaced the Amended and Restated 2009 Stock Incentive Plan on May 27, 2021. Share-based compensation expense for restricted stock units under the 2021 Plan was \$33,168, \$14,830, and \$11,626 during the years ended December 31, 2021, 2020, and 2019, respectively. During the year ended December 31, 2021, in connection with employee stock incentive plans the Company granted 516,152 restricted stock units with a total grant date fair value of \$35,289 and 1,958,540 performance stock units with a total grant date fair value of \$67,227. During the year ended December 31, 2020, in connection with employee stock incentive plans the Company granted 465,711 restricted stock units with a total grant date fair value of \$8,818.

The restricted stock units generally vest over a period of one to five years based on continued service. Performance based restricted stock units generally vest based on both the employee’s continued service and the Company’s common stock price, as defined in the grant, achieving a set threshold during the two to three-year period following the grant. In determining the fair value of restricted stock units on the grant date, the fair value is adjusted for (a) estimated forfeitures, (b) expected dividends based on historical patterns and the Company’s anticipated dividend payments over the expected holding period, and (c) the risk-free interest rate based on U.S. Treasuries for a maturity matching the expected holding period.

As of December 31, 2021, the expected remaining unrecognized share-based compensation expense of \$82,639 was to be expensed over a weighted average period of 1.9 years. As of December 31, 2020, the expected remaining unrecognized share-based compensation expense of \$11,156 was to be expensed over a weighted average period of 1.9 years.

A summary of equity incentive award activity during the years ended December 31, 2021 and 2020 was as follows:

	<u>Shares</u>	<u>Weighted Average Fair Value</u>
Nonvested at December 31, 2019	2,263,988	\$ 12.35
Granted	465,711	18.93
Vested	(1,730,734)	10.88
Forfeited	(171,743)	11.47
Nonvested at December 31, 2020	<u>827,222</u>	\$ 19.29
Granted	2,474,692	41.43
Vested	(412,272)	19.97
Forfeited	(5,766)	50.52
Nonvested at December 31, 2021	<u>2,883,876</u>	\$ 38.21

The per-share weighted average grant-date fair value of restricted stock units granted during the years ended December 31, 2021 and 2020 was \$68.37 and \$18.93, respectively. For the year ended December 31, 2021, the grant-date per-share weighted average fair value of performance stock units granted was \$34.33. During the year ended December 31, 2021, the total fair value of shares vested was \$8,233. During the year ended December 31, 2020, the total fair value of shares vested was \$18,831, which included \$11,236 in performance based restricted stock units which fully vested in December 2020.

**(b) Amended and Restated FBR & Co. 2006 Long-Term Stock Incentive Plan**

In connection with the acquisition of FBR & Co. on June 1, 2017, the equity awards previously granted or available for issuance under the FBR & Co. 2006 Long-Term Stock Incentive Plan (the “FBR Stock Plan”) may be issued. On May 27, 2021, the FBR Stock Plan was replaced by the 2021 Plan. During the year ended December 31, 2021, the Company granted restricted stock units representing 15,334 shares of common stock with a total grant date fair value of \$1,007 and 140,000 performance stock units with a grant date fair value of \$5,202 under the FBR Stock Plan. During the year ended December 31, 2020, the Company granted, restricted stock units representing 142,029 shares of common stock with a total grant date fair value of \$2,603 under the FBR Stock Plan. The share-based compensation expense in connection with the FBR Stock Plan restricted stock awards was \$2,085, \$3,381, and \$3,969 during the years ended December 31, 2021, 2020, and 2019, respectively. As of December 31, 2021, the expected remaining unrecognized share-based compensation expense of \$5,183 will be expensed over a weighted average period of 1.2 years. As of December 31, 2020, the expected remaining unrecognized share-based compensation expense of \$3,686 will be expensed over a weighted average period of 1.8 years.

A summary of equity incentive award activity as of December 31, 2021 and 2020 was as follows:

	<b>Shares</b>	<b>Weighted Average Fair Value</b>
Nonvested at December 31, 2019	485,033	\$ 18.33
Granted	142,029	18.33
Vested	(310,867)	17.37
Forfeited	(26,075)	19.21
Nonvested at December 31, 2020	<u>290,120</u>	\$ 19.33
Granted	155,334	39.98
Vested	(150,337)	20.08
Forfeited	(10,636)	30.59
Nonvested at December 31, 2021	<u>284,481</u>	\$ 30.06

The per-share weighted average grant-date fair value of restricted stock units granted as of December 31, 2021 and 2020 was \$65.69 and \$18.33, respectively. As of December 31, 2021, the grant-date per-share weighted average fair value of performance stock units granted was \$37.16. The total fair value of shares vested as of December 31, 2021 and 2020 was \$3,018 and \$5,400, respectively.

## NOTE 19 — BENEFIT PLANS AND CAPITAL TRANSACTIONS

### *(a) Employee Benefit Plans*

The Company maintains qualified defined contribution 401(k) plans, which cover substantially all of its U.S. employees. Under the plans, participants are entitled to make pre-tax contributions up to the annual maximums established by the Internal Revenue Service. The plan documents permit annual discretionary contributions from the Company. Employer contributions in the amount of \$2,125, \$1,565 and \$1,424 were made during the years ended December 31, 2021, 2020, and 2019, respectively.

### *(b) Employee Stock Purchase Plan*

In connection with the Company's Employee Stock Purchase Plan, share based compensation was \$758, \$377 and \$322 during the years ended December 31, 2021, 2020, and 2019, respectively. As of December 31, 2021, there were 450,717 shares reserved for issuance under the Purchase Plan. As of December 31, 2020, there were 502,326 shares reserved for issuance under the Purchase Plan.

### *(c) Common Stock*

Since October 30, 2018, the Company's Board of Directors has authorized annual share repurchase programs of up to \$50,000 of its outstanding common shares. All share repurchases were effected on the open market at prevailing market prices or in privately negotiated transactions. During the year ended December 31, 2021, the Company repurchased 44,650 shares of its common stock for \$2,656, which represents an average price of \$59.49 per common share. The shares repurchased under the program were retired. On October 25, 2021, the share repurchase program was reauthorized by the Board of Directors for share repurchases up to \$50,000 of its outstanding common shares and expires in October 2022.

During the year ended December 31, 2020, the Company repurchased 2,165,383 shares of its common stock for \$48,248 which represents an average price of \$22.28 per common share. On July 1, 2020, the Company entered into an agreement to repurchase 900,000 shares of its common stock for \$19,800 (\$22.00 per common share) from one of its shareholders. In accordance with the agreement, the Company repurchased 450,000 shares for \$9,900 on July 2, 2020 and the remaining 450,000 shares were repurchased for \$9,900 on November 2, 2020. In addition to the repurchases of common stock, 387,365 shares of the Company's common stock that were previously held in escrow in connection with the acquisition of a wealth management company in 2017 were forfeited and cancelled on June 11, 2020 to indemnify the Company for certain representations and warranties and related claims pursuant to a related acquisition agreement. In January and February of 2020, the Company repurchased 880,000 shares of its common stock in a block purchase from an existing stockholder as part of a privately-negotiated transaction. The Company purchased the shares at \$24.4725 per share for an aggregate amount of \$21,536.

On January 15, 2021, the Company issued 1,413,045 shares of common stock inclusive of 184,310 shares issued pursuant to the full exercise of the Underwriter's option to purchase additional shares of common stock at a price of \$46 per share for net proceeds of approximately \$64,713 after underwriting fees and costs.

### *(d) Preferred Stock*

On October 7, 2019, the Company closed its public offering of depositary shares (the "Depositary Shares"), each representing 1/1000<sup>th</sup> of a share of 6.875% Series A Cumulative Perpetual Preferred Stock, par value \$0.0001 per share (the "Series A Preferred Stock"). The liquidation preference of each share of Series A Preferred Stock is \$25,000 (\$25.00 per Depositary Share). At the closing, the Company issued 2,000 shares of Series A Preferred Stock represented by 2,000,000 Depositary Shares issued. On October 11, 2019, the Company completed the sale of an additional 300,000 Depositary Shares, pursuant to the underwriters' full exercise of their over-allotment option to purchase additional Depositary Shares. The offering of the 2,300,000 Depositary Shares generated \$57,500 of gross proceeds. The Company may elect from time to time to offer the Series A Preferred Stock via ATM sales.

During the years ended December 31, 2021 and 2020, the Company issued depositary shares equivalent to 233 and 232 shares, respectively, of the Series A Preferred Stock through ATM sales. There were 2,814 and 2,581 shares issued and outstanding as of December 31, 2021 and 2020, respectively. Total liquidation preference for the Series A Preferred Stock as of December 31, 2021 and 2020, was \$70,362 and \$64,519, respectively. Dividends on the Series A preferred paid during the years ended December 31, 2021 and 2020, were \$1.71875 and \$1.71875 per depositary share, respectively.

On September 4, 2020, the Company issued depositary shares each representing 1/1000th of a share of 7.375% Series B Cumulative Perpetual Preferred Stock, par value \$0.0001 per share (the "Series B Preferred Stock"). The Series B Preferred Stock has a liquidation preference of \$25 per 1/1000 depositary share or \$25,000 per preferred share. As a result of the offering the Company issued 1,300 shares of Series B Preferred Stock represented by 1,300,000 depositary shares. The offering resulted in gross proceeds of approximately \$32,500. The Company may elect from time to time to offer the Series B Preferred Stock via ATM sales.

During the years ended December 31, 2021 and 2020, the Company issued depositary shares equivalent to 307 and 90 shares, respectively, of the Series B Preferred Stock through ATM sales. There were 1,697 shares and 1,390 shares issued and outstanding as of December 31, 2021, and 2020, respectively. Total liquidation preference for the Series B Preferred Stock as of December 31, 2021 and 2020, was \$42,428 and \$34,741, respectively. Dividends on the Series B preferred paid during the years ended December 31, 2021 and 2020, were \$1.84375 and \$0.29193 per depositary share, respectively.

The Series A Preferred Stock and the Series B Preferred Stock ranks, as to dividend rights and rights upon the Company's liquidation, dissolution or winding up: (i) senior to all classes or series of the Company's common stock and to all other equity securities issued by the Company other than equity securities issued with terms specifically providing that those equity securities rank on a parity with the Series A Preferred Stock or Series B Preferred Stock, (ii) junior to all equity securities issued by the Company with terms specifically providing that those equity securities rank senior to the Series A Preferred Stock and the Series B Preferred Stock with respect to payment of dividends and the distribution of assets upon the Company's liquidation, dissolution or winding up and (iii) effectively junior to all of the Company's existing and future indebtedness (including indebtedness convertible into our common stock or preferred stock) and to the indebtedness and other liabilities of (as well as any preferred equity interests held by others in) the Company's existing or future subsidiaries. Generally, the Series A Preferred Stock and the Series B Preferred Stock is not redeemable by the Company prior to October 7, 2024. However, upon a change of control or delisting event, the Company will have the special option to redeem the Series A Preferred Stock and the Series B Preferred Stock.

#### ***(e) Dividends***

From time to time, we may decide to pay dividends which will be dependent upon our financial condition and results of operations. During the years ended December 31, 2021, 2020, and 2019, we paid cash dividends on our common stock of \$347,135, \$38,792, and \$41,138, respectively. On February 23, 2022, the Company declared a regular quarterly dividend of \$1.00 per share, which will be paid on or about March 23, 2022 to stockholders of record as of March 9, 2022. On October 28, 2021, we declared a regular dividend of \$1.00 per share and special dividend of \$3.00 per share that will be paid on or about November 23, 2021 to stockholders of record as of November 9, 2021. On July 29, 2021, we declared a regular dividend of \$0.50 per share and special dividend of \$1.50 per share that was paid on August 26, 2021 to stockholders of record as of August 13, 2021. On May 3, 2021, we declared a regular dividend of \$0.50 per share and special dividend of \$2.50 per share that was paid on May 28, 2021 to stockholders of record as of May 17, 2021. On October 28, 2021, the Board of Directors announced an increase to the regular quarterly dividend from \$0.50 per share to \$1.00 per share. While it is the Board's current intention to make regular dividend payments of \$0.50 per share each quarter and special dividend payments dependent upon certain circumstances from time to time, our Board of Directors may reduce or discontinue the payment of dividends at any time for any reason it deems relevant. The declaration and payment of any future dividends or repurchases of our common stock will be made at the discretion of our Board of Directors and will be dependent upon our financial condition, results of operations, cash flows, capital expenditures, and other factors that may be deemed relevant by our Board of Directors.

A summary of our common stock dividend activity during the years ended December 31, 2021, 2020, and 2019 was as follows:

<b>Date Declared</b>	<b>Date Paid</b>	<b>Stockholder Record Date</b>	<b>Regular Dividend Amount</b>	<b>Special Dividend Amount</b>	<b>Total Dividend Amount</b>
October 28, 2021	November 23, 2021	November 9, 2021	\$ 1.000	\$ 3.000	\$ 4.000
July 29, 2021	August 26, 2021	August 13, 2021	0.500	1.500	2.000
May 3, 2021	May 28, 2021	May 17, 2021	0.500	2.500	3.000
February 25, 2021	March 24, 2021	March 10, 2021	0.500	3.000	3.500
October 28, 2020	November 24, 2020	November 10, 2020	0.375	0.000	0.375
July 30, 2020	August 28, 2020	August 14, 2020	0.300	0.050	0.350
May 8, 2020	June 10, 2020	June 1, 2020	0.250	0.000	0.250
March 3, 2020	March 31, 2020	March 17, 2020	0.250	0.100	0.350
October 30, 2019	November 26, 2019	November 14, 2019	0.175	0.475	0.650
August 1, 2019	August 29, 2019	August 15, 2019	0.175	0.325	0.500
May 1, 2019	May 29, 2019	May 15, 2019	0.080	0.180	0.260
March 5, 2019	March 26, 2019	March 19, 2019	0.080	0.000	0.080

Holders of Series A Preferred Stock, when and as authorized by the board of directors of the Company, are entitled to cumulative cash dividends at the rate of 6.875% per annum of the \$25,000 liquidation preference (\$25.00 per Depositary Share) per year (equivalent to \$1,718.75 or \$1.71875 per Depositary Share). Dividends will be payable quarterly in arrears, on or about the last day of January, April, July and October. On January 9, 2020, the Company declared a cash dividend of \$0.4296875 per Depositary Share, which was paid on January 31, 2020 to holders of record as of the close of business on January 21, 2020. On April 13, 2020, the Company declared a cash dividend of \$0.4296875 per Depositary Share, which was paid on April 30, 2020 to holders of record as of the close of business on April 23, 2020. On July 7, 2020, the Company declared a cash dividend of \$0.4296875 per Depositary Share, which was paid on July 31, 2020 to holders of record as of the close of business on July 21, 2020. On October 8, 2020, the Company declared a cash dividend of \$0.4296875 per Depositary Share, which was paid on October 31, 2020 to holders of record as of the close of business on October 21, 2020. On January 11, 2021, the Company declared a cash dividend of \$0.4296875 per Depositary Share, which was paid on January 29, 2021 to holders of record as of the close of business on January 21, 2021. On April 5, 2021, the Company declared a cash dividend \$0.4296875 per Depositary Share, which was paid on April 30, 2021 to holders of record as of the close of business on April 20, 2021. On July 8, 2021, the Company declared a cash dividend \$0.4296875 per Depositary Share, which was paid on August 2, 2021 to holders of record as of the close of business on July 21, 2021. On October 6, 2021, the Company declared a cash dividend \$0.4296875 per Depositary Share, which was paid on November 1, 2021 to holders of record as of the close of business on October 21, 2021. On January 10, 2022, the Company declared a cash dividend \$0.4296875 per Depositary Share, which was paid on January 31, 2022 to holders of record as of the close of business on January 21, 2022.

Holders of Series B Preferred Stock, when and as authorized by the board of directors of the Company, are entitled to cumulative cash dividends at the rate of 7.375% per annum of the \$25,000 liquidation preference (\$25.00 per Depositary Share) per year (equivalent to \$1,843.75 or \$1.84375 per Depositary Share). Dividends will be payable quarterly in arrears, on or about the last day of January, April, July and October. On October 8, 2020, the Company declared a cash dividend of \$0.29193 per Depositary Share, which was paid on October 31, 2020 to holders of record as of the close of business on October 21, 2020. On January 11, 2021, the Company declared a cash dividend of \$0.4609375 per Depositary Share, which was paid on January 29, 2021 to holders of record as of the close of business on January 21, 2021. On April 5, 2021, the Company declared a cash dividend \$0.4609375 per Depositary Share, which was paid on April 30, 2021 to holders of record as of the close of business on April 20, 2021. On July 8, 2021, the Company declared a cash dividend \$0.4609375 per Depositary Share, which was paid on August 2, 2021 to holders of record as of the close of business on July 21, 2021. On October 6, 2021, the Company declared a cash dividend \$0.4609375 per Depositary Share, which was paid on November 1, 2021 to holders of record as of the close of business on October 21, 2021. On January 10, 2022, the Company declared a cash dividend \$0.4609375 per Depositary Share, which was paid on January 31, 2022 to holders of record as of the close of business on January 21, 2022.

Our principal sources of liquidity to finance our business is our existing cash on hand, cash flows generated from operating activities, funds available under revolving credit facilities and special purpose financing arrangements.

## **NOTE 20 — NET CAPITAL REQUIREMENTS**

B. Riley Securities (“BRS”), B. Riley Wealth Management (“BRWM”), and National Securities Corporation (“NSC”), the Company’s broker-dealer subsidiaries, are registered with the SEC as broker-dealers and members of the Financial Industry Regulatory Authority, Inc. (“FINRA”). The Company’s broker-dealer subsidiaries are subject to SEC Uniform Net Capital Rule (Rule 15c3-1) which requires the maintenance of minimum net capital and requires that the ratio of aggregate indebtedness to net capital, both as defined, to not exceed 15 to 1. As such, they are subject to the minimum net capital requirements promulgated by the SEC. As of December 31, 2021, BRS had net capital of \$277,611, which was \$265,093 in excess of its required minimum net capital of \$12,518; BRWM had net capital of \$13,833, which was \$12,819 in excess of its required minimum net capital of \$1,014; and NSC had net capital of \$1,959 which was \$959 in excess of required minimum net capital of \$1,000. As of December 31, 2020, BRS had net capital of \$146,060, which was \$140,101 in excess of its required minimum net capital of \$5,959; and BRWM had net capital of \$4,998, which was \$4,299 in excess of its required minimum net capital of \$699.

## **NOTE 21 — RELATED PARTY TRANSACTIONS**

The Company provides asset management and placement agent services to unconsolidated funds affiliated with the Company (the “Funds”). In connection with these services, the Funds may bear certain operating costs and expenses which are initially paid by the Company and subsequently reimbursed by the Funds.

As of December 31, 2021, amounts due from related parties of \$2,306 included \$621 from the Funds for management fees and other operating expenses, and \$1,635 due from CA Global Partners (“CA Global”) for operating expenses related to wholesale and industrial liquidation engagements managed by CA Global on behalf of GA Global Partners. As of December 31, 2020, amounts due from related parties of \$1,037 included \$604 from the Funds for management fees and other operating expenses and \$433 due from CA Global for operating expenses related to wholesale and industrial liquidation engagements managed by CA Global on behalf of GA Global Partners.

During the years ended December 31, 2021 and 2020, the Company recorded interest expense of \$525 and \$1,710, respectively, related to loan participations sold to BRC Partners Opportunity Fund, LP (“BRCPOF”), a private equity fund managed by one of its subsidiaries. The Company also recorded commission income of \$555 and \$568 from introducing trades on behalf of BRCPOF during the years ended December 31, 2021 and 2020, respectively. Our executive officers and members of our board of directors have a 55.8% financial interest, which includes a financial interest of Bryant Riley, our Co-Chief Executive Officer, of 31.8% in the BRCPOF as of December 31, 2021. The Company had no outstanding loan participations to BRCPOF as of December 31, 2021 and had \$14,816 outstanding as of December 31, 2020.

In June 2020, the Company entered into an investment advisory services agreement with Whitehawk Capital Partners, L.P. (“Whitehawk”), a limited partnership controlled by Mr. J. Ahn, who is the brother of Phil Ahn, the Company’s Chief Financial Officer and Chief Operating Officer. Whitehawk has agreed to provide investment advisory services for GACP I, L.P. and GACP II, L.P. During the years ended December 31, 2021 and 2020, management fees paid for investment advisory services by Whitehawk was \$1,729 and \$1,214, respectively.

The Company periodically participates in loans and financing arrangements for which the Company has an equity ownership and representation on the board of directors (or similar governing body). The Company may also provide consulting services or investment banking services to raise capital for these companies. These transactions can be summarized as follows:

### ***Babcock and Wilcox***

The Company had a last-out term loan receivable due from B&W that is included in loans receivable, at fair value with a fair value of \$176,191 as of December 31, 2020. On June 1, 2021 the Company agreed to settle the outstanding balance and accrued interest on the last-out term loan receivable in exchange for \$848 and 2,916,880 shares of B&W’s 7.75% Series A Cumulative Perpetual Preferred Stock.

During the years ended December 31, 2021 and 2020, the Company earned \$15,766 and \$2,486, respectively, of underwriting and financial advisory and other fees from B&W in connection with B&W’s capital raising activities.

One of the Company’s wholly owned subsidiaries entered into a services agreement with B&W that provided for the President of the Company to serve as the Chief Executive Officer of B&W until November 30, 2020 (the “Executive Consulting Agreement”), unless terminated by either party with thirty days written notice. The agreement was extended through December 31, 2023. Under this agreement, fees for services provided are \$750 per annum, paid monthly. In addition, subject to the achievement of certain performance objectives as determined by B&W’s compensation committee of the board, a bonus or bonuses may also be earned and payable to the Company.

The Company is also a party to indemnification agreements for the benefit of B&W, and the B. Riley Guaranty, each as disclosed above in Note 17 – Commitments and Contingencies.

### ***Maven***

The Company has loans receivable due from the Maven, Inc. that are included in loans receivable, at fair value of \$69,835 and \$56,552 as of December 31, 2021 and 2020, respectively. Interest on these loans is payable at 10% per annum with maturity dates through December 2022.

### **Lingo**

The Company has loans receivable due from Lingo Management LLC (“Lingo”) included in loans receivable, at fair value with a fair value of \$58,565 and \$55,066 as of December 31, 2021 and 2020, respectively. The term loan bears interest at 16.0% per annum with a maturity date of December 1, 2022. The term loan has a conversion feature under which \$17,500 will convert to additional equity ownership upon receipt of certain regulatory approval. If those regulatory approvals are received, the conversion would increase the Company’s ownership interest in Lingo from 40% to 80%. On August 1, 2021, the credit agreement was amended to allow the borrower to elect that a portion of interest payable be payable in kind. On March 10, 2021, the Company also extended a promissory note to Lingo Communications, LLC (a wholly owned subsidiary of Lingo) in the amount of \$1,100. The note bears interest at 6% per annum with a maturity date of March 31, 2022.

### **bebe**

The Company had a loan receivable due from bebe included in loans receivable, at fair value with a fair value of \$8,000 as of December 31, 2020. The term loan bore interest at 16.0% per annum and had a maturity date of November 10, 2021. The term loan was paid in full in August 2021.

### **Charah Solutions, Inc.**

On August 25, 2021 the Company extended a \$17,852 promissory note to Charah Solutions, Inc., in which one of the Company’s senior executives serves on the board of directors. The promissory note bore interest at 8.0% per annum and had a maturity date of September 25, 2022 and a 2.5% commitment fee payable at maturity. The promissory note was paid in full in December 2021.

### **California Natural Resources Group, LLC.**

On November 1, 2021 the Company extended a \$34,393 bridge promissory note bearing interest at up to 10% per annum (the “Bridge Note”) to California Natural Resources Group, LLC (“CalNRG”). As of December 31, 2021, the Bridge Note is included in loans receivable, at fair value in the amount of \$34,000. On January 3, 2022, CalNRG repaid the Bridge Note using proceeds from a new credit facility with a third party bank (the “CalNRG Credit Facility”). The Company has guaranteed CalNRG’s obligations, up to \$10,375, under the CalNRG Credit Facility.

### **Other**

As of December 31, 2021, the Company has loans receivable due from other related parties in the amount of \$4,201.

The Company often provides consulting or investment banking services to raise capital for companies in which the Company has significant influence through equity ownership, representation on the board of directors (or similar governing body), or both. During the year ended December 31, 2021, the Company earned \$26,236 of fees related to these services.

## **NOTE 22 — BUSINESS SEGMENTS**

The Company’s business is classified into the Capital Markets segment, Wealth Management segment, Auction and Liquidation segment, Financial Consulting segment, Principal Investments - Communications segment and Brands segment. These reportable segments are all distinct businesses, each with a different marketing strategy and management structure.

During the fourth quarter of 2020, the Company realigned its segment reporting structure to reflect organizational management changes. Under the new structure, the valuation and appraisal businesses are reported in the Financial Consulting segment and our bankruptcy, financial advisory, forensic accounting, and real estate consulting businesses that were previously reported in the Capital Markets segment are now reported in the Financial Consulting segment.

As a result of the National acquisition, the Company realigned its segment reporting structure in the first quarter of 2021 to reflect organizational management changes for its wealth management business. Under the new structure, the wealth management business previously reported in the Capital Markets segment are now reported in the Wealth Management segment. Under the new structure, there is a new segment for Wealth Management.

In conjunction with the new reporting structure, the Company recast its segment presentation for all periods presented. The following is a summary of certain financial data for each of the Company's reportable segments:

	Year Ended December 31,		
	2021	2020	2019
<b>Capital Markets segment:</b>			
Revenues - Services and fees	\$ 575,317	\$ 339,877	\$ 199,630
Trading income and fair value adjustments on loans	379,053	103,214	104,637
Interest income - Loans and securities lending	122,723	102,499	77,221
Total revenues	1,077,093	545,590	381,488
Selling, general and administrative expenses	(345,455)	(198,962)	(175,369)
Restructuring charge	—	(917)	—
Interest expense - Securities lending and loan participations sold	(52,631)	(42,451)	(32,144)
Depreciation and amortization	(2,136)	(2,386)	(2,810)
Segment income	676,871	300,874	171,165
<b>Wealth Management segment:</b>			
Revenues - Services and fees	374,361	72,345	65,073
Trading income and fair value adjustments on loans	7,623	804	1,826
Total revenues	381,984	73,149	66,899
Selling, general and administrative expenses	(357,130)	(68,368)	(64,347)
Restructuring recovery	—	—	4
Depreciation and amortization	(8,920)	(1,880)	(2,048)
Segment income	15,934	2,901	508
<b>Auction and Liquidation segment:</b>			
Revenues - Services and fees	20,169	63,101	18,296
Revenues - Sale of goods	53,348	25,663	4,220
Total revenues	73,517	88,764	22,516
Direct cost of services	(30,719)	(40,730)	(33,295)
Cost of goods sold	(20,675)	(9,766)	(4,016)
Selling, general and administrative expenses	(14,069)	(12,357)	(10,731)
Restructuring charge	—	(140)	—
Depreciation and amortization	—	(2)	(7)
Segment income (loss)	8,054	25,769	(25,533)
<b>Financial Consulting segment:</b>			
Revenues - Services and fees	94,312	91,622	76,292
Selling, general and administrative expenses	(77,062)	(68,232)	(58,226)
Restructuring charge	—	(500)	—
Depreciation and amortization	(356)	(347)	(252)
Segment income	16,894	22,543	17,814
<b>Principal Investments - Communications segment:</b>			
Revenues - Services and fees	88,490	83,666	97,147
Revenues - Sale of goods	4,857	3,472	3,715
Total revenues	93,347	87,138	100,862
Direct cost of services	(23,671)	(19,721)	(25,529)
Cost of goods sold	(6,278)	(2,694)	(3,559)
Selling, general and administrative expenses	(25,493)	(20,352)	(24,256)
Depreciation and amortization	(10,747)	(11,011)	(12,658)
Restructuring charge	—	—	(1,703)
Segment income	27,158	33,360	33,157
<b>Brands segment:</b>			
Revenues - Services and fees	20,308	16,458	4,055
Selling, general and administrative expenses	(3,178)	(2,889)	(881)
Depreciation and amortization	(2,745)	(2,858)	(507)
Impairment of tradenames	—	(12,500)	—
Segment income (loss)	14,385	(1,789)	2,667
<b>Consolidated operating income from reportable segments</b>			
	<b>759,296</b>	<b>383,658</b>	<b>199,778</b>
Corporate and other expenses	(58,905)	(38,893)	(33,127)
Interest income	229	564	1,577
Gain on extinguishment of loans and other	3,796	—	—
Income (loss) on equity investments	2,801	(623)	(1,431)
Interest expense	(92,455)	(65,249)	(50,205)
Income before income taxes	614,762	279,457	116,592
Provision for income taxes	(163,960)	(75,440)	(34,644)
Net income	450,802	204,017	81,948
Net income (loss) attributable to noncontrolling interests	5,748	(1,131)	337
Net income attributable to B. Riley Financial, Inc.	445,054	205,148	81,611
Preferred stock dividends	7,457	4,710	264
Net income available to common shareholders	\$ 437,597	\$ 200,438	\$ 81,347



The following table presents revenues by geographical area:

	Year Ended December 31,		
	2021	2020	2019
Revenues:			
Revenues - Services and fees:			
North America	\$ 1,168,483	\$ 641,127	\$ 460,374
Australia	—	664	58
Europe	4,474	25,278	61
Total Revenues - Services and fees	<u>\$ 1,172,957</u>	<u>\$ 667,069</u>	<u>\$ 460,493</u>
Trading income and fair value adjustments on loans			
North America	\$ 386,676	\$ 104,018	\$ 106,463
Revenues - Sale of goods			
North America	\$ 12,130	\$ 6,788	\$ 7,935
Europe	46,075	22,347	—
Total Revenues - Sale of Goods	<u>\$ 58,205</u>	<u>\$ 29,135</u>	<u>\$ 7,935</u>
Revenues - Interest income - Loans and securities lending:			
North America	<u>\$ 122,723</u>	<u>\$ 102,499</u>	<u>\$ 77,221</u>
Total Revenues:			
North America	\$ 1,690,012	\$ 854,432	\$ 651,993
Australia	—	664	58
Europe	50,549	47,625	61
Total Revenues	<u>\$ 1,740,561</u>	<u>\$ 902,721</u>	<u>\$ 652,112</u>

As of December 31, 2021 and 2020 long-lived assets, which consist of property and equipment and other assets of \$12,870 and \$11,685, respectively, were located in North America.

Segment assets are not reported to, or used by, the Company's Chief Operating Decision Maker to allocate resources to, or assess performance of, the segments and therefore, total segment assets have not been disclosed.

**NOTE 23 — REVISION OF PRIOR PERIOD FINANCIALS**

As disclosed in Note 2(a), during the year ended December 31, 2021, the Company identified misstatements related to the consolidation of certain VIE's, which primarily resulted in a gross up the investing and financing activities in the consolidated statements of cash flows. Although the Company concluded that these misstatements were not material, either individually or in aggregate, to its current or previously issued consolidated financial statements, the Company has elected to revise its previously issued consolidated financial statements to correct for these misstatements.

The revision to the accompanying consolidated statements of cash flows are as follows:

	<b>Year Ended December 31, 2020</b>		
	<b>As Previously Reported</b>	<b>Adjustments</b>	<b>As Revised</b>
<b>Statement of Cash Flows</b>			
Cash flows from investing activities:			
Purchase of equity investments	\$ (13,986)	\$ 6,486	\$ (7,500)
Funds received from trust account of subsidiary	—	320,500	320,500
Investment of subsidiaries initial public offering proceeds into trust account	—	(176,750)	(176,750)
Net cash (used in) provided by investing activities	\$ (128,446)	\$ 150,236	\$ 21,790
Cash flows from financing activities:			
Payment of debt issuance and offering costs	\$ (3,359)	\$ (6,486)	\$ (9,845)
Redemption of subsidiary temporary equity and distributions	—	(318,750)	(318,750)
Proceeds from initial public offering of subsidiaries	—	175,000	175,000
Net cash provided by (used in) financing activities	\$ 69,544	\$ (150,236)	\$ (80,692)
	<b>Year Ended December 31, 2019</b>		
	<b>As Previously Reported</b>	<b>Adjustments</b>	<b>As Revised</b>
<b>Statement of Cash Flows</b>			
Cash flows from investing activities:			
Purchase of equity investments	\$ (33,391)	\$ 4,634	\$ (28,757)
Investment of subsidiaries initial public offering proceeds into trust account	—	(143,750)	(143,750)
Net cash used in investing activities	\$ (298,590)	\$ (139,116)	\$ (437,706)
Cash flows from financing activities:			
Payment of debt issuance and offering costs	\$ (3,425)	\$ (4,634)	\$ (8,059)
Proceeds from initial public offering of subsidiaries	—	143,750	143,750
Net cash provided by financing activities	\$ 250,176	\$ 139,116	\$ 389,292

**NOTE 24 — SUBSEQUENT EVENT**

On January 19, 2022, the Company completed the acquisition of FocalPoint Securities, LLC ("FocalPoint"), an independent investment bank, for total cash, stock, and contingent consideration of up to \$175,000. The acquisition is expected to expand B. Riley Securities' mergers and acquisitions advisory business and enhance its debt capital markets and financial restructuring capabilities. The acquisition of FocalPoint will be accounted for using the acquisition method of accounting in the first quarter of fiscal year 2022. The Company has not completed the preliminary purchase price accounting since it is in the process of completing the valuation of the assets of FocalPoint.

**DESCRIPTION OF THE REGISTRANT'S SECURITIES  
REGISTERED PURSUANT TO SECTION 12 OF THE  
SECURITIES EXCHANGE ACT OF 1934**

B. Riley Financial, Inc. has ten classes of securities registered under Section 12 of the Securities Exchange Act of 1934, as amended (the “*Exchange Act*”):

- (1) our common stock, par value \$0.0001 per share (“*Common Stock*”);
- (2) our depositary shares (each representing a 1/1000<sup>th</sup> interest in a 6.875% Series A Cumulative Perpetual Preferred Stock, par value \$0.0001 per share) (the “*Series A Depositary Shares*”);
- (3) our depositary shares (each representing a 1/1000<sup>th</sup> interest in a 7.375% Series B Cumulative Perpetual Preferred Stock, par value \$0.0001 per share) (the “*Series B Depositary Shares*”);
- (4) our 6.75% Senior Notes due 2024 (the “*2024 Notes*”);
- (5) our 6.375% Senior Notes due 2025 (the “*2025 Notes*”);
- (6) our 6.50% Senior Notes due 2026 (the “*6.50% 2026 Notes*”);
- (7) our 5.50% Senior Notes due 2026 (the “*5.50% 2026 Notes*”);
- (8) our 5.00% Senior Notes due 2026 (the “*5.00% 2026 Notes*”);
- (9) our 6.00% Senior Notes due 2028 (the “*6.00% 2028 Notes*”); and
- (10) our 5.25% Senior Notes due 2028 (the “*5.25% 2028 Notes*,” and together with the 2024 Notes, 2025 Notes, 6.50% 2026 Notes, 5.50% 2026 Notes, 5.00% 2026 Notes and 6.00% 2028 Notes, the “*Notes*”);

This description does not purport to be complete and is qualified in its entirety by reference to the full text of our (i) Amended and Restated Certificate of Incorporation, as amended (“*Certificate of Incorporation*”); (ii) Amended and Restated Bylaws, as amended (“*Bylaws*”); (iii) Certificate of Designation designating the 6.875% Series A Cumulative Perpetual Preferred Stock (“*Series A Certificate of Designation*”); (iv) Certificate of Designation designating the 7.375% Series B Cumulative Perpetual Preferred Stock (“*Series B Certificate of Designation*”); (v) Series A Deposit Agreement (as defined below); (vi) Series B Deposit Agreement (as defined below); and (vii) 2019 Indenture (as defined below) (clauses (i) – (vii) together, the “*Documents*”). We encourage you to read the Documents and the applicable provisions of the Delaware General Corporation Law for additional information.

References herein to “the Company,” “we,” “us” or “our” refer to B. Riley Financial, Inc. and not to any of its subsidiaries

**Description of Common Stock**

Authorized	Our Certificate of Incorporation provides that we are authorized to issue 101,000,000 shares of capital stock. Our authorized capital stock is comprised of 100,000,000 shares of Common Stock.
Ranking	Our Common Stock ranks junior to any future issuances of preferred stock and the Notes and any future senior securities that we may establish and issue from time to time, with respect to the payments of distributions and amounts, and rights to payment upon liquidation, dissolution and winding up.
Dividends	Subject to preferences that may apply to any then outstanding shares of preferred stock, the holders of outstanding shares of our Common Stock are entitled to receive dividends out of assets legally available for distribution at the times and in the amounts, if any, that our board of directors (the “ <i>Board</i> ”) may determine from time to time.
Liquidation	In the event of our liquidation, dissolution or winding up, subject to the rights of each series of our preferred stock, which may, from time to time come into existence, holders of our Common Stock are entitled to share ratably in all of our assets remaining after we pay our liabilities.
Voting Rights	The holders of our Common Stock are entitled to one vote for each share held of record on all matters submitted to a vote of the stockholders. Except as otherwise provided by law, our Certificate of Incorporation, our Bylaws or the rules and regulations of any stock exchange applicable to us or pursuant to any other regulation applicable to us or our stockholders, at each meeting of stockholders at which a quorum is present, all corporate actions to be taken by vote of the stockholders shall be authorized by the affirmative vote of the holders of a majority in voting power of the stock present in person or represented by proxy and entitled to vote on the subject matter, and where a separate vote by class or series is required, if a quorum of such class or series is present, such act shall be authorized by the affirmative vote of the holders of a majority in voting power of the stock of such class or series present in person or represented by proxy and entitled to vote on the subject matter.

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Nominee for director shall be elected to the Board if a majority of the votes cast are in favor of such nominee's election; provided, however, that, if the number of nominees for director exceeds the number of directors to be elected, directors shall be elected by a plurality of the votes of the shares represented in person or by proxy at any meeting of stockholders held to elect directors and entitled to vote on such election of directors. For purposes of this bylaw, a majority of votes cast shall mean that the number of votes cast "for" a director's election exceeds the number of votes cast "against" that director's election (with "abstentions" and "broker nonvotes" not counted as a vote cast either "for" or "against" that director's election). In the event that a director nominee fails to receive an affirmative majority of the votes cast in an election where the number of nominees is less than or equal to the number of directors to be elected, the Board, within its powers, may take any appropriate action, including decreasing the number of directors or filling a vacancy.

Listing Our Common Stock is listed on the Nasdaq Global Market ("*Nasdaq*") under the symbol "RILY."

Transfer Agent The transfer agent, registrar and dividend disbursing agent for our Common Stock is Continental Stock Transfer and Trust Company.

#### **Description of the Series A Depositary Shares and Series A Preferred Stock**

*The following is a summary of the material terms and provisions of the Series A Preferred Stock and the Series A Depositary Shares. The statements below describing our Series A Preferred Stock are in all respects subject to and qualified in their entirety by reference to the applicable provisions of our Certificate of Incorporation, Certificate of Designation, Bylaws and our Deposit Agreement, dated October 7, 2019, among the Company, Continental Stock Transfer & Trust Company, as Depositary, and the holders of depositary receipts (the "Series A Deposit Agreement").*

Ranking The 6.875% Series A Cumulative Perpetual Preferred Stock, par value \$0.0001 per share ("*Series A Preferred Stock*") underlying the Series A Depositary Shares will rank, as to dividend rights and rights upon our liquidation, dissolution or winding up:

- (1) Senior to all classes or series of our Common Stock and to all other equity securities issued by us other than any equity securities issued by us with terms specifically providing that those equity securities rank on a parity with the Series A Preferred Stock;
- (2) Junior to all equity securities issued by us with terms specifically providing that those equity securities rank senior to the Series A Preferred Stock with respect to the payment of dividends and the distribution of assets upon our liquidation, dissolution or winding up; and
- (3) Effectively junior to all our existing and future indebtedness (including indebtedness convertible into our Common Stock or preferred stock) and to the indebtedness and other liabilities of (as well as any preferred equity interests held by others in) our existing or future subsidiaries.

Dividends We will pay cumulative cash dividends on the Series A Preferred Stock, when and as declared by our Board, at the rate of 6.875% of the \$25,000.00 liquidation preference (\$25.00 per depositary share) per year (equivalent to \$1,718.75 or \$1.71875 per depositary share).

Dividends will be payable quarterly in arrears, on or about the last day of January, April, July and October; provided that if any dividend payment date is not a business day, then the dividend which would otherwise have been payable on that dividend payment date may be paid on the next succeeding business day, and no interest, additional dividends or other sums will accumulate. Dividends will accumulate and be cumulative from, and including, the date of original issuance. Dividends on the Series A Preferred Stock underlying the Series A Depositary Shares will continue to accumulate whether or not (i) any of our agreements prohibit the current payment of dividends, (ii) we have earnings or funds legally available to pay the dividends, or (iii) our Board does not declare the payment of the dividends.

**Liquidation Preference** The liquidation preference of each share of Series A Preferred Stock is \$25,000.00 (\$25.00 per depositary share). Upon liquidation, Series A preferred shareholders will be entitled to receive the liquidation preference with respect to their shares of Series A Preferred Stock plus an amount equal to accumulated but unpaid dividends with respect to such shares.

**Optional Redemption** We may not redeem the Series A Preferred Stock underlying the Series A Depositary Shares prior to October 7, 2024, except as described below under “Special Optional Redemption.” At any time on or after October 7, 2024, we may, at our option, redeem the Series A Preferred Stock, in whole or from time to time in part, by paying \$25,000.00 per share (equivalent to \$25.00 per depositary share), plus any accumulated and unpaid dividends to, but not including, the date of redemption, and the depositary will redeem a proportional number of Series A Depositary Shares representing the shares redeemed. We refer to this redemption as an “optional redemption.”

**Special Optional Redemption** Upon the occurrence of a Delisting Event (as defined below), we may, at our option, redeem the Series A preferred stock, in whole or in part, within 90 days after the first date on which such Delisting Event occurred, for cash, at a redemption price of \$25,000.00 per share (equivalent to \$25.00 per depositary share), plus any accrued and unpaid dividends to, but not including, the date of redemption, and the depositary will redeem a proportional number of Series A Depositary Shares representing the shares redeemed.

A “**Delisting Event**” occurs when, after the original issuance of Series A Preferred Stock, both (i) the shares of Series A Preferred Stock (or the Series A Depositary Shares) are no longer listed on the New York Stock Exchange (the “**NYSE**”), the NYSE American LLC (“**NYSE AMER**”) or the Nasdaq Stock Market LLC (“**Nasdaq Exchange**”), or listed or quoted on an exchange or quotation system that is a successor to the NYSE, the NYSE AMER or Nasdaq Exchange, and (ii) we are not subject to the reporting requirements of the Exchange Act, but any Series A Preferred Stock is still outstanding.

Upon the occurrence of a Change of Control (as defined below), we may, at our option, redeem the Series A Preferred Stock underlying the Series A Depositary Shares, in whole or in part within 120 days after the first date on which such Change of Control occurred, for cash, at a redemption price of \$25,000.00 per share (equivalent to \$25.00 per depositary share), plus any accrued and unpaid dividends to, but not including, the date of redemption, and the depositary will redeem a proportional number of Series A Depositary Shares representing the shares redeemed.

A “**Change of Control**” occurs when, after the original issuance of the Series A Preferred Stock, the following have occurred and are continuing:

- the acquisition by any person, including any syndicate or group deemed to be a “person” under Section 13(d)(3) of the Exchange Act, of beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of purchases, mergers or other acquisition transactions of shares of our company entitling that person to exercise more than 50% of the total voting power of all shares of our company entitled to vote generally in elections of directors (except that such person will be deemed to have beneficial ownership of all securities that such person has the right to acquire, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition); and
- following the closing of any transaction referred to in the bullet point above, neither we nor any acquiring or surviving entity (or if, in connection with such transaction shares of our Common Stock are converted into or exchanged for (in whole or in part) common equity securities of another entity), has a class of common securities (or ADRs representing such securities) listed on the NYSE, the NYSE AMER or Nasdaq Exchange, or listed or quoted on an exchange or quotation system that is a successor to the NYSE, the NYSE AMER or Nasdaq Exchange.

We refer to redemption following a Delisting Event or Change of Control as a “special optional redemption.” If, prior to the Delisting Event Conversion Date or the Change of Control Conversion Date, as applicable, we have provided or provide notice of exercise of any of our redemption rights relating to the Series A Preferred Stock (whether our optional redemption right or our special optional redemption right), the holders of Series A Depositary Shares representing interests in the Series A Preferred Stock will not have the conversion right described below.

#### Conversion Rights

Upon the occurrence of a Delisting Event or a Change of Control, as applicable, each holder of Series A Depositary Shares representing interests in the Series A Preferred Stock will have the right (unless, prior to the Delisting Event Conversion Date or Change of Control Conversion Date, as applicable, we have provided or provide notice of our election to redeem the Series A Preferred Stock) to direct the depositary, on such holder’s behalf, to convert some or all of the Series A Preferred Stock underlying the Series A Depositary Shares held by such holder on the Delisting Event Conversion Date or Change of Control Conversion Date, as applicable into a number of shares of our Common Stock (or equivalent value of alternative consideration) per depositary share equal to the lesser of:

- the quotient obtained by dividing (1) the sum of the \$25.00 per depositary share liquidation preference plus the amount of any accumulated and unpaid dividends to, but not including, the Delisting Event Conversion Date or Change of Control Conversion Date, as applicable (unless the Delisting Event Conversion Date or Change of Control Conversion Date, as applicable is after a record date for a Series A Preferred Stock dividend payment and prior to the corresponding Series A Preferred Stock dividend payment date, in which case no additional amount for such accumulated and unpaid dividend will be included in this sum) by (2) the Common Stock Price (as defined herein); and
- 2.176 (i.e., the Series A Share Cap), subject to certain adjustments;

and subject, in each case, to certain conditions, including, under specified circumstances, an aggregate cap on the total number of shares of our Common Stock issuable upon conversion and to provisions for the receipt of alternative consideration.

If, prior to the Delisting Event Conversion Date or Change of Control Conversion Date, as applicable, we have provided or provide a redemption notice, whether pursuant to our special optional redemption right or our optional redemption right, holders of Series A Depositary Shares representing interests in the Series A Preferred Stock will not have any right to direct the depositary to convert the Series A Preferred Stock, and any Series A Preferred Stock subsequently selected for redemption that has been tendered for conversion will be redeemed on the related date of redemption instead of converted on the Delisting Event Conversion Date or Change of Control Conversion Date, as applicable.

Because each depositary share represents a 1/1000th interest in a share of the Series A Preferred Stock, the number of shares of Common Stock ultimately received for each depositary share will be equal to the number of shares of Common Stock received upon conversion of each share of Series A Preferred Stock divided by 1000. In the event that the conversion would result in the issuance of fractional shares of Common Stock, we will pay the holder of Series A Depositary Shares cash in lieu of such fractional shares.

Except as provided above in connection with a Delisting Event or Change of Control, shares of the Series A Preferred Stock are not convertible into or exchangeable for any other securities or property.

#### No Maturity, Sinking Fund or Mandatory Redemption

The Series A Preferred Stock underlying the Series A Depositary Shares does not have any stated maturity date and is not subject to mandatory redemption at the option of the holder or any sinking fund. We are not required to set aside funds to redeem the Series A Preferred Stock. Accordingly, the Series A Preferred Stock and Series A Depositary Shares will remain outstanding indefinitely unless we decide to redeem them pursuant to our optional redemption or special optional redemption rights, or they are converted in connection with a Delisting Event or Change of Control.

Limited Voting Rights	Holders of the Series A Depositary Shares representing interests in the Series A Preferred Stock generally will have no voting rights. However, if we do not pay dividends on any outstanding shares of Series A Preferred Stock for six or more quarterly dividend periods (whether or not declared or consecutive), holders of Series A Depositary Shares representing interests in the Series A Preferred Stock (voting separately as a class with all other outstanding series of preferred stock upon which like voting rights have been conferred and are exercisable) will be entitled to elect two additional directors to our Board to serve until all unpaid dividends have been fully paid or declared and set apart for payment. In addition, certain material and adverse changes to the terms of the Series A Preferred Stock cannot be made without the affirmative vote of holders of at least 66 2/3% of the outstanding shares of Series A Preferred Stock, voting as a separate class. In any matter in which the Series A Preferred Stock may vote, each share of Series A Preferred Stock shall be entitled to one vote. As a result, each depositary share will be entitled to 1/1000th of a vote.
Listing	Our Series A Depositary Shares are listed on Nasdaq under the symbol “RILYP.”
Form	The Series A Depositary Shares will be issued and maintained in book-entry form registered in the name of the nominee of The Depositary Trust Company, except under limited circumstances.
Depositary	Continental Stock Transfer and Trust Company.

#### **Description of the Series B Depositary Shares and Series B Preferred Stock**

*The following is a summary of the material terms and provisions of the Series B Preferred Stock and the Series B Depositary Shares. The statements below describing our Series B Preferred Stock are in all respects subject to and qualified in their entirety by reference to the applicable provisions of our Certificate of Incorporation, Certificate of Designation, Bylaws and our Deposit Agreement, dated September 4, 2020, among the Company, Continental Stock Transfer & Trust Company, as Depositary, and the holders of depositary receipts (the “**Series B Deposit Agreement**”).*

Ranking	<p>The 7.375% Series B Cumulative Perpetual Preferred Stock, par value \$0.0001 per share (“<b>Series B Preferred Stock</b>”) underlying the Series B Depositary Shares will rank, as to dividend rights and rights upon our liquidation, dissolution or winding up:</p> <ol style="list-style-type: none"> <li>(1) Senior to all classes or series of our common stock and to all other equity securities issued by us expressly designated as ranking junior to the Series B Preferred Stock;</li> <li>(2) On parity with our Series A Preferred Stock;</li> <li>(2) Junior to all equity securities issued by us with terms specifically providing that those equity securities rank senior to the Series B Preferred Stock with respect to the payment of dividends and the distribution of assets upon our liquidation, dissolution or winding up; and</li> <li>(3) Effectively junior to all our existing and future indebtedness (including indebtedness convertible into our common stock or preferred stock) and to the indebtedness and other liabilities of (as well as any preferred equity interests held by others in) our existing or future subsidiaries.</li> </ol>
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Dividends	<p>We will pay cumulative cash dividends on the Series B Preferred Stock, when and as declared by our Board of Directors, at the rate of 7.375% of the \$25,000.00 liquidation preference (\$25.00 per depositary share) per year (equivalent to \$1,843.75 or \$1.84375 per depositary share).</p> <p>Dividends will be payable quarterly in arrears, on or about the last day of January, April, July and October; provided that if any dividend payment date is not a business day, then the dividend which would otherwise have been payable on that dividend payment date may be paid on the next succeeding business day, and no interest, additional dividends or other sums will accumulate. Dividends will accumulate and be cumulative from, and including, the date of original issuance. Dividends on the Series B Preferred Stock underlying the Series B Depositary Shares will continue to accumulate whether or not (i) any of our agreements prohibit the current payment of dividends, (ii) we have earnings or funds legally available to pay the dividends, or (iii) our Board of Directors does not declare the payment of the dividends.</p>
Liquidation Preference	<p>The liquidation preference of each share of Series B Preferred Stock is \$25,000.00 (\$25.00 per depositary share). Upon liquidation, Series B preferred shareholders will be entitled to receive the liquidation preference with respect to their shares of Series B Preferred Stock plus an amount equal to accumulated but unpaid dividends with respect to such shares.</p>
Optional Redemption	<p>We may not redeem the Series B Preferred Stock underlying the Series B Depositary Shares prior to September 4, 2025, except as described below under “Special Optional Redemption.” At any time on or after September 4, 2025, we may, at our option, redeem the Series B Preferred Stock, in whole or from time to time in part, by paying \$25,000.00 per share (equivalent to \$25.00 per depositary share), plus any accumulated and unpaid dividends to, but not including, the date of redemption, and the depositary will redeem a proportional number of Series B Depositary Shares representing the shares redeemed. We refer to this redemption as an “optional redemption.”</p>
Special Optional Redemption	<p>Upon the occurrence of a Delisting Event (as defined below), we may, at our option, redeem the Series B preferred stock, in whole or in part, within 90 days after the first date on which such Delisting Event occurred, for cash, at a redemption price of \$25,000.00 per share (equivalent to \$25.00 per depositary share), plus any accrued and unpaid dividends to, but not including, the date of redemption, and the depositary will redeem a proportional number of Series B Depositary Shares representing the shares redeemed.</p> <p>A “<b>Delisting Event</b>” occurs when, after the original issuance of Series B Preferred Stock, both (i) the shares of Series B Preferred Stock (or the Series B Depositary Shares) are no longer listed on the NYSE, the NYSE AMER or the Nasdaq Exchange, or listed or quoted on an exchange or quotation system that is a successor to the NYSE, the NYSE AMER or Nasdaq Exchange, and (ii) we are not subject to the reporting requirements of the Exchange Act, but any Series B Preferred Stock is still outstanding.</p> <p>Upon the occurrence of a Change of Control (as defined below), we may, at our option, redeem the Series B Preferred Stock underlying the Series B Depositary Shares, in whole or in part within 120 days after the first date on which such Change of Control occurred, for cash, at a redemption price of \$25,000.00 per share (equivalent to \$25.00 per depositary share), plus any accrued and unpaid dividends to, but not including, the date of redemption, and the depositary will redeem a proportional number of Series B Depositary Shares representing the shares redeemed.</p>

A “**Change of Control**” occurs when, after the original issuance of the Series B Preferred Stock, the following have occurred and are continuing:

- the acquisition by any person, including any syndicate or group deemed to be a “person” under Section 13(d)(3) of the Exchange Act, of beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of purchases, mergers or other acquisition transactions of shares of our company entitling that person to exercise more than 50% of the total voting power of all shares of our company entitled to vote generally in elections of directors (except that such person will be deemed to have beneficial ownership of all securities that such person has the right to acquire, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition); and
- following the closing of any transaction referred to in the bullet point above, neither we nor any acquiring or surviving entity (or if, in connection with such transaction shares of our common stock are converted into or exchanged for (in whole or in part) common equity securities of another entity), has a class of common securities (or ADRs representing such securities) listed on the NYSE, the NYSE AMER or Nasdaq Exchange, or listed or quoted on an exchange or quotation system that is a successor to the NYSE, the NYSE AMER or Nasdaq Exchange.

We refer to redemption following a Delisting Event or Change of Control as a “special optional redemption.” If, prior to the Delisting Event Conversion Date or the Change of Control Conversion Date, as applicable, we have provided or provide notice of exercise of any of our redemption rights relating to the Series B Preferred Stock (whether our optional redemption right or our special optional redemption right), the holders of Series B Depositary Shares representing interests in the Series B Preferred Stock will not have the conversion right described below.

#### Conversion Rights

Upon the occurrence of a Delisting Event or a Change of Control, as applicable, each holder of Series B Depositary Shares representing interests in the Series B Preferred Stock will have the right (unless, prior to the Delisting Event Conversion Date or Change of Control Conversion Date, as applicable, we have provided or provide notice of our election to redeem the Series B Preferred Stock) to direct the depositary, on such holder’s behalf, to convert some or all of the Series B Preferred Stock underlying the Series B Depositary Shares held by such holder on the Delisting Event Conversion Date or Change of Control Conversion Date, as applicable into a number of shares of our common stock (or equivalent value of alternative consideration) per depositary share equal to the lesser of:

- the quotient obtained by dividing (1) the sum of the \$25.00 per depositary share liquidation preference plus the amount of any accumulated and unpaid dividends to, but not including, the Delisting Event Conversion Date or Change of Control Conversion Date, as applicable (unless the Delisting Event Conversion Date or Change of Control Conversion Date, as applicable is after a record date for a Series B Preferred Stock dividend payment and prior to the corresponding Series B Preferred Stock dividend payment date, in which case no additional amount for such accumulated and unpaid dividend will be included in this sum) by (2) the Common Stock Price (as defined herein); and
- 1.8671 (i.e., the Series B Share Cap), subject to certain adjustments;

and subject, in each case, to the conditions described in this prospectus supplement and the accompanying prospectus, including, under specified circumstances, an aggregate cap on the total number of shares of our common stock issuable upon conversion and to provisions for the receipt of alternative consideration.

If, prior to the Delisting Event Conversion Date or Change of Control Conversion Date, as applicable, we have provided or provide a redemption notice, whether pursuant to our special optional redemption right or our optional redemption right, holders of Series B Depositary Shares representing interests in the Series B Preferred Stock will not have any right to direct the depositary to convert the Series B Preferred Stock, and any Series B Preferred Stock subsequently selected for redemption that has been tendered for conversion will be redeemed on the related date of redemption instead of converted on the Delisting Event Conversion Date or Change of Control Conversion Date, as applicable.

Because each depositary share represents a 1/1000th interest in a share of the Series B Preferred Stock, the number of shares of common stock ultimately received for each depositary share will be equal to the number of shares of common stock received upon conversion of each share of Series B Preferred Stock divided by 1000. In the event that the conversion would result in the issuance of fractional shares of common stock, we will pay the holder of Series B Depositary Shares cash in lieu of such fractional shares.

Except as provided above in connection with a Delisting Event or Change of Control, shares of the Series B Preferred Stock are not convertible into or exchangeable for any other securities or property.

No Maturity, Sinking Fund or Mandatory Redemption	The Series B Preferred Stock underlying the Series B Depositary Shares does not have any stated maturity date and is not subject to mandatory redemption at the option of the holder or any sinking fund. We are not required to set aside funds to redeem the Series B Preferred Stock. Accordingly, the Series B Preferred Stock and Series B Depositary Shares will remain outstanding indefinitely unless we decide to redeem them pursuant to our optional redemption or special optional redemption rights, or they are converted in connection with a Delisting Event or Change of Control.
Limited Voting Rights	Holders of the Series B Depositary Shares representing interests in the Series B Preferred Stock generally will have no voting rights. However, if we do not pay dividends on any outstanding shares of Series B Preferred Stock for six or more quarterly dividend periods (whether or not declared or consecutive), holders of shares of the Series B Preferred Stock and the holders of preferred stock of all other classes and series ranking on parity with the Series B Preferred Stock with respect to payment of dividends and the distribution of assets upon liquidation, dissolution or winding up, and upon which like voting rights have been conferred, including our Series A Preferred Stock, and are exercisable, which we refer to as our parity preferred stock, and with which the holders of Series B Preferred Stock and all classes and series of parity preferred stock are entitled to vote together as a single class, voting together as a single class will be entitled to elect two additional directors to our Board of Directors to serve until all unpaid dividends have been fully paid or declared and set apart for payment. In addition, the affirmative vote of the holders of at least two-thirds of the outstanding shares of the Series B Preferred Stock and any other class or series of parity preferred stock with which the holders of Series B Preferred Stock are entitled to vote together as a single class, including our Series A Preferred Stock, is required for us to create, authorize or issue any class or series of stock ranking senior to the Series B Preferred Stock or to amend any provision of our charter so as to materially and adversely affect the terms of the Series B Preferred Stock. If the proposed charter amendments would materially and adversely affect the rights, preferences, privileges or voting powers of the Series B Preferred Stock disproportionately relative to any other class or series of parity preferred stock, the affirmative vote of the holders of at least two-thirds of the outstanding shares of the Series B Preferred Stock, voting as a separate class, is also required. In any matter in which the Series B Preferred Stock may vote, each share of Series B Preferred Stock shall be entitled to one vote. As a result, each depositary share will be entitled to 1/1000 <sup>th</sup> of a vote.
Listing	The Series B Depositary Shares are listed on Nasdaq under the symbol "RILYL."
Form	The Series B Depositary Shares will be issued and maintained in book-entry form registered in the name of the nominee of The Depositary Trust Company, except under limited circumstances.
Depositary	Continental Stock Transfer and Trust Company.

## Description of the Notes

The following is a summary of the material terms and provisions of the Notes. The description of the Notes are subject to and qualified in their entirety by reference to our Indenture dated as of May 7, 2019, as supplemented by the First Supplemental Indenture dated May 7, 2019, the Second Supplemental Indenture dated as of September 23, 2019, the Third Supplemental Indenture dated as of February 12, 2020, the Fourth Supplemental Indenture dated as of January 25, 2021, the Fifth Supplemental Indenture dated as of March 29, 2021, the Sixth Supplemental Indenture dated as of August 6, 2021 and the Seventh Supplemental Indenture dated as of December 3, 2021, which we refer to collectively as the “**2019 Indenture**,” between the Company and The Bank of New York Mellon Trust Company, N.A., trustee.

We use the term “trustee” to refer to The Bank of New York Mellon Trust Company, N.A., as trustee, under the 2019 Indenture.

Maturity	The 2024 Notes will mature on May 31, 2024, the 2025 Notes will mature on February 28, 2025, the 6.50% 2026 Notes will mature on September 30, 2026, the 5.50% 2026 Notes will mature on March 31, 2026, the 5.00% 2026 Notes will mature on December 31, 2026, the 6.00% 2028 Notes will mature on January 31, 2028 and the 5.25% 2028 Notes will mature on August 31, 2028, each unless redeemed prior to maturity.
Interest Rate and Payment Dates	6.75% interest per annum on the principal amount of the 2024 Notes, 6.375% interest per annum on the principal amount of the 2025 Notes, 6.50% interest per annum on the principal amount of the 6.50% 2026 Notes, 5.50% interest per annum on the principal amount of the 5.50% 2026 Notes, 5.00% interest per annum on the principal amount of the 5.00% 2026 Notes, 6.00% interest per annum on the principal amount of the 6.00% 2028 Notes and 5.25% interest per annum on the principal amount of the 5.25% 2028 Notes will accrue from the most recent interest payment date immediately preceding the date of issuance of the 2024 Notes, 2025 Notes, 6.50% 2026 Notes, 5.50% 2026 Notes, 5.00% 2026 Notes, 6.00% 2028 Notes and 5.25% 2028 Notes, respectively, except that Notes purchased after the record dates noted below, but prior to the interest payment date immediately following such record date (or if settlement of a purchase of Notes otherwise occurs after such record date but prior to the interest payment date immediately following such record date), such Notes will not begin to accrue interest until the interest payment date immediately following such record date. Interest will be paid quarterly in arrears on January 31, April 30, July 31 and October 31 of each year. The interest payable on each interest payment date will be paid only to holders of record of the Notes at the close of business on January 15, April 15, July 15 and October 15 of each year, as the case may be, immediately preceding the applicable interest payment date. As a general matter, holders of the Notes will not be entitled to receive any payments of principal on the Notes prior to the stated maturity date.
Guarantors	None.
Ranking	<p>The Notes will be our senior unsecured obligations and will rank equal in right of payment with all of our existing and future senior unsecured and unsubordinated indebtedness. The Notes will be effectively subordinated to all of our existing and future secured indebtedness to the extent of the value of the assets securing such indebtedness. The Notes will be structurally subordinated to all existing and future indebtedness (including trade payables) of our subsidiaries.</p> <p>The 2019 Indenture governing the Notes does not limit the amount of indebtedness that we or our subsidiaries may incur or whether any such indebtedness can be secured by our assets.</p>
Optional Redemption	<p>We may redeem the 2024 Notes for cash in whole or in part at any time at our option (i) on or after May 31, 2021 and prior to May 31, 2022, at a price equal to \$25.50 per note, plus accrued and unpaid interest to, but excluding, the date of redemption, (ii) on or after May 31, 2022 and prior to May 31, 2023, at a price equal to \$25.25 per note, plus accrued and unpaid interest to, but excluding, the date of redemption, and (iii) on or after May 31, 2023 and prior to maturity, at a price equal to 100% of their principal amount, plus accrued and unpaid interest to, but excluding, the date of redemption.</p> <p>We may redeem the 2025 Notes for cash in whole or in part at any time at our option (i) on or after February 28, 2021 and prior to February 28, 2022, at a price equal to \$25.75 per note, plus accrued and unpaid interest to, but excluding, the date of redemption, (ii) on or after February 28, 2022 and prior to February 28, 2023, at a price equal to \$25.50 per note, plus accrued and unpaid interest to, but excluding, the date of redemption, (iii) on or after February 28, 2023 and prior to February 29, 2024, at a price equal to \$25.25 per note, plus accrued and unpaid interest to, but excluding, the date of redemption, and (iv) on or after February 29, 2024 and prior to maturity, at a price equal to 100% of their principal amount, plus accrued and unpaid interest to, but excluding, the date of redemption.</p>

We may redeem the 6.50% 2026 Notes for cash in whole or in part at any time at our option (i) on or after September 30, 2022 and prior to September 30, 2023, at a price equal to \$25.50 per note, plus accrued and unpaid interest to, but excluding, the date of redemption, (ii) on or after September 30, 2023 and prior to September 30, 2024, at a price equal to \$25.25 per note, plus accrued and unpaid interest to, but excluding, the date of redemption, and (iii) on or after September 30, 2024 and prior to maturity, at a price equal to 100% of their principal amount, plus accrued and unpaid interest to, but excluding, the date of redemption.

Prior to January 1, 2026 (the “**5.50% 2026 Notes Par Call Date**”), we may, at our option, redeem the 5.50% 2026 Notes, for cash in whole or in part at any time, at a redemption price equal to 100% of the principal amount of the Notes to be redeemed, plus the 5.50% 2026 Notes Make-Whole Amount, if any, plus accrued and unpaid interest to, but excluding, the date of redemption. On or after January 1, 2026 and prior to maturity, we may, at our option, redeem the 5.50% 2026 Notes, for cash in whole or in part at any time at a redemption price equal to 100% of their principal amount, plus accrued and unpaid interest to, but excluding, the date of redemption.

Prior to October 2, 2026 (the “**5.00% 2026 Notes Par Call Date**”), we may, at our option, redeem the 5.00% 2026 Notes, for cash in whole or in part at any time, at a redemption price equal to 100% of the principal amount of the Notes to be redeemed, plus the 5.00% 2026 Notes Make-Whole Amount, if any, plus accrued and unpaid interest to, but excluding, the date of redemption. On or after October 2, 2026 and prior to maturity, we may, at our option, redeem the 5.00% 2026 Notes for cash in whole or in part at any time at a redemption price equal to 100% of their principal amount, plus accrued and unpaid interest to, but excluding, the date of redemption.

We may redeem the 6.00% 2028 Notes for cash in whole or in part at any time at our option (i) on or after January 31, 2022 and prior to January 31, 2023, at a price equal to \$25.75 per note, plus accrued and unpaid interest to, but excluding, the date of redemption, (ii) on or after January 31, 2023 and prior to January 31, 2024, at a price equal to \$25.50 per note, plus accrued and unpaid interest to, but excluding, the date of redemption, (iii) on or after January 31, 2024 and prior to January 31, 2025, at a price equal to \$25.25 per note, plus accrued and unpaid interest to, but excluding, the date of redemption, and (iv) on or after January 31, 2025 and prior to maturity, at a price equal to 100% of their principal amount, plus accrued and unpaid interest to, but excluding, the date of redemption.

At any time prior to August 31, 2023, we may redeem the 5.25% 2028 Notes for cash in whole or in part at any time at our option at a redemption price equal to 100.0% of the principal amount thereof plus the 5.25% 2028 Notes Make-Whole Amount as of, and accrued and unpaid interest to, but excluding, the date of redemption. In addition, we may redeem the 5.25% 2028 Notes for cash in whole or in part at any time at our option (i) on or after August 31, 2023 and prior to August 31, 2024, at a price equal to \$25.75 per note, plus accrued and unpaid interest to, but excluding, the date of redemption, (ii) on or after August 31, 2024 and prior to August 31, 2025, at a price equal to \$25.50 per note, plus accrued and unpaid interest to, but excluding, the date of redemption, (iii) on or after August 31, 2025 and prior to August 31, 2026, at a price equal to \$25.25 per note, plus accrued and unpaid interest to, but excluding, the date of redemption, and (iv) on or after August 31, 2026 and prior to maturity, at a price equal to 100% of their principal amount, plus accrued and unpaid interest to, but excluding, the date of redemption.

As used herein:

“**5.50% 2026 Make-Whole Amount**” means, in connection with any optional redemption of any 5.50% 2026 Note, the excess, if any, of (i) the sum of the present values, as of the date of such redemption, of the remaining scheduled payments of principal of, and interest (exclusive of interest accrued to, but excluding, the date of redemption) on, such 5.50% 2026 Note, assuming such 5.50% 2026 Note matured on, and that accrued and unpaid interest on such 5.50% 2026 Note was payable through, the 5.50% 2026 Notes Par Call Date, determined by discounting, on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months), such principal and interest at the Reinvestment Rate (as defined below) (determined on the third business day preceding the date of redemption) over (ii) the aggregate principal amount of such 5.50% 2026 Notes being redeemed.

**“5.00% 2026 Make-Whole Amount”** means, in connection with any optional redemption of any 5.00% 2026 Note, the excess, if any, of (i) the sum of the present values, as of the date of such redemption, of the remaining scheduled payments of principal of, and interest (exclusive of interest accrued to, but excluding, the date of redemption) on, such 5.00% 2026 Note, assuming such 5.00% 2026 Note matured on, and that accrued and unpaid interest on such 5.00% 2026 Note was payable through, the 5.00% 2026 Notes Par Call Date, determined by discounting, on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months), such principal and interest at the Reinvestment Rate (as defined below) (determined on the third business day preceding the date of redemption) over (ii) the aggregate principal amount of such 5.00% 2026 Notes being redeemed.

**“5.25% 2028 Make-Whole Amount”** means, in connection with any optional redemption of any 5.25% 2028 Note, the excess, if any, of (i) the sum of the present values, as of the date of redemption, of the remaining scheduled payments of principal (including the applicable redemption price of such 5.25% 2028 Note at August 31, 2023) of, and interest (exclusive of interest accrued to, but excluding, the date of redemption) on, such 5.25% 2028 Note, assuming such 5.25% 2028 Note matured on, and that accrued and unpaid interest on such 5.25% 2028 Note was payable through, August 31, 2023, determined by discounting, on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months), such principal and interest at the Reinvestment Rate (determined on the third business day preceding the date of redemption) over (ii) the aggregate principal amount of such 5.25% 2028 Notes being redeemed.

**“Reinvestment Rate”** means, 0.500%, or 50 basis points, plus the arithmetic mean (rounded to the nearest one-hundredth of one percent) of the yields displayed for each day in the preceding calendar week published in the most recent Statistical Release under the caption “Treasury constant maturities” for the maturity (rounded to the nearest month) corresponding to the remaining life to maturity of the 5.50% 2026 Notes, 5.00% 2026 Notes or 5.25% 2028 Notes, as applicable (assuming that the 5.50% 2026 Notes matured on the 5.50% 2026 Notes Par Call Date or assuming that the 5.00% 2026 Notes matured on the 5.00% 2026 Notes Par Call Date or assuming that the 5.25% 2028 Notes matured on August 31, 2023, as applicable) as of the date of redemption. If no maturity exactly corresponds to such remaining life to maturity, yields for the two published maturities most closely corresponding to such remaining life to maturity shall be calculated pursuant to the immediately preceding sentence and the Reinvestment Rate shall be interpolated or extrapolated from such yields on a straight-line basis, rounding in each of such relevant periods to the nearest month. For the purpose of calculating the Reinvestment Rate, the most recent Statistical Release published prior to the date of determination of the Reinvestment Rate shall be used.

**“Statistical Release”** means that statistical release designated “H.15” or any successor publication that is published daily by the Federal Reserve System and that establishes yields on actively traded United States Treasury securities adjusted to constant maturities, or, if such statistical release (or a successor publication) is not published at the time of any determination under the Indenture, then such other reasonably comparable index that shall be designated by us.

Sinking Fund	The Notes will not be subject to any sinking fund (i.e., no amounts will be set aside by us to ensure repayment of the Notes at maturity).
Events of Default	Events of default generally will include failure to pay principal, failure to pay interest, failure to observe or perform any other covenant or warranty in the Notes or in the 2019 Indenture, and certain events of bankruptcy, insolvency or reorganization.
Certain Covenants	The 2019 Indenture that governs the Notes contains certain covenants, including, but not limited to, restrictions on our ability to merge or consolidate with or into any other entity.
No Financial Covenants	The 2019 Indenture relating to the Notes does not contain financial covenants.
Modification or Waiver	<p>The holders of not less than a majority of the outstanding principal amount of the applicable series of Notes, may on behalf of the holders of all the Notes waive any past default with respect to such Notes, other than (i) a default in the payment of principal or interest on such series of Notes, when such payments are due and payable (other than by acceleration), or (ii) in respect of a covenant that cannot be modified or amended without the consent of each holder of such series of Notes.</p> <p>Certain changes to the Notes require the specific approval of each holder of the Notes, including changing the stated maturity, reducing the principal amount or rate of interest, changing the place of payment, impairing the right to institute suit for the enforcement of any payment, reducing the percentage in principal amount of holders of the Notes whose consent is needed to modify or amend the 2019 Indenture and reducing the percentage in principal amount of holders of the Notes whose consent is needed to waive compliance with certain provisions of the 2019 Indenture or to waive certain defaults.</p>
Additional Notes	We may create and issue additional notes ranking equally and ratably with the 2024 Notes, 2025 Notes, 6.50% 2026 Notes, 5.50% 2026 Notes, 5.00% 2026 Notes, 6.00% 2028 Notes and 5.25% 2028 Notes, in all respects, so that such additional notes will constitute and form a single series with the 2024 Notes, 2025 Notes, 6.50% 2026 Notes, 5.50% 2026 Notes, 5.00% 2026 Notes, 6.00% 2028 Notes and 5.25% 2028 Notes, as applicable, and will have the same terms as to status, redemption or otherwise (except the price to public, the issue date and, if applicable, the initial interest payment date) as such Notes. We will not issue any such additional notes unless such issuance would constitute a “qualified reopening” for U.S. federal income tax purposes.
Listing	The 2024 Notes, 2025 Notes, 6.50% 2026 Notes, 5.50% 2026 Notes, 5.00% 2026 Notes, 6.00% 2028 Notes and 5.25% 2028 Notes, when issued, are or will be quoted on Nasdaq under the symbols “RILYO,” “RILYM,” “RILYN,” “RILYK,” “RILYG,” “RILYT” and “RILYZ,” respectively.
Form and Denomination	The Notes are issued in book-entry form in minimum denominations of \$25 and integral multiples in excess thereof. The Notes will be represented by a permanent global certificate deposited with the trustee as custodian for The Depository Trust Company (“DTC”) and registered in the name of a nominee of DTC. Beneficial interests in any of the Notes will be shown on, and transfers will be effected only through, records maintained by DTC and its direct and indirect participants and any such interest may not be exchanged for certificated securities, except in limited circumstances.
Trustee	The Bank of New York Mellon Trust Company, N.A. under the 2019 Indenture relating to the Notes.

**THIRD AMENDMENT TO CREDIT AGREEMENT**

THIS THIRD AMENDMENT TO CREDIT AGREEMENT (this "Amendment"), dated as of December 16, 2021 (the "Third Amendment Effective Date"), is entered into by and among BRPI Acquisition Co LLC, a Delaware limited liability company, United Online, Inc., a Delaware corporation, YMax Corporation, a Delaware corporation (collectively, the "Borrowers"), the Affiliates of the Borrowers identified on the signature pages hereto (collectively, the "Secured Guarantors"), the financial institutions identified on the signature pages hereto (collectively, the "Lenders"), and Banc of California, N.A., as Administrative Agent (the "Administrative Agent"), with reference to the following facts:

**RECITALS**

A. The Borrowers, the Secured Guarantors, the Lenders, and the Administrative Agent are parties to a Credit Agreement dated as of December 19, 2018, as amended by a First Amendment to Credit Agreement and Joinder dated as of January 30, 2019, and that certain Second Amendment to Credit Agreement dated as of December 31, 2020 (collectively, the "Credit Agreement").

B. The parties wish to amend the Credit Agreement to make certain modifications as set forth below.

NOW, *THEREFORE*, the parties hereby agree as follows:

1. **Defined Terms**. All initially capitalized terms used in this Amendment (including, without limitation, in the recitals to this Amendment) without definition shall have the respective meanings assigned to such terms in the Credit Agreement.

2. **Addition of New Definitions**. Section 1.01 of the Credit Agreement is hereby amended and supplemented by adding the following definitions therein in appropriate alphabetical order:

"Index": initially, the Term SOFR Reference Rate; provided, however, that the Index is subject to change pursuant to Section 3.03 of this Agreement.

"Relevant Governmental Body": means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York or, in each case, any successor thereto.

"SOFR": means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

"SOFR Loans": Term Loans the rate of interest applicable to which is based upon Term SOFR.

“SOFR Administrator”: means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“Spread Adjustment”: the per annum margin set forth below, as determined by the applicable Interest Period:

<u>Interest Period</u>	<u>Spread Adjustment</u>
One month	0.11448%
Three months	0.26161%
Six months	0.42826%

Notwithstanding the foregoing, if the SOFR Administrator, the Term SOFR Administrator, the Relevant Governmental Body or any other Governmental Authority increases the Spread Adjustment with respect to any Interest Period, then, at Agent’s option, the applicable Spread Adjustment hereunder shall increase by the same amount upon delivery of written notice thereof from Agent to Borrowers.

“Term SOFR”: means the Term SOFR Reference Rate on the day (such day, the “Periodic Term SOFR Determination Day.”) that is two (2) Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and the Index has not been replaced under Section 3.03 of this Agreement, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding Business Day is not more than three (3) Days prior to such Periodic Term SOFR Determination Day; provided, further, that if Term SOFR determined as provided above shall ever be less than zero, then Term SOFR shall be deemed to be zero.

“Term SOFR Administrator”: means the CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR selected by the Administrative Agent in its reasonable discretion).

“Term SOFR Reference Rate”: means the thirty-day average Secured Overnight Financing Rate per annum, as determined by the Term SOFR Administrator.

“Third Amendment Effective Date” means December 16, 2021, the effective date of the Third Amendment to Credit Agreement by and among the Borrowers, the Secured Guarantors, the Lenders and the Administrative Agent.

3. **Amendment of Current Definitions.** Section 1.01 of the Credit Agreement is hereby further amended by amending and restating the definitions of “Applicable Margin,” “Business Day,” “Consolidated Fixed Charge Coverage Ratio,” and “Permitted Distributions” so that they read in their entirety as follows (deleted text is indicated by ~~strike through~~ formatting; added text is indicated in ***bold, italicized and underscored*** type):

“Applicable Margin” means, for any day, the interest rate margin per annum set forth below opposite the applicable Level then in effect (based on the Consolidated Total Funded Debt Ratio) to be added to ~~the Eurodollar Adjusted Rate~~ ***Term SOFR***:

Level	Consolidated Total Funded Debt Ratio	Applicable Margin
1	> 1.50:1.00	3.25%
2	> 1.00:1.00 and ≤ 1.50:1.00	3.00%
3	≤ 1.00:1.00	2.75%

Any increase or decrease in the Applicable Margin resulting from a change in the Consolidated Total Funded Debt Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(b); provided, however, that if a Compliance Certificate is not delivered when due in accordance with such Section, then, upon the request of the Required Lenders, Pricing Level 1 shall apply, in each case as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and in each case shall remain in effect until the first Business Day following the date on which such Compliance Certificate is delivered.

Notwithstanding anything to the contrary contained in this definition, the determination of the Applicable Margin for any period shall be subject to the provisions of Section 2.10(b). Any adjustment in the Applicable Margin shall be applicable to all Credit Extensions then existing or subsequently made or issued.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state of California ~~and any such day that is also a London Banking Day~~, ***provided, however, that if such day relates to a SOFR Loan, the term “Business Day” excludes any day on which the Securities Industry and Financial Markets Association (SIFMA) recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.***

“Consolidated Fixed Charge Coverage Ratio” means, as of any date of determination, the ratio of (a) (i) Consolidated Adjusted EBITDA less (ii) the aggregate amount of all non-financed cash Capital Expenditures, less (iii) the aggregate amount of federal, state, local and foreign income taxes paid in cash, less (iv) the aggregate amount of cash distributions or dividends, in each case, of or by Holdco and its Subsidiaries for the most recently completed Measurement Period, excluding any distribution or dividend of the type described in clause (ii) of the definition of “Permitted Distributions” and excluding any Permitted Distributions made on the Second Amendment Effective Date **and Third Amendment Effective Date** to (b) the sum of (i) Consolidated Interest Charges to the extent paid in cash for the most recently completed Measurement Period, but excluding any such payments to the extent refinanced through the incurrence of additional Indebtedness otherwise expressly permitted under Section 7.02 (other than the Term Loans provided by the Lenders to the Borrowers on the Second Amendment Effective Date), plus (ii) the current portion of Capitalized Lease obligations, plus (iii) the lesser of the outstanding principal amount of the Term Loans and the Term Loan Reduction Installment, ~~in each case~~ for the most recently completed Measurement Period.

“Permitted Distributions” means , the aggregate cash distributions or dividends by the Borrowers to Parent and/or Ultimate Parent being made:

(i) on the Closing Date in accordance with Section 6.11;

(ii) with the proceeds of any Optional Loans borrowed after the Closing Date in accordance with Section 6.11; and

(iii) otherwise from time to time but, in the case of this clause (iii) only, also subject to all of the following additional requirements, (a) in no event prior to making any mandatory prepayment, if any, due under Section 2.7(e) based upon Consolidated Excess Cash Flow for the immediately preceding fiscal year and (b) in no event in an aggregate amount in excess of as applicable, (1) \$30,000,000 in one distribution on the Second Amendment Effective Date, (2) ~~\$0 in 2021~~ **\$15,000,000 in one distribution on the Third Amendment Effective Date in 2021**, (3) \$5,000,000 in 2022, (4) \$8,000,000 in 2023, (5) \$8,000,000 in 2024, (6) \$8,000,000 in 2025, which are, in turn, distributed to the holders of Parent’s and/or Ultimate Parent’s Equity Interests so long as the Borrowers shall have delivered to Administrative Agent, in form and substance reasonably satisfactory to the Administrative Agent, (x) except with respect to the distributions on the Second Amendment Effective Date and **Third Amendment Effective Date**, the audited financial statements required by Section 6.01(b) for Borrowers’ immediately preceding fiscal year and (y) evidence that immediately before and after giving effect to such dividends or distributions (A) no Event of Default shall have occurred and be continuing at the time thereof or result therefrom, (B) the Loan Parties are in Pro Forma Compliance with each of the financial covenants set forth in Section 7.11 and (C) the Borrowers have aggregate balance sheet cash (or solely in the case of the distribution in the amount of \$30,000,000 permitted to be made on the Second Amendment Effective Date, a combination of aggregate balance sheet cash and unused Term Loan proceeds) of at least \$5,000,000.

4. **Deletion of Certain Definitions.** Section 1.01 of the Credit Agreement is hereby amended to delete in their entirety the definitions of “Eurodollar Rate,” “Eurodollar Adjusted Rate,” “Eurodollar Reserve Requirements,” “LIBOR Rate,” and “London Banking Day.”

5. **Replacement of Eurodollar Rate with Term SOFR.**

A. **Amendment of Section 2.01.** Section 1.07 of the Credit Agreement is hereby amended and restated so that it reads in its entirety as follows (deleted text is indicated by ~~strikethrough~~ formatting; added text is indicated in ***bold, italicized and underscored*** type):

The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of “~~Eurodollar Rate~~” ***“Term SOFR”*** or with respect to any comparable or successor rate thereto.

B. **Amendment of Section 2.01(b).** The Credit Agreement is hereby amended by amending and restating Section 2.01(b) so that it reads in its entirety as follows (deleted text is indicated by ~~strikethrough~~ formatting; added text is indicated in bold, italicized and underscored type):

(b) Subject to Sections 3.02 and 3.03, all Term Loans shall be ~~LIBOR~~ ***SOFR*** Loans.

C. **Amendment of Section 2.10.** Section 2.10(a) of the Credit Agreement is hereby amended and restated to read in its entirety as follows (deleted text is indicated by ~~strikethrough~~ formatting; added text is indicated in ***bold, italicized and underscored*** type):

“(a) **Interest.** Subject to the provisions of Section 2.10(b), each Term Loan shall bear interest on the outstanding principal amount thereof for each day during each Interest Period from the applicable borrowing date at a rate per annum equal to the greater of: (i) ~~the Eurodollar Rate~~ ***Term SOFR*** for such Interest Period, ~~plus~~ the Applicable Margin, ***plus the Spread Adjustment*** or (ii) 3.00%.”

D. Amendment of Section 3.02. The Credit Agreement is hereby amended by amending and restating Section 3.02 to read in its entirety as follows (deleted text is indicated by ~~strike through~~ formatting; added text is indicated in **bold, italicized and underscored** type):

### 3.02 Illegality.

If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its Lending Office to maintain its Term Loan as a loan whose interest is determined by reference to ~~the Eurodollar Rate~~ **Term SOFR**, or to determine or charge interest rates based upon ~~the Eurodollar Rate~~ **Term SOFR**, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrowers through the Administrative Agent, (a) any obligation of such Lender to continue its Term Loan as a loan whose interest is determined by reference to ~~the Eurodollar Rate~~ **Term SOFR** shall be suspended until such Lender notifies the Administrative Agent and the Borrowers that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (i) the Borrowers shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert the Term Loan of such Lender to a loan whose interest is determined by reference to the Base Rate either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain its Term Loan as a loan whose interest is determined by reference to ~~the Eurodollar Rate~~ **Term SOFR** to such day, or immediately, if such Lender may not lawfully continue to maintain its Term Loan as a loan whose interest is determined by reference to the ~~Eurodollar Rate~~ **Term SOFR** and (ii) if such notice asserts the illegality of such Lender determining or charging interest rates based upon ~~the Eurodollar Rate~~ **Term SOFR**, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon ~~the Eurodollar Rate~~ **Term SOFR**. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted.

E. Amendment of Section 3.03. The Credit Agreement is hereby amended by amending and restating Section 3.03 in its entirety to read as follows:

### 3.03 Index Cessation.

(a) If at any time Administrative Agent reasonably believes or reasonably determines that (i) the pre-replacement Index has been or will imminently be discontinued for any reason, (ii) the pre-replacement Index will not adequately and fairly reflect the cost to Administrative Agent and the Lenders of maintaining or funding loans based on the pre-replacement Index, (iii) the pre-replacement Index is not widely used as a benchmark Index or is no longer an industry-accepted reference rate for similarly situated loans to the Term Loans, (iv) adequate and fair means do not exist for Administrative Agent to ascertain the pre-replacement Index or the pre-replacement Index is no longer being published by a reliable source reasonably available to and used by Administrative Agent, (v) regulatory changes (meaning a change in any applicable law, treaty, rule, regulation or guideline, or the interpretation or administration thereof, by the administrator of the relevant benchmark or its regulatory supervisor, any governmental authority, central bank or other fiscal, monetary or other authority having jurisdiction over each Lender or its lending office) make it unlawful or commercially unreasonable for the Administrative Agent to use the pre-replacement Index as the Index for purposes of determining the interest rate or (vi) the administrator of the pre-replacement Index or a governmental authority having jurisdiction over Administrative Agent and the Lenders has made a public statement identifying a specific date after which the pre-replacement Index shall no longer be used for determining interest rates for loans, then Administrative Agent shall use reasonable efforts to select a replacement Index that Administrative Agent in good faith believes is a practical means of preserving the parties' intent relative to the economics of the pre-replacement Index.

(2) In the event that Administrative Agent determines a replacement Index, which determination shall be conclusive, in order to account for the relationship of the replacement Index to the pre-replacement Index, Administrative Agent shall also determine, which determination shall be conclusive, any change necessary to the percentage points ("Margin") to be added or subtracted to the replacement Index necessary to ensure that the replacement method will measure interest rates in a manner similar to the pre-replacement Index, and for the avoidance of doubt, any such change to the Margin shall not reduce the interest rate in effect as of the date of such Index replacement.

(3) In selecting such replacement Index and Margin, Administrative Agent may give due consideration to (i) the recommendation of a replacement Index or Margin adjustment, or method of calculating or determining such replacement Index or Margin by the regulatory entities with jurisdiction over Administrative Agent and Lenders or a committee officially endorsed or convened by the regulatory entities, (ii) any evolving or industry-accepted means for determining an Index and Margin, or method of calculating or determining such Index and Margin, for the replacement of the Index and Margin with the replacement Index and Margin, (iii) the then prevailing market convention for determining an Index rate of interest for commercial loans that are comparable to Administrative Agent's commercial loans at that time, and (iv) a similar rate Index from other sources deemed to be reasonably reliable by and available to Administrative Agent.

(4) To the extent a replacement Index and Margin are so designated, the replacement Index and Margin shall be applied in a manner consistent with market practice; and, to the extent such market practice is not administratively feasible for Administrative Agent, such replacement Index and Margin shall be applied in a manner as otherwise reasonably determined by Administrative Agent.

(5) Reasonably promptly after such determination by Administrative Agent, Administrative Agent may, by notice to Borrowers, amend this Agreement (without the need for any action or consent by Borrowers) (i) to replace the Index with the replacement Index selected, (ii) amend the Margin to be added to the Index, and (iii) state the date upon which the replacement Index and Margin shall be effective. Upon the operative date, the replacement Index and Margin shall then be deemed the Index and Margin for all purposes of this Agreement. To the extent practicable, the interest rate based on the replacement Index plus or subtract the Margin, as it may be adjusted, will be substantially equivalent to the interest rate plus or subtract the Margin previously in effect as of the date of the replacement of the Index and Margin.

(6) Borrowers understand that Administrative Agent may make loans to other borrowers based on other rates as well. A different replacement Index and Margin may be selected for different types of loans and transactions. Borrowers acknowledge that the discontinuation of pre-replacement Index is a future event over which neither Administrative Agent nor Borrowers have influence but which will necessarily affect such Index and Margin. Borrowers acknowledge that the interest rate resulting from replacement Index and Margin will differ from pre-replacement Index and Margin.

(7) Borrowers agree that Administrative Agent shall not be liable in any manner for its selection and implementation of a replacement Index and Margin, provided that Administrative Agent makes such selection in good faith and implementation consistent with market practice, or if not feasible, as reasonably determined by Administrative Agent.

(8) The replacement Index and Margin shall remain in effect from the effective date set forth in such notice until the maturity date, unless such an instance occurs where the replacement Index is no longer available, then the same process described in this section shall apply.

F. Amendment of Section 3.04. Section 3.04 of the Credit Agreement is hereby amended by (i) deleting “;**Reserves on Eurodollar Rate Loans**” from the heading thereof, (ii) deleting “the London” from clause (a) (iii) thereof, and (iii) amending and restating clause (e) thereof in its entirety to read as follows: “(e) **Reserved.**”

G. Amendment of Section 3.05. The Credit Agreement is hereby amended by amending and restating the last paragraph of Section 3.05 to read in its entirety as follows (deleted text is indicated by strikethrough formatting; added text is indicated in ***bold, italicized and underscored*** type):

For purposes of calculating amounts payable by the Borrowers to the Lenders under this Section 3.05, each Lender shall be deemed to have funded its Term Loan at ***Term SOFR*** ~~the Eurodollar Rate~~ for such Term Loan by a matching deposit or other borrowing in ~~the London~~ ***an*** interbank ~~eurolollar~~ market for a comparable amount and for a comparable period, whether or not such Term Loan was in fact so funded.

6. Mandatory Prepayments from Consolidated Excess Cash Flow. Section 2.07 of the Credit Agreement is hereby amended by amending and restating subsection (f) thereof as follows (deleted text from subsection (f) is indicated by ~~strikethrough~~ formatting; added text to subsection (f) is indicated in ***bold, italicized and underscored*** type):

“(f) The Borrowers shall prepay the outstanding principal amount of the Term Loans in an amount equal to 25% of Consolidated Excess Cash Flow for each fiscal year commencing with the fiscal year ending December 31, 2020 (***but excluding the fiscal year ending December 31, 2021***), ~~provided that~~ any voluntary prepayment of the Term Loans made by the Borrowers pursuant to Section 2.06 that is applied to the principal amount of the Term Loans in the inverse order of maturity shall be credited toward, and shall reduce dollar-for dollar, the amount of the Borrowers’ required mandatory principal payments pursuant to this Section 2.07(f). Each mandatory prepayment amount hereunder shall be payable within five (5) days after the Borrowers’ delivery to the Administrative Agent of the audited financial statements referred to in and required by Section 6.01(b) for such fiscal year but in any event not later than one hundred twenty-five (125) days after the end of each such fiscal year.

7. Amendment of Exhibit O. Exhibit O of the Credit Agreement is hereby amended to replace the reference to “Eurodollar Rate Loans” with “SOFR Loans”.

8. Commitment Fee for Term Loans. On the Third Amendment Effective Date, the Borrowers shall pay to the Administrative Agent, for the ratable benefit of the Lenders, a one-time, non-refundable and fully earned commitment fee equal to fifteen (15) basis points ~~times~~ the aggregate outstanding principal amount of the Term Loans as of the Third Amendment Effective Date (~~i.e.~~, a fee of \$88,374.41).

9. **Conditions Precedent.** This Amendment shall be effective on the Third Amendment Effective Date subject to the satisfaction of each of the following conditions:

(i) **This Amendment.** The Administrative Agent shall have received this Amendment, duly executed by the Borrowers, the Secured Guarantors, and the Lenders;

(ii) **Officer's Certificate.** The Administrative Agent shall have received an Officer's Certificate dated the Third Amendment Effective Date, certifying as to the Organization Documents of each Borrower (which, to the extent filed with a Governmental Authority, shall be certified as of a recent date by such Governmental Authority), the resolutions of the governing body of each Borrower, the good standing, existence or its equivalent of each Borrower and of the incumbency (including specimen signatures) of the Responsible Officers of each Borrower;

(iii) **Acknowledgment of Guaranties by Parent and Ultimate Parent.** Parent and Ultimate Parent shall have executed the Acknowledgment of Parent and Ultimate Parent Guarantors attached to this Amendment;

(iv) **Fees.** The Administrative Agent shall have received payment from Borrowers, for the benefit of the Lenders, of the Commitment Fee required by Section 9 hereof, and the Administrative Agent shall have received all fees owing pursuant to a separate fee letter agreement between the Administrative Agent and the Borrowers;

(v) **Expenses.** The Administrative Agent shall have received payment from the Borrowers of all costs and expenses (including, without limitation, the reasonable fees and expenses of Buchalter, P.C., outside counsel to the Administrative Agent) incurred by the Administrative Agent in connection with this Amendment, to the extent invoiced on or before the Third Amendment Effective Date;

(vi) **Representations and Warranties.** The representations and warranties of the Borrowers and each other Loan Party contained in Article II or Article V of the Credit Agreement or in any other Loan Document shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein) on and as of the Third Amendment Effective Date, except (i) that for purposes of this Section 4.01(p), the representations and warranties contained in Sections 5.05(a) and (b) shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(b), respectively; and (ii) to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct in all material respects as of such earlier date;

(vii) **Default.** No Default shall exist, or would result from the Term Loans or from the application of the proceeds thereof;

(viii) **Other Documents.** All other documents provided for herein or which the Administrative Agent or any other Lender may reasonably request or require; and

(ix) **Additional Information.** Such additional information and materials which the Administrative Agent and/or any Lender shall reasonably request or require.

10. **Reaffirmation and Ratification.** The Borrowers and the Secured Guarantors hereby reaffirm, ratify and confirm the Obligations under the Credit Agreement and acknowledge that all of the terms and conditions of the Credit Agreement, as amended hereby, remain in full force and effect.

11. **Integration.** This Amendment constitutes the entire agreement of the parties in connection with the subject matter hereof and cannot be changed or terminated orally. All prior agreements, understandings, representations, warranties and negotiations regarding the subject matter hereof, if any, are merged into this Amendment.

12. **Counterparts; Electronic Signatures.** This Amendment may be executed in multiple counterparts, each of which when so executed and delivered shall be deemed an original, and all of which, taken together, shall constitute but one and the same agreement. Delivery of an executed counterpart of a signature page of this Amendment by facsimile or in electronic (*i.e.*, “pdf” or “tif”) format shall be effective as delivery of a manually executed counterpart of this Amendment. The parties may deliver executed copies of the documents required by Section 12 to the Administrative Agent on the Third Amendment Effective Date. The parties shall deliver the originals of such documents to the Administrative Agent no later than thirty (30) days after the Third Amendment Effective Date.

13. **Governing Law.** This Amendment shall be governed by, and construed and enforced in accordance with, the internal laws (as opposed to the conflicts of law principles) of the State of California.

*[Rest of page intentionally left blank; signature pages follow]*

IN WITNESS WHEREOF, the parties hereto have executed this Amendment by their respective duly authorized officers as of the date first above written.

**BORROWERS:**

**BRPI ACQUISITION CO LLC,**  
a Delaware limited liability company

By: /s/ Kenny Young

Name: Kenny Young

Title: CEO

**UNITED ONLINE, INC.,**  
a Delaware corporation

By: /s/ Kenny Young

Name: Kenny Young

Title: CEO

**YMAX CORPORATION,**  
a Delaware corporation

By: /s/ Kenny Young

Name: Kenny Young

Title: CEO

Third Amendment to Credit Agreement

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**SECURED GUARANTORS:**

**NETZERO, INC.,**  
a Delaware corporation

By: /s/ Ananth Velupillai  
Name: Ananth Velupillai  
Title: President

**JUNO ONLINE SERVICES, INC.,**  
a Delaware corporation

By: /s/ Ananth Velupillai  
Name: Ananth Velupillai  
Title: President

**JUNO INTERNET SERVICES, INC.,**  
a Delaware corporation

By: /s/ Ananth Velupillai  
Name: Ananth Velupillai  
Title: President

**CLASSMATES MEDIA CORPORATION,**  
a Delaware corporation

By: /s/ Ananth Velupillai  
Name: Ananth Velupillai  
Title: President

**NETZERO MODECOM, INC.,**  
a Delaware corporation

By: /s/ Ananth Velupillai  
Name: Ananth Velupillai  
Title: President

Third Amendment to Credit Agreement

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**NETZERO WIRELESS, INC.,**  
a Delaware corporation

By: /s/ Ananth Veluppillai  
Name: Ananth Veluppillai  
Title: President

**UNITED ONLINE ADVERTISING NETWORK, INC.,**  
a Delaware corporation

By: /s/ Ananth Veluppillai  
Name: Ananth Veluppillai  
Title: President

**UNITED ONLINE WEB SERVICES,**  
a Delaware corporation

By: /s/ Ananth Veluppillai  
Name: Ananth Veluppillai  
Title: President

**MAGICJACK HOLDINGS CORPORATION,**  
a Delaware corporation

By: /s/ Ananth Veluppillai  
Name: Ananth Veluppillai  
Title: President

**BROADSMART HOLDING CO INC.,**  
a Delaware corporation

By: /s/ Ananth Veluppillai  
Name: Ananth Veluppillai  
Title: President

Third Amendment to Credit Agreement

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**MAGICJACK VOIP SERVICES, LLC,**  
a Delaware limited liability company

By: /s/ Ananth Veluppillai  
Name: Ananth Veluppillai  
Title: President

**MAGICJACK LP,**  
a Delaware limited partnership

By: MAGICJACK HOLDINGS CORPORATION,  
its General Partner

By: /s/ Ananth Veluppillai  
Name: Ananth Veluppillai  
Title: President

**YMAX COMMUNICATIONS CORP. OF VIRGINIA,**  
a Virginia corporation

By: /s/ Ananth Veluppillai  
Name: Ananth Veluppillai  
Title: President

**MAGICJACK SMB, INC.,**  
a Florida corporation

By: /s/ Ananth Veluppillai  
Name: Ananth Veluppillai  
Title: President

Third Amendment to Credit Agreement

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**ADMINISTRATIVE AGENT:**

**BANC OF CALIFORNIA, N.A.,**  
as Administrative Agent

By: /s/ Carlos Ramos

Name: Carlos Ramos

Title: SVP – Market Manager

Third Amendment to Credit Agreement

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**LENDERS:**

**BANC OF CALIFORNIA, N.A.**

By: /s/ Carlos Ramos

Name: Carlos Ramos

Title: SVP – Market Manager

Third Amendment to Credit Agreement

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**UMPQUA BANK**

By: /s/ Justin Dargavel

Name: Justin Dargavel

Title: Senior Vice President

Third Amendment to Credit Agreement

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**BANKUNITED, N.A.**

By: /s/ Arthur Rhatigan

Name: Arthur Rhatigan

Title: SVP

Third Amendment to Credit Agreement

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**BANK HAPOALIM B.M.**

By: /s/ John Yoler

Name: John Yoler, EVP

Title:

By: /s/ Thomas J. Vigna

Name: Thomas J. Vigna

Title: SVP

Third Amendment to Credit Agreement

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**CITY NATIONAL BANK**

By: /s/ Sandy Lee

Name: Sandy Lee

Title: Senior Vice President

Third Amendment to Credit Agreement

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**ACKNOWLEDGMENT OF PARENT AND  
ULTIMATE PARENT GUARANTORS**

The undersigned (the "Parent and Ultimate Parent Guarantors") hereby acknowledge and agree to the attached Third Amendment to Credit Agreement (the "Third Amendment"), including, without limitation, the Term Loans to me made by the Lenders to the Borrowers thereunder. The Parent and Ultimate Parent Guarantors acknowledge and reaffirm their obligations owing to the Secured Parties under their respective unconditional guaranties (collectively, the "Guaranties"), and the Parent and Ultimate Parent Guarantors agree that their respective Guaranties are and shall remain in full force and effect notwithstanding the Third Amendment. Although the Parent and Ultimate Parent Guarantors have been informed of the matters set forth herein and have acknowledged and agreed to the same, the Parent and Ultimate Parent Guarantors understand that neither the Administrative Agent nor any other Secured Party has any obligation to inform the Parent and Ultimate Parent Guarantors of such matters in the future nor any obligation to seek the Parent and Ultimate Parent Guarantors' acknowledgement or agreement to future amendments, consents or waivers with respect to the Credit Agreement, and nothing herein shall create such a duty.

All initially capitalized terms used in this Acknowledgment of Guarantors shall have the respective meanings set forth for such terms in the Credit Agreement referred to in the Third Amendment.

Dated: As of December 16, 2021

**B. RILEY PRINCIPAL INVESTMENTS, LLC,**  
a Delaware limited liability company

By: /s/ Kenny Young  
Name: Kenny Young  
Title: CEO

**B. RILEY FINANCIAL, INC.,**  
a Delaware corporation

By: /s/ Phillip J. Ahn  
Name: Phillip J. Ahn  
Title: CFO

Acknowledgment of Parent and Ultimate Parent Guarantors  
(Third Amendment to Credit Agreement)

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**SECOND INCREMENTAL AMENDMENT TO CREDIT AGREEMENT**

This SECOND INCREMENTAL AMENDMENT TO CREDIT AGREEMENT (this "Amendment") is entered into effective December 17, 2021 (the "Effective Date"), among B. Riley Financial, Inc., a Delaware corporation ("Ultimate Parent"), BR Financial Holdings, LLC, a Delaware limited liability company (the "Primary Guarantor"), BR Advisory & Investments, LLC, a Delaware limited liability company (the "Borrower"), each of the Subsidiary Guarantors signatory hereto, each of the lenders from time to time parties hereto (the "Lenders"), Nomura Corporate Funding Americas, LLC, as administrative agent for the Lenders (in such capacity, together with its successors and permitted assigns in such capacity, the "Administrative Agent"), and Wells Fargo Bank, N.A., as collateral agent for the Secured Parties (in such capacity, together with its successors and permitted assigns in such capacity, the "Collateral Agent" and, together with the Administrative Agent, the "Agents"). All capitalized terms used herein (including in this preamble) and not otherwise defined herein shall have the respective meanings provided such terms in the Credit Agreement referred to below.

**RECITALS:**

WHEREAS, the Ultimate Parent, the Primary Guarantor, the Borrower, the Lenders, the Administrative Agent, and the Collateral Agent are parties to that certain Credit Agreement dated as of June 23, 2021 (as amended, restated or otherwise modified from time to time, the "Credit Agreement", and as amended by this Amendment, the "Amended Credit Agreement");

WHEREAS, pursuant to Section 9.01 of the Credit Agreement, the Ultimate Parent, the Primary Guarantor, and the Borrower have requested the Agents and the Lenders agree to amend the Credit Agreement as hereinafter provided;

WHEREAS, the Borrower has requested and the lenders identified on Schedule A hereto (each, a "2021 Incremental Term Loan Lender", and, collectively, the "2021 Incremental Term Loan Lenders") have agreed to provide, subject to the terms and conditions set forth herein, Term Loan Commitments in an aggregate principal amount of \$100,000,000 (such Term Loan Commitments, the "2021 Incremental Term Loan Commitments"), in each case on terms identical to those applicable to the Term Loans made on the Closing Date ("Closing Date Term Loans") (including as to pricing, tenor, rights of payment and prepayment and rights of security);

WHEREAS, the Borrower intends to use the proceeds of the 2021 Incremental Term Loans (as defined below) funded under the 2021 Incremental Term Loan Commitments for the purposes set forth in Section 2(d) below;

WHEREAS, pursuant to Section 5.5 of the Guarantee and Collateral Agreement, a Grantor shall provide written notice to the Agent (as defined therein) within thirty (30) days of any change in its legal name;

WHEREAS, pursuant to Section 5.03(a) of the Credit Agreement, promptly after obtaining knowledge of the occurrence of a Default or Event of Default, a Responsible Officer of the Borrower or any Guarantor shall give written notice to the Administrative Agent of the occurrence of such Default or Event of Default;

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WHEREAS, the Borrower has requested, that the provisions of the Credit Agreement be amended set forth in Exhibit A hereto subject to the satisfaction of the conditions precedent to effectiveness set forth in Section 5 below; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Rules of Construction. The rules of construction specified in Section 1.02 of the Credit Agreement shall apply to this Amendment, including the terms defined in the preamble and recitals hereto.

Section 2. Incremental Term Loans

(a) Subject to the terms and conditions of this Amendment and the Credit Agreement, each 2021 Incremental Term Loan Lender severally agrees to make an incremental Term Loan (collectively, the "2021 Incremental Term Loans") in immediately available funds denominated in U.S. dollars to the Borrower on the Second Amendment Closing Date (as defined below) in a principal amount not to exceed the amount set forth opposite such 2021 Incremental Term Loan Lender's name in Schedule A attached hereto. The 2021 Incremental Term Loan Commitments hereunder will terminate in full upon the making of the 2021 Incremental Term Loans referred to herein. Once borrowed, amounts repaid in respect of the 2021 Incremental Term Loans may not be reborrowed.

(b) Upon the occurrence of the Second Amendment Closing Date, each 2021 Incremental Term Loan Lender shall be a Lender, for all purposes of the Amended Credit Agreement, with an outstanding Term Loan. Following the Second Amendment Closing Date and the funding of the 2021 Incremental Term Loans, each reference to "Term Loans" in the Loan Documents shall include the 2021 Incremental Term Loans, and each reference to "Lenders" in the Loan Documents shall include the 2021 Incremental Term Loan Lenders, in each case, unless the context shall require otherwise, and the 2021 Incremental Term Loan Lenders shall have the rights and obligations of a "Lender" under the Amended Credit Agreement and the other Loan Documents. Each of the parties hereto hereby agrees that the Administrative Agent may take any and all action as may be reasonably necessary to ensure that all such 2021 Incremental Term Loans, when originally made, are Term Loans for all purposes under the Loan Documents, and the Administrative Agent is authorized to mark the Register accordingly to reflect the amendments and adjustments set forth herein. For the avoidance of doubt, upon the funding of the 2021 Incremental Term Loans on the Second Amendment Closing Date, the 2021 Incremental Term Loans and the Term Loans made on the Closing Date shall form a single Class of Term Loans for all purposes under the Amended Credit Agreement.

(c) The 2021 Incremental Term Loans shall be made as a single Eurodollar Term Loan, with an initial Interest Period that commences on the Second Amendment Closing Date and ends on the last date of the Interest Period applicable to the then-outstanding Term Loans as of the Second Amendment Closing Date. During such initial Interest Period, the interest rate (*i.e.*, Applicable Margin plus the relevant Eurodollar Rate) applicable to the 2021 Incremental Term Loans shall be the same interest rate (*i.e.*, Applicable Margin plus the relevant Eurodollar Rate) applicable for the initial Term Loans under the Credit Agreement (after giving effect to the amendments contemplated by this Amendment).

(d) The proceeds of the 2021 Incremental Term Loans shall be used only by BRF Finance Co LLC and BRF Investments LLC solely for the purpose of making Investments permitted under the Credit Agreement.

(e) The 2021 Incremental Term Loans shall be repaid in accordance with Section 2.07(a)(ii) of the Amended Credit Agreement and shall have such terms as set forth in the Amended Credit Agreement.

### Section 3. Limited Waiver and Consent

Subject to the satisfaction of the applicable conditions to effectiveness set forth in Section 5 herein, the Agents and Lenders hereby:

- (a) waive any Default or Event of Default arising under Section 7.01(c)(i) of the Credit Agreement as a result of the Borrower's failure to comply with the covenant regarding the change in a Grantor's legal name set forth in Section 5.5 of the Guarantee and Collateral Agreement due to not giving notice to the Agent (as defined therein) within thirty (30) days of the change of Great American Group Advisory & Valuation Services, LLC's legal name to "B. Riley Advisory & Valuation Services, LLC";
- (b) solely with respect to the occurrence of any Default or Event of Default described in Section 3(a) herein, waive any Default or Event of Default arising under Section 7.01(c)(i) of the Credit Agreement as a result of the Borrower's failure to comply with the covenant regarding giving prompt written notice of the occurrence of a Default or Event Default set forth in Section 5.03(a) of the Credit Agreement;

The limited waiver set forth above shall be limited as written and to the extent described above and nothing in this Section 3 shall be deemed to:

- (i) Constitute a waiver of compliance by the Borrower with respect to any other term, provision or condition of the Credit Agreement or any other Loan Document, or any other instrument or agreement referred to therein; or
- (ii) Prejudice any right or remedy that the Lenders under the Credit Agreement may now have or may have in the future under or in connection with the Credit Agreement or any other Loan Document, or any other instrument or agreement referred to therein.

### Section 4. Amendments to Credit Agreement.

The parties hereto (including the Required Lenders) agree that, effective as of the Second Amendment Closing Date, the Credit Agreement is hereby amended to (i) delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and (ii) add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the pages of the Amended Credit Agreement attached as Exhibit A hereto.

Section 5. Conditions to Effectiveness. The effectiveness of this Amendment and the obligation of the 2021 Incremental Term Loan Lenders to make the 2021 Incremental Term Loans are subject to the satisfaction (or waiver by the Administrative Agent and the Lenders signatory hereto) of each of the following conditions (the date upon which all of such conditions are satisfied or waived, the "Second Amendment Closing Date"):

(a) **Execution.** The Administrative Agent shall have received (including by way of facsimile or other electronic transmission) a duly authorized, executed and delivered counterpart of the signature page to this Amendment from the Ultimate Parent, the Primary Guarantor, the Borrower, the Lenders constituting the Required Lenders under the Credit Agreement, the 2021 Incremental Term Loan Lenders party hereto, the Administrative Agent, and the Collateral Agent;

(b) **Representation and Warranties.** After giving effect to the waiver in Section 3 herein, each of the representations and warranties made by any Loan Party in or pursuant to the Loan Documents shall be true and correct in all material respects on and as of the date of such Credit Extension with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date); *provided* that any representation and warranty that is qualified by “materiality”, “Material Adverse Effect” or similar language shall be true and correct (after giving effect to any qualification therein) in all respects.

(c) **No Default.** After giving effect to the waiver in Section 3 herein, no Default or Event of Default shall exist or would result from the Credit Extension or from the application of the proceeds thereof;

(d) **Borrowing Notice.** The Administrative Agent shall have received a fully executed Borrowing Notice in accordance with Section 2.02(a) of the Amended Credit Agreement.

(e) **Fees.** Concurrently with the funding under this Amendment, each of the Agents, and each Lender shall have received, for its own respective account, (a) all fees and reasonable and documented out-of-pocket expenses due and payable to such Person on the date hereof, and (b) the reasonable and documented fees and out-of-pocket costs and expenses due and payable to such Person pursuant to Section 9.05 (including the reasonable and documented out-of-pocket fees, disbursements and other charges of counsel) as of the Effective Date for which invoices have been received by the Borrower at least one (1) Business Day prior to the Effective Date (or such later date as the Borrower may agree in its sole discretion).

(f) **Fee Letter.** A duly executed Second Amendment Fee Letter, dated as of the date hereof (the “Second Amendment Fee Letter”), by and among the Ultimate Parent, the Primary Guarantor, the Borrower and the Administrative Agent.

(g) **Legal Opinion.** The Administrative Agent shall have received a customary executed legal opinion of Sullivan and Cromwell LLP, special counsel to the Loan Parties, which shall (a) be dated as of the Effective Date, (b) be addressed to the Agents and the Lenders and (c) cover such matters relating to the Loan Documents and the Transactions as the Administrative Agent may reasonably require. Each Loan Party hereby instructs such counsel to deliver such opinions to the Agents and the Lenders.

(h) **Solvency Certificate.** The Administrative Agent shall have received a Solvency Certificate signed by a chief financial officer, chief accounting officer or other authorized officer with equivalent duties of Ultimate Parent reasonably acceptable to the Administrative Agent.

(i) **Closing Certificate.** The Administrative Agent shall have received a certificate of the Borrower, dated the Effective Date, confirming satisfaction of the conditions set forth in clause (b) and (c) of this Section 5.

(j) **Secretary's Certificate.** The Administrative Agent shall have received with respect to the Borrower and each other Loan Party:

(i) copies of the Organizational Documents of such Loan Party (including each amendment thereto) certified as of a date reasonably near the Second Amendment Closing Date as being a true and complete copy thereof by the Secretary of State or other applicable Governmental Authority of the jurisdiction in which each such Loan Party is organized;

(ii) a certificate of the secretary or assistant secretary of each Loan Party dated the Second Amendment Closing Date and certifying (A) that attached thereto is a true and complete copy of the Organizational Documents of such Loan Party as in effect on the Second Amendment Closing Date, (B) that attached thereto is a true and complete copy of resolutions duly adopted by the board of directors or similar governing body of such Loan Party (and, if applicable, any parent company of such Loan Party) approving and authorizing the execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party and the consummation of the Transactions, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, (C) that the certificate or articles of incorporation, formation or organization, as applicable, of such Loan Party have not been amended since the date of the last amendment thereto shown on the certificate of good standing furnished pursuant to clause (iv) below and (D) as to the incumbency and specimen signature of each Person authorized to execute any Loan Document or any other document delivered in connection herewith on behalf of such Loan Party;

(iii) a certificate of another officer as to the incumbency and specimen signature of the secretary or assistant secretary executing the certificate pursuant to clause (ii) above; and

(iv) a copy of the certificate of good standing of such Loan Party from the Secretary of State or other applicable Governmental Authority of the jurisdiction in which each such Loan Party is organized (dated as of a date reasonably near the Second Amendment Closing Date).

(k) **Bank Regulatory Information.** At least three (3) Business Days prior to the Effective Date, the Agents and the Lenders shall have received all documentation and other information required by bank regulatory authorities and requested by any Agent or any Lender under or in respect of applicable "know-your-customer" and anti-money laundering rules and regulations, including the PATRIOT Act that was requested at least five (5) Business Days prior to the Effective Date and a Beneficial Ownership Certification in relation to the Borrower.

(l) **No Material Adverse Effect.** Since the Closing Date, no event, change or circumstance shall have occurred that has had, or would reasonably be expected to result in, a Material Adverse Effect.

(m) **No Litigation.** There shall not exist any action, suit, investigation, litigation, proceeding, injunction, hearing or other legal or regulatory developments, pending or threatened in any court or before any arbitrator or Governmental Authority that individually or in the aggregate materially impairs any of the transactions contemplated by the Loan Documents.

(n) **Borrowing Base Certificate.** The Primary Guarantor shall have delivered a Borrowing Base Certificate dated as of the Effective Date.

Each Lender, by delivering its signature page to this Amendment and funding a Loan on the Effective Date, shall be deemed to have consented to, approved or accepted or to be satisfied with, each Loan Document and each other document required thereunder to be consented to, approved by or acceptable or satisfactory to a Lender, unless the Administrative Agent shall have received notice from such Lender prior to the proposed Effective Date specifying its objection thereto.

Section 6. Representations and Warranties.

Each Loan Party hereby represents and warrants that as of the Effective Date, both before and after giving effect to the provisions of this Amendment, (i) each of the representations and warranties made by any Loan Party in or pursuant to the Loan Documents are true and correct in all material respects as of the Effective Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date); *provided* that any representation and warranty that is qualified by “materiality”, “Material Adverse Effect” or similar language shall be true and correct (after giving effect to any qualification therein) in all respects and (ii) no Default or Event of Default has occurred and is continuing or would result from the transactions contemplated by this Amendment.

Section 7. Reference to and Effect on the Credit Agreement and the other Loan Documents.

(a) On and after the Effective Date, (a) each reference in the Credit Agreement to “this Agreement,” “hereunder,” “hereof” or words of like import referring to the Credit Agreement shall mean and be a reference to the Credit Agreement, as amended by this Amendment and (b) all references in each of the Loan Documents referring to the Credit Agreement shall be deemed to be a reference to the Credit Agreement, as amended by this Amendment.

(b) The Credit Agreement and each of the other Loan Documents, as specifically amended by this Amendment, are and shall continue to be in full force and effect and are hereby in all respects ratified and confirmed. Without limiting the generality of the foregoing, each Loan Party hereby (A) confirms the obligations of such Loan Party under the Amended Credit Agreement (including with respect to the 2021 Incremental Term Loans) and that the other Loan Documents are entitled to the benefits of the guarantees and the security interests set forth or created in the Security Documents and the other Loan Documents and constitute Obligations, (B) ratifies and reaffirms the validity and enforceability of the guarantee obligations of the Loan Parties pursuant to the Security Documents and all of the Liens and security interests heretofore granted, pursuant to and in connection with the Security Documents or any other Loan Document to the Collateral Agent, on behalf of and for the benefit of each Secured Party, as collateral security for the obligations under the Loan Documents in accordance with their respective terms, and (C) acknowledges that all of such Liens and security interests, and all Collateral heretofore pledged as security for such obligations, continue to be and remain collateral for such obligations from and after the date hereof (including, without limitation, from after giving effect to this Amendment).

(c) The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of the Agents or any Lender under any of the Loan Documents, nor constitute a waiver of any provision of any of the Loan Documents.

(d) On and after the effectiveness of this Amendment, this Amendment shall constitute a “Loan Document” for all purposes of the Loan Agreement and the other Loan Documents.

Section 8. Miscellaneous Provisions.

(a) Ratification. This Amendment is limited to the matters specified herein and shall not constitute a modification, acceptance or waiver of any other provision of the Credit Agreement or any other Loan Document. Nothing herein contained shall be construed as a substitution or novation of the obligations outstanding under the Credit Agreement or any other Loan Document or instruments securing the same, which shall remain in full force and effect as modified hereby or by instruments executed concurrently herewith.

(b) Governing Law; Submission to Jurisdiction, Waiver of Jury Trial, Etc. THIS AMENDMENT AND ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO THIS AMENDMENT (WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE) SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK. Sections 9.13 and 9.16 of the Credit Agreement are incorporated by reference herein as if such Sections appeared herein, *mutatis mutandis*.

(c) Severability. Section 9.09 of the Credit Agreement is incorporated by reference herein as if such Section appeared herein, *mutatis mutandis*.

(d) Counterparts. This Amendment shall be valid, binding, and enforceable against a party only when executed and delivered by an authorized individual on behalf of the party by means of (i) any electronic signature permitted by the federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, state enactments of the Uniform Electronic Transactions Act, and/or any other relevant electronic signatures law, including relevant provisions of the UCC (collectively, “Signature Law”); (ii) an original manual signature; or (iii) a faxed, scanned, or photocopied manual signature. Each electronic signature or faxed, scanned, or photocopied manual signature shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Each party hereto shall be entitled to conclusively rely upon, and shall have no liability with respect to, any faxed, scanned, or photocopied manual signature, or other electronic signature, of any party and shall have no duty to investigate, confirm or otherwise verify the validity or authenticity thereof. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but such counterparts shall, together, constitute one and the same instrument. For avoidance of doubt, original manual signatures shall be used for execution or indorsement of writings when required under the UCC or other Signature Law due to the character or intended character of the writings.

(e) Section Headings. The Section headings used in this Amendment are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

(f) Costs and Expenses. The Borrower hereby agrees to pay and reimburse the Agents for its reasonable and documented out-of-pocket costs and expenses incurred in connection with the negotiation, preparation, execution and delivery of this Amendment, including without limitation, the reasonable fees, charges and disbursements of one counsel for the Administrative Agent, all in accordance with Section 9.05 of the Credit Agreement.

(g) Direction to Agents. By their execution and delivery of this Amendment, the Lenders party hereto hereby direct the Administrative Agent to direct the Collateral Agent to execute and deliver this Amendment, and the Administrative Agent hereby so directs the Collateral Agent.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

B. RILEY FINANCIAL, INC., as Ultimate Parent

By: /s/ Phillip Ahn  
Name: Phillip Ahn  
Title: Authorized Signatory

BR FINANCIAL HOLDINGS, LLC, as Primary Guarantor

By: /s/ Phillip Ahn  
Name: Phillip Ahn  
Title: Authorized Signatory

BR ADVISORY & INVESTMENTS, LLC, as Borrower

By: /s/ Phillip Ahn  
Name: Phillip Ahn  
Title: Authorized Signatory

*[Signature Page to Amendment No. 2 to Credit Agreement]*

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**SUBSIDIARY GUARANTORS:**

B. RILEY ADVISORY HOLDINGS, LLC

By: /s/ Phillip Ahn  
Name: Phillip Ahn  
Title: Authorized Signatory

B. RILEY BRAND MANAGEMENT LLC

By: /s/ Phillip Ahn  
Name: Phillip Ahn  
Title: Authorized Signatory

B. RILEY REAL ESTATE, LLC

By: /s/ Phillip Ahn  
Name: Phillip Ahn  
Title: Authorized Signatory

BRF FINANCE CO., LLC

By: /s/ Phillip Ahn  
Name: Phillip Ahn  
Title: Authorized Signatory

BRF FINANCE CO., LLC

By: /s/ Phillip Ahn  
Name: Phillip Ahn  
Title: Authorized Signatory

*[Signature Page to Amendment No. 2 to Credit Agreement]*

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**SUBSIDIARY GUARANTORS (cont.):**

BRF INVESTMENTS, LLC

By: /s/ Phillip Ahn  
Name: Phillip Ahn  
Title: Authorized Signatory

B. RILEY GOVERNMENT SERVICES, LLC

By: /s/ Phillip Ahn  
Name: Phillip Ahn  
Title: Authorized Signatory

B. RILEY OPERATIONS MANAGEMENT  
SERVICES, LLC

By: /s/ Phillip Ahn  
Name: Phillip Ahn  
Title: Authorized Signatory

GLASSRATNER ADVISORY & CAPITAL  
GROUP, LLC

By: /s/ Phillip Ahn  
Name: Phillip Ahn  
Title: Authorized Signatory

GREAT AMERICAN GROUP MACHINERY &  
EQUIPMENT, LLC

By: /s/ Phillip Ahn  
Name: Phillip Ahn  
Title: Authorized Signatory

*[Signature Page to Amendment No. 2 to Credit Agreement]*

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**SUBSIDIARY GUARANTORS (cont.):**

GREAT AMERICAN GROUP INTELLECTUAL  
PROPERTY ADVISORS, LLC

By: /s/ Phillip Ahn  
Name: Phillip Ahn  
Title: Authorized Signatory

B. RILEY ADVISORY &  
VALUATION SERVICES, LLC

By: /s/ Phillip Ahn  
Name: Phillip Ahn  
Title: Authorized Signatory

GLASSRATNER INTERNATIONAL, INC.

By: /s/ Phillip Ahn  
Name: Phillip Ahn  
Title: Authorized Signatory

GLASSRATNER BROKERAGE SERVICES, INC.

By: /s/ Phillip Ahn  
Name: Phillip Ahn  
Title: Authorized Signatory

[Signature Page to Amendment No. 2 to Credit Agreement]

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NOMURA CORPORATE FUNDING AMERICAS, LLC, as  
Administrative Agent

By: /s/ Nilesh S. Parikh

Name: Nilesh S. Parikh

Title: Managing Director

*[Signature Page to Amendment No. 2 to Credit Agreement]*

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NOMURA SECURITIES (BERMUDA) LTD., as a 2021  
Incremental Term Loan Lender and a Lender

By: /s/ Donald F. Folkard

Name: Donald F. Folkard

Title: President

*[Signature Page to Amendment No. 2 to Credit Agreement]*

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WELLS FARGO BANK, N.A., as Collateral Agent

By: COMPUTERSHARE TRUST COMPANY, N.A., as  
agent

By: /s/ Jessica Wuornos

Name: Jessica Wuornos

Title: Vice President

*[Signature Page to Amendment No. 2 to Credit Agreement]*

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*Executed Required Lender signature pages on file with Administrative Agent*

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Schedule A

2021 Incremental Term Loan Commitments

<b>2021 Incremental Term Loan Lender</b>	<b>2021 Incremental Term Loan Commitment</b>	<b>2021 Incremental Term Loan Commitment Percentage</b>
Nomura Securities (Bermuda) LTD	\$ 100,000,000.00	100%
<b>TOTAL:</b>	<b>\$ 100,000,000.00</b>	<b>100%</b>

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**Exhibit A**

Amended Credit Agreement  
(see attached)

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~~\$280,000,000~~ \$380,000,000 CREDIT AGREEMENT,

dated as of June 23, 2021,  
(as amended by the First Amendment dated as of September 15, 2021 and the Second Amendment dated as of December 17, 2021)

among

B. Riley Financial, Inc.,  
as Ultimate Parent,

BR Financial Holdings, LLC,  
as Primary Guarantor,

BR Advisory & Investments, LLC,  
as Borrower,

THE LENDERS PARTY HERETO FROM TIME TO TIME

NOMURA CORPORATE FUNDING AMERICAS, LLC,  
as Administrative Agent

and

WELLS FARGO BANK, N.A.,  
as Collateral Agent

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## TABLE OF CONTENTS

	<b>Page</b>
<b>Article I. DEFINITIONS</b>	<b>1</b>
Section 1.01	1
Section 1.02	45
Section 1.03	46
Section 1.04	47
Section 1.05	47
Section 1.06	47
Section 1.07	47
<b>Article II. LOANS</b>	<b>47</b>
Section 2.01	47
Section 2.02	48
Section 2.03	48
Section 2.04	48
Section 2.05	49
Section 2.06	49
Section 2.07	50
Section 2.08	51
Section 2.09	52
Section 2.10	53
Section 2.11	54
Section 2.12	54
Section 2.13	55
Section 2.14	55
Section 2.15	56
Section 2.16	56
Section 2.17	57
Section 2.18	58
Section 2.19	59
Section 2.20	63
Section 2.21	63
Section 2.22	64
Section 2.23	65
<b>Article III. REPRESENTATIONS AND WARRANTIES</b>	<b>66</b>
Section 3.01	66
Section 3.02	66
Section 3.03	66
Section 3.04	66
Section 3.05	67
Section 3.06	67
Section 3.07	68
Section 3.08	68

Section 3.09	Investment Company Act	68
Section 3.10	Taxes	68
Section 3.11	No Material Misstatements	69
Section 3.12	Labor Matters	69
Section 3.13	ERISA	69
Section 3.14	Environmental Matters	70
Section 3.15	Insurance	70
Section 3.16	Security Documents	71
Section 3.17	Material Nonpublic Information	71
Section 3.18	Solvency	71
Section 3.19	PATRIOT Act, etc	71
Section 3.20	Anti-Terrorism Laws	71
Section 3.21	Anti-Corruption Laws and Sanctions	72
Section 3.22	Use of Proceeds	72
Section 3.23	Borrowing Base Certificate	72
Section 3.24	Deposit Accounts	73
Section 3.25	Bona Fide Loan; Full Recourse	73
Article IV. CONDITIONS PRECEDENT		73
Section 4.01	Conditions to Initial Credit Extension	73
Section 4.02	Conditions to Each Credit Extension	76
Article V. AFFIRMATIVE COVENANTS		77
Section 5.01	Financial Statements	77
Section 5.02	Certificates; Other Information	78
Section 5.03	Notices	79
Section 5.04	Payment of Taxes	80
Section 5.05	Preservation of Existence, Etc.	80
Section 5.06	Maintenance of Property	80
Section 5.07	Maintenance of Insurance	80
Section 5.08	Books and Records; Inspection Rights.	81
Section 5.09	Compliance with Laws	81
Section 5.10	Compliance with Environmental Laws; Preparation of Environmental Reports	82
Section 5.11	Use of Proceeds	82
Section 5.12	Covenant to Guarantee Obligations and Give Security	82
Section 5.13	Further Assurances	83
Section 5.14	Borrowing Base Certificate	84
Section 5.15	Cash Management; Registration of Public Equities	84
Section 5.16	Post-Closing Undertakings	85
Article VI. NEGATIVE COVENANTS		85
Section 6.01	Limitation on Indebtedness	85
Section 6.02	Limitation on Liens	87
Section 6.03	Limitation on Fundamental Changes	88
Section 6.04	Limitations on Dispositions	89
Section 6.05	Limitation on Restricted Payments	91

Section 6.06	Limitation on Investments	92
Section 6.07	Modifications of Organizational Documents	92
Section 6.08	Limitation on Transactions with Affiliates	93
Section 6.09	Limitations in Respect of Margin Stock	93
Section 6.10	Limitation on Changes in Fiscal Periods	93
Section 6.11	Limitation on Burdensome Agreements	93
Section 6.12	Limitation on Lines of Business	95
Section 6.13	Financial Covenants	95
Section 6.14	Limitation on Activities of the Primary Guarantor	95
Section 6.15	Limitation on Activities of Ultimate Parent	96
Section 6.16	Limitation on Activities of BR Advisory Loan Parties	96
Section 6.17	No Impairment of Public Equities; Restricted Transactions	97
Article VII. EVENTS OF DEFAULT AND REMEDIES		97
Section 7.01	Events of Default	97
Section 7.02	Remedies Upon Event of Default	100
Section 7.03	Application of Funds	100
Article VIII. THE AGENTS		101
Section 8.01	Appointment and Authority	101
Section 8.02	Rights as a Lender	101
Section 8.03	Exculpatory Provisions	101
Section 8.04	Reliance by Agents	105
Section 8.05	Delegation of Duties	105
Section 8.06	Resignation of Administrative Agent or the Collateral Agent	105
Section 8.07	Non-Reliance on Administrative Agent and Other Lenders	106
Section 8.08	No Other Duties, Etc	106
Section 8.09	Administrative Agent May File Proofs of Claim	106
Section 8.10	Collateral and Guaranty Matters	107
Section 8.11	Erroneous Payments	109
Section 8.12	Certain ERISA Matters	111
Article IX. MISCELLANEOUS		112
Section 9.01	Amendments and Waivers	112
Section 9.02	Notices	114
Section 9.03	No Waiver by Course of Conduct; Cumulative Remedies	117
Section 9.04	Survival of Representations, Warranties, Covenants and Agreements	117
Section 9.05	Payment of Expenses; Indemnity	117
Section 9.06	Successors and Assigns; Participations and Assignments	119
Section 9.07	Sharing of Payments by Lenders; Set-off	123
Section 9.08	Counterparts	124
Section 9.09	Severability	125
Section 9.10	Section Headings	125
Section 9.11	Integration	125
Section 9.12	Governing Law	125
Section 9.13	Submission to Jurisdiction; Waivers	125
Section 9.14	Acknowledgments	126

Section 9.15	Confidentiality	126
Section 9.16	Waiver of Jury Trial	128
Section 9.17	PATRIOT Act Notice; AML Laws	128
Section 9.18	Usury Savings Clause	129
Section 9.19	Payments Set Aside	129
Section 9.20	No Advisory or Fiduciary Responsibility	129
Section 9.21	Judgment Currency	129

ANNEXES:

Annex A-1	Revolving Commitments
Annex A-2	Term Loan Commitments

SCHEDULES:

Schedule 1.01(a)	Approved Assets
Schedule 1.01(b)	Transfer Restrictions
Schedule 3.07	Equity Interests
Schedule 3.16(a)	UCC Filing Jurisdictions
Schedule 3.24	Deposit Accounts and Securities Accounts
Schedule 4.01(a)	Closing Date Security Documents
Schedule 5.16	Post-Closing Undertakings
Schedule 6.01	Existing Indebtedness
Schedule 6.02	Existing Liens
Schedule 6.06	Existing Investments
Schedule 6.08	Existing Affiliate Transactions
Schedule 6.11	Existing Restrictive Agreements
Schedule 6.11	Restricted Transactions

EXHIBITS:

Exhibit A	Form of Compliance Certificate
Exhibit B	Perfection Certificate
Exhibit C	Form of Assignment and Assumption
Exhibit D-1	Form of Term Loan Note
Exhibit D-2	Form of Revolving Note
Exhibit E-1	Form of U.S. Tax Compliance Certificate
Exhibit E-2	Form of U.S. Tax Compliance Certificate
Exhibit E-3	Form of U.S. Tax Compliance Certificate
Exhibit E-4	Form of U.S. Tax Compliance Certificate
Exhibit F	Form of Borrowing Notice
Exhibit G	Form of Solvency Certificate
Exhibit H	Form of Subordinated Intercompany Note
Exhibit I	Form of Valuation Report
Exhibit J	Form of Borrowing Base Certificate
Exhibit K	Form of Waterfall Certificate

**CREDIT AGREEMENT**, dated as of June 23, 2021 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, this “**Agreement**”), among B. Riley Financial, Inc., a Delaware corporation (“**Ultimate Parent**”), BR Financial Holdings, LLC, a Delaware limited liability company (the “**Primary Guarantor**”), BR Advisory & Investments, LLC, a Delaware limited liability company (the “**Borrower**”), each of the lenders from time to time parties hereto (the “**Lenders**”), Nomura Corporate Funding Americas, LLC, as administrative agent for the Lenders (in such capacity, together with its successors and permitted assigns in such capacity, the “**Administrative Agent**”), and Wells Fargo Bank, N.A., as collateral agent for the Secured Parties (in such capacity, together with its successors and permitted assigns in such capacity, the “**Collateral Agent**”).

**WITNESSETH:**

**WHEREAS**, the Lenders are willing to extend such credit to the Borrower on the terms and subject to the conditions set forth herein.

**NOW, THEREFORE**, in consideration of the premises and the agreements hereinafter set forth, the parties hereto hereby agree as follows:

**ARTICLE I.  
DEFINITIONS**

**Section 1.01 Defined Terms.** As used in this Agreement, the terms listed in this **Section 1.01** shall have the respective meanings set forth in this **Section 1.01**.

**“2021 Incremental Term Loan Commitments” shall have the meaning assigned to such term in the Second Amendment.**

**“2021 Incremental Term Loan Lenders” shall have the meaning assigned to such term in the Second Amendment.**

**“2021 Incremental Term Loans” shall have the meaning assigned to such term in the Second Amendment.**

**“6 Brands”** shall mean BR Brand Holdings, LLC.

**“Account Control Agreements”** shall mean (a) the Deposit Account Control Agreement (Springing), dated as of the Closing Date, among B. RILEY REAL ESTATE, LLC, Axos Bank and the Collateral Agent, (b) the Deposit Account Control Agreement (Access Restricted After Notice), dated as of the Closing Date, among the Borrower, Wells Fargo Bank, National Association, and the Collateral Agent, (c) the Deposit Account Control Agreement (Access Restricted After Notice), dated as of the Closing Date, among the BRF Finance Co., LLC, Wells Fargo Bank, National Association, and the Collateral Agent, (d) the Deposit Account Control Agreement (Access Restricted After Notice), dated as of the Closing Date, among GLASSRATNER ADVISORY & CAPITAL GROUP, LLC, Wells Fargo Bank, National Association, and the Collateral Agent, (e) the Deposit Account Control Agreement (Access Restricted After Notice), dated as of the Closing Date, among the Great American Group Advisory & Valuation Services, LLC, Wells Fargo Bank, National Association, and the Collateral Agent, (f) the Securities Account Control Agreement, dated as of the Closing Date, among BRF Finance Co., LLC, Wells Fargo Bank, National Association, and the Collateral Agent, (g) the Securities Account Control Agreement, dated as of the Closing Date, among BRF Investments, LLC, Wells Fargo Bank, National Association, and the Collateral Agent, (h) the Securities Account Control Agreement, dated as of the Closing Date, among B. Riley Brand Management, LLC, Wells Fargo Bank, National Association, and the Collateral Agent and (i) any other deposit account control agreement or security account control agreement, as applicable, entered into in connection with this Agreement from time to time in form and substance reasonably satisfactory to the Administrative Agent.

“**Accounting Change**” shall mean any change occurring after the Closing Date in GAAP or in the application thereof.

“**Administrative Agent**” shall have the meaning set forth in the preamble hereto.

“**Administrative Questionnaire**” shall mean an administrative questionnaire in a form supplied by the Administrative Agent.

“**Affiliate**” shall mean, with respect to a specified Person, another Person that directly or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“**Agents**” shall mean each of the Administrative Agent and the Collateral Agent.

“**Agreement**” shall have the meaning set forth in the preamble hereto.

“**Anti-Corruption Laws**” shall mean all laws, rules, and regulations of any jurisdiction applicable to Ultimate Parent, the Primary Guarantor or any Subsidiaries of Ultimate Parent from time to time concerning or relating to bribery or corruption, including without limitation the United States Foreign Corrupt Practices Act of 1977, as amended, and other similar legislation in any other jurisdictions.

“**Anti-Terrorism Laws**” shall mean any laws relating to terrorism or money laundering, including Executive Order No. 13224, the PATRIOT Act, the laws comprising or implementing the Bank Secrecy Act, and the laws administered by the United States Treasury Department’s Office of Foreign Assets Control (as any of the foregoing laws may from time to time be amended, renewed, extended, or replaced).

“**Applicable Margin**” shall mean (a) for Eurodollar Loans, 4.50% and (B) for Base Rate Loans, 3.50%.

“**Approved Assets**” shall mean the Private Assets, Public Equities and Credit Assets set forth on **Schedule 1.01(a)** and certain criteria set forth in the definition of “Eligible Credit Assets”, “Eligible Private Assets” and “Eligible Public Equities”, as applicable, that shall not be applied to such Private Assets, Public Equities and Credit Assets.

“**Approved Electronic Communications**” shall mean, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed to any Agent or Lender by means of electronic communications pursuant to **Section 9.02(b)** or **Section 9.02(d)**, including through the Platform.

“**Approved Fund**” shall mean any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“**Approved Transfer Restrictions**” means Transfer Restrictions on any Public Equities (a) as set forth on **Schedule 1.01(b)** or (b) on account of (i) such Public Equities being “restricted securities” within the meaning of Rule 144, provided that (A) such Public Equities have a holding period for purposes of Rule 144(d) exceeding one year as of the date such Public Equities are pledged as Collateral and (B) the Issuer of such Public Equities is not an “issuer” described in Rule 144(i)(1) or (ii) any Loan Party being an “affiliate” (as such term is defined in Rule 144) of the Issuer of such Public Equity.

“**Asset Portfolio Component**” has the meaning set forth in clause (a) of the definition of “Borrowing Base”.

“**Asset Value**” shall mean, on the relevant date of determination

(a) with respect to any Credit Asset, the least of (i) the aggregate principal amount, including any capitalized interest of such Credit Asset as of the Closing Date but excluding any capitalized interest thereafter and (ii) the book value of such Credit Asset as determined by the Borrower in accordance with GAAP and (iii) for assets with a value of \$30,000,000 or greater, the value set forth in the most recent Valuation Report preceding the relevant Borrowing Base Certificate,

(b) with respect to any Public Equities (other than warrants), the closing price per share of the applicable Public Equity as quoted on the relevant exchange on which such Public Equity is traded for the trading day immediately prior to such date of determination,

(c) with respect to any Private Assets, the lesser of (x) the book value of such Private Assets as determined by the Borrower in accordance with GAAP and (y) for assets with a value of \$30,000,000 or greater, the value set forth in the most recent Valuation Report preceding the relevant Borrowing Base Certificate, in each case, multiplied by 100% (or if Operating EBITDA of the Ultimate Parent and its Subsidiaries is less than \$145,000,000 as of the most recently ended Test Period, 75%), and

(d) with respect to any Public Equity that is a warrant, the lesser of (A) the book value of such warrant and (B) the difference of (x) the closing price per share of the corresponding Public Equity for which such warrant is exercisable as quoted on the relevant exchange on which such Public Equity is traded for the trading day immediately prior to such date of determination minus (y) the per share exercise price of such warrant.

“**Assignment and Assumption**” shall mean an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 9.06), and accepted by the Administrative Agent, in substantially the form of Exhibit C or any other form approved by the Administrative Agent.

“**Attributable Indebtedness**” shall mean, when used with respect of any Sale and Leaseback, as at the time of determination, the present value (discounted at a rate equivalent to the Borrower’s then-current weighted average cost of funds for borrowed money as at the time of determination, compounded on a semi-annual basis) of the total obligations of the lessee for rental payments during the remaining term of the lease included in such Sale and Leaseback, including any period for which such lease has been extended or may, at the option of the lessor, be extended. Such present value shall be calculated using a discount rate equal to the rate of interest implicit in such transaction, determined in accordance with GAAP; *provided* that, if such Sale and Leaseback results in a Capital Lease Obligation, the amount of Indebtedness represented thereby will be determined in accordance with the definition of Capital Lease Obligation.

“**Available Tenor**” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if the then-current Benchmark is a term rate, any tenor for such Benchmark that is or may be used for determining the length of an Interest Period or (y) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, pursuant to this Agreement as of such date.

“**Average Utilization**” means, for any Interest Period, the quotient expressed as a percentage obtained by dividing (a) the average daily Total Revolving Outstanding Amount by (b) the average daily Total Revolving Commitments for such Interest Period.

“**Bankruptcy Code**” shall mean Title 11 of the United States Code entitled “Bankruptcy”, as now and hereafter in effect, or any successor statute.

“**Base Rate**” shall mean, for any day, a *per annum* rate of interest equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus 0.50%, (c) the Eurodollar Rate (after giving effect to any Eurodollar Rate “floor”) that would be payable on such day for a Eurodollar Loan with a one-month interest period plus 1.00% and (d) 1.00%. Any change in the Base Rate due to a change in (x) the Prime Rate or the Federal Funds Effective Rate shall be effective as of the opening of business on the effective day of such change in the Prime Rate or the Federal Funds Effective Rate respectively, and (y) the Eurodollar Rate shall be effective as of the conclusion of the applicable one-month interest period.

“**Base Rate Loan**” shall mean a Loan bearing interest at a rate determined by reference to the Base Rate.

“**Benchmark**” means, initially, USD LIBOR; provided that if a replacement of the Benchmark has occurred pursuant to the Section titled “Benchmark Replacement Setting”, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate. Any reference to “Benchmark” shall include, as applicable, the published component used in the calculation thereof.

“**Benchmark Replacement**” means, for any Available Tenor:

(a) the first alternative set forth below that can be determined by the Administrative Agent:

(i) the sum of:

(A) Term SOFR and

(B) 0.11448% (11.448 basis points) for an Available Tenor of one-month’s duration, 0.26161% (26.161 basis points) for an Available Tenor of three-months’ duration, and 0.42826% (42.826 basis points) for an Available Tenor of six-months’ duration, or

(ii) the sum of:

(A) Daily Simple SOFR and

(B) the spread adjustment selected or recommended by the Relevant Governmental Body for the replacement of the tenor of USD LIBOR with a SOFR-based rate having approximately the same length as the interest payment period specified in clause (a) of this Section; and

(b) the sum of (i) the alternate benchmark rate and (ii) an adjustment (which may be a positive or negative value or zero), in each case, that has been selected by the Administrative Agent and the Borrower as the replacement for such Available Tenor of such Benchmark giving due consideration to any evolving or then-prevailing market convention, including any applicable recommendations made by the Relevant Governmental Body, for U.S. dollar-denominated syndicated credit facilities at such time;

**provided** that, if the Benchmark Replacement as determined pursuant to **clause (a)** or **(b)** above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

**“Benchmark Replacement Conforming Changes”** means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “ABR,” the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

**“Benchmark Transition Event”** means, with respect to any then-current Benchmark other than USD LIBOR, the occurrence of a public statement or publication of information by or on behalf of the administrator of the then-current Benchmark, the regulatory supervisor for the administrator of such Benchmark, the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark, a resolution authority with jurisdiction over the administrator for such Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark, announcing or stating that (a) such administrator has ceased or will cease on a specified date to provide all Available Tenors of such Benchmark, permanently or indefinitely, **provided** that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark or (b) all Available Tenors of such Benchmark are or will no longer be representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored.

**“Beneficial Ownership Certification”** means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

**“Beneficial Ownership Regulation”** means 31 C.F.R. § 1010.230.

**“Benefit Plan”** means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

**“Blocked Person”** shall have the meaning set forth in **Section 3.20(b)**.

**“Board of Governors”** shall mean the Board of Governors of the Federal Reserve System of the United States of America, or any successor thereto.

**“Book-Entry Shares”** shall mean, with respect to each Issuer, Public Equities that are “uncertificated securities” (within the meaning of Article 8 of the UCC) that are registered in the name of the securities intermediary on the books of the relevant Issuer and its transfer agent.

“**Borrower**” shall have the meaning set forth in the preamble hereto.

“**Borrowing Base**” shall mean, at any time of calculation, in each case, of the Borrowing Base Loan Parties:

(a) the sum of:

(i) 60% of the Asset Value of Eligible First Lien Credit Assets, **plus**

(ii) 40% of the Asset Value of Eligible Credit Assets (other than Eligible First Lien Credit Assets and Eligible Subordinated Credit Assets), **plus**

(iii) 40% of the Asset Value of Eligible Public Equities, **plus**

(iv) 30% of the Asset Value of Eligible Private Assets, **plus**,

(v) 30% of the Asset Value of Eligible Subordinated Credit Assets,

(the sum of **clauses (i)** through **(v)**, the “**Asset Portfolio Component**”) plus

(b) the lesser of 100% of (i) Qualified Cash as of such day and (ii) the sum of (x) the 30-day average of Qualified Cash (other than any Qualified Cash referred to in **clause (y)**) for the 30-day period ending on such day **plus (y)** any Qualified Cash that is the proceeds of any equity contribution in the form of Qualified Equity to a Borrowing Base Loan Party made since the previously delivered Borrowing Base Certificate and designated by the Borrower for purposes of constituting Qualified Cash, **minus**

(c) the Excess Concentration Amount, **minus**

(d) any Reserves then in effect.

The Asset Values used to calculate the “Borrowing Base” shall be those set forth in the most recent Borrowing Base Certificate. Notwithstanding the foregoing, the Asset Value included in the calculation of the Borrowing Base of Eligible Public Equities that are warrants that shall not, in the aggregate, exceed \$50,000,000.

“**Borrowing Base Certificate**” means a certificate from a Responsible Officer of the Borrower, in substantially the form of **Exhibit J**, as such form, subject to the terms hereof, may from time to time be modified as agreed by the Borrower and the Administrative Agent or such other form which is acceptable to the Administrative Agent in its reasonable discretion.

“**Borrowing Base Loan Parties**” means BRF Finance Co., LLC, BRF Investments, LLC, B. Riley Brand Management, LLC and any Subsidiaries thereof other than any Excluded Subsidiaries.

“**Borrowing Date**” shall mean any Business Day specified by the Borrower in a Borrowing Notice as a date on which the relevant Lenders are requested to make Loans hereunder.

“**Borrowing Notice**” shall mean, with respect to any request for borrowing of Loans hereunder, a notice from the Borrower, substantially in the form of, and containing the information prescribed by, **Exhibit F**, delivered to the Administrative Agent.

“**BR Advisory Loan Parties**” shall mean the Borrower, the BR Advisory OpCos and the Borrowing Base Loan Parties.

“**BR Advisory OpCos**” shall mean B. Riley Advisory Holdings, LLC and B. Riley Real Estate, LLC and any Subsidiaries thereof other than any Excluded Subsidiaries.

“**Business Day**” shall mean (i) any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close and (ii) with respect to all notices, determinations, fundings and payments in connection with the Eurodollar Rate or any Eurodollar Loans, any day which is a Business Day described in **clause (i)** and which is also a day for trading by and between banks in Dollar deposits in the London interbank market.

“**Canada Blocked Person**” means (i) a “terrorist group” as defined for the purposes of Part II.1 of the Criminal Code (Canada), as amended or (ii) a Person identified in or pursuant to (w) Part II.1 of the Criminal Code (Canada), as amended or (x) the Proceeds of Crime (Money Laundering) and Terrorist Finance Act, as amended or (y) the Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law), as amended or (z) regulations or orders promulgated pursuant to the Special Economic Measures Act (Canada), as amended, the United Nations Act (Canada), as amended, or the Freezing Assets of Corrupt Foreign Officials Act (Canada), as amended, in any case pursuant to this clause (ii) as a Person in respect of whose property or benefit a holder of Notes would be prohibited from entering into or facilitating a related financial transaction.

“**Capital Lease**” shall mean, with respect to any Person, any lease of, or other arrangement conveying the right to use, any property by such Person as lessee that has been or should be accounted for as a capital lease on a balance sheet of such person prepared in accordance with GAAP as in effect prior to giving effect to the adoption of ASU No. 2016-02 “Leases (Topic 842)” and ASU No. 2018-11 “Leases (Topic 842)”.

“**Capital Lease Obligations**” shall mean, with respect to any Person, the obligations of such Person to pay rent or other amounts under any Capital Lease, any lease entered into as part of any Sale and Leaseback or any Synthetic Lease, or a combination thereof, which obligations are (or would be, if such Synthetic Lease or other lease were accounted for as a Capital Lease) required to be classified and accounted for as Capital Leases on a balance sheet of such person under GAAP as in effect prior to giving effect to the adoption of ASU No. 2016-02 “Leases (Topic 842)” and ASU No. 2018-11 “Leases (Topic 842)”, and the amount of such obligations shall be the capitalized amount thereof (or the amount that would be capitalized, if such Synthetic Lease were accounted for as a Capital Lease) determined in accordance with GAAP.

“**Cash Equivalents**” shall mean, as at any date of determination, any of the following:

(a) marketable securities (i) issued or directly and unconditionally guaranteed as to interest and principal by the government of the United States of America or (ii) issued by any agency of the United States of America and the obligations of which are backed by the full faith and credit of the United States of America, in each case maturing within one year from the date of acquisition;

(b) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one year after the date of acquisition and having a rating of at least A-1 from S&P or at least P-1 from Moody’s;

(c) certificates of deposit, time deposits, Eurodollar time deposits or overnight bank deposits having maturities of six months or less from the date of acquisition issued by any Lender or by any commercial bank organized under the laws of the United States of America or any state thereof or the District of Columbia that (i) is at least “adequately capitalized” (as defined in the regulations of its primary Federal banking regulator), (ii) has Tier 1 capital (as defined in such regulations) of not less than \$1,000,000,000 and (iii) has a rating of at least AA- from S&P and Aa3 from Moody’s;

(d) commercial paper of an issuer rated at least A-1 by S&P or P-1 by Moody’s, or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of commercial paper issuers generally, and maturing within six months from the date of acquisition;

(e) securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States of America, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by S&P or A by Moody’s;

(f) securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any Lender or any commercial bank satisfying the requirements of **clause (c)** of this definition; and

(g) shares of money market, mutual or similar funds which (i) invest exclusively in assets satisfying the requirements of **clauses (a)** through **(f)** of this definition; (ii) has net assets of not less than \$500,000,000 and (iii) has the highest rating obtainable from either S&P or Moody’s.

“**Change in Law**” shall mean the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; *provided that*, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“**Change of Control**” shall mean the occurrence of any of the following events:

(a) any Person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) shall have (x) acquired beneficial ownership or control of 35% or more on a fully diluted basis of the voting and/or economic interest in the Equity Interests of Ultimate Parent; or (y) obtained the power (whether or not exercised) to elect a majority of the members of the board of directors (or similar governing body) of Ultimate Parent;

(b) (i) Ultimate Parent shall cease to beneficially own and control directly 100% on a fully diluted basis of each class of outstanding Equity Interests of the Primary Guarantor;

(ii) the Primary Guarantor shall cease to beneficially own and control directly 100% on a fully diluted basis of each class of outstanding Equity Interests of the Borrower; or

(iii) the Borrower shall cease to beneficially own and control directly 100% on a fully diluted basis of each class of outstanding Equity Interests of each of the BR Advisory OpCos and each of the Borrowing Base Loan Parties;

(c) any “change of control” or similar event (however denominated) shall occur under any indenture or other agreement with respect to Material Indebtedness of Ultimate Parent or any Subsidiary thereof.

“**Class**” (a) when used with respect to any Lender, refers to whether such Lender has a Loan or Commitment with respect to a particular Class of Loans or Commitments, (b) when used with respect to Commitments, refers to whether such Commitments are Revolving Commitments or Term Loan Commitments and (c) when used with respect to Loans, refers to whether such Loans are Revolving Loans or Term Loans.

“**Closing Date**” shall mean June 23, 2021.

“**Closing Date Term Loans**” shall have the meaning assigned to such term in the Second Amendment.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended.

“**Collateral**” shall mean (i) all Property of the BR Advisory Loan Parties, now owned or hereafter acquired, upon which a Lien is purported to be created by any Security Document, but in any event excluding Excluded Assets and (ii) the Equity Interests in the Borrower.

“**Collateral Agent**” shall have the meaning set forth in the recitals hereto.

“**Commitment**” shall mean, with respect to any Lender, such Lender’s Term Loan Commitment or Revolving Commitment.

“**Commitment Fee**” shall have the meaning set forth in **Section 2.08(a)**.

“**Commitment Fee Rate**” shall mean, for any day, 1.00% per annum; *provided*, that on and after the first day of each fiscal quarter, commencing with the first fiscal quarter ending June 30, 2021, the Commitment Fee Rate shall be determined based on the Average Utilization for the immediately preceding fiscal quarter (or portion thereof since the Closing Date in the case of the first such date) in accordance with the following grid (and shall remain in effect until the next change to be effected pursuant to this definition):

Average Utilization	Commitment Fee Rate
< 33%	1.00%
>33% and ≤ 66%	0.75%
> 66%	0.50%

“**Commodity Exchange Act**” shall mean the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“**Compliance Certificate**” shall mean a certificate duly executed by a Responsible Officer of the Borrower, substantially in the form of **Exhibit A**.

“**Contractual Obligation**” shall mean, with respect to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its Property is bound.

“**Control**” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or by contract or otherwise. “**Controlling**” and “**Controlled**” have meanings correlative thereto.

“**Controlled Account**” shall mean a Deposit Account or Securities Account subject to an Account Control Agreement pursuant to **Section 5.15**.

“**Credit Extension**” shall mean the making of a Loan (but not any continuation or conversion thereof).

“**Credit Asset**” shall mean a commercial loan or bonds owned by a Borrowing Base Loan Party.

“**Credit Asset Collections**” shall mean all cash collections, distributions, payments or other amounts received, or to be received, by the Borrowing Base Loan Party from any Person in respect of any Credit Asset constituting Collateral, including all principal, interest, fees, distributions, recoveries and redemption and withdrawal proceeds payable to the Borrowing Base Loan Party under or in connection with any such Credit Assets and all Proceeds from any sale or disposition of any such Credit Assets, but excluding:

(a) any amounts received by the Borrowing Base Loan Party from a Credit Asset Obligor or any other party obligated to make payments in respect of such Credit Asset following the sale of a Credit Asset by the Borrowing Base Loan Party that the Borrowing Base Loan Party is required to pay to the purchaser of such Credit Asset so long as such amounts are not included in the net proceeds reported to be received by the Borrowing Base Loan Party from such sale; and

(b) any amounts in respect of indemnities received by the Borrowing Base Loan Party but owing to parties other than such Borrowing Base Loan Party in accordance with the applicable Credit Asset Documents for any such Credit Asset.

“**Credit Asset Collateral**” shall mean, with respect to a Credit Asset, any property or other assets designated and pledged or mortgaged as collateral to secure repayment of such Credit Asset.

“**Credit Asset Document Checklist**” means an electronic or hard copy list delivered by the Borrowing Base Loan Party to the Administrative Agent that identifies each of the documents that is in the Borrowing Base Loan Party’s possession (or that may be readily obtained by the Borrowing Base Loan Party) and contained in each Credit Asset File and whether such document is an original or a copy and whether a hard copy or electronic copy will be delivered to the Administrative Agent related to a Credit Asset and includes the name of the Credit Asset Obligor with respect to such Credit Asset.

“**Credit Asset Documents**” shall mean, with respect to a Credit Asset, the document or documents evidencing the commercial loan agreement or facility pursuant to which such Credit Asset is made; any promissory notes, if any, executed by a Credit Asset Obligor evidencing such Credit Asset and all other agreements or documents evidencing, securing, governing or giving rise to such Credit Asset.

“**Credit Asset File**” shall mean, with respect to each Credit Asset delivered, each of the Credit Asset Documents in the applicable Borrowing Base Loan Party’s possession (or that may be readily obtained by the Borrowing Base Loan Party) and in original or copy as identified on the related Credit Asset Document Checklist, and any other document delivered in connection therewith.

“**Credit Asset Obligor**” shall mean, in respect of any Credit Asset, any Person obligated to pay Credit Asset Collections in respect of such Credit Asset, including any applicable guarantors.

“**Credit Facilities**” shall mean each of (a) the Term Loan Commitments and the Term Loans made thereunder (the “**Term Loan Facility**”) and (b) the Revolving Commitments and the extensions of credit made thereunder (the “**Revolving Facility**”).

“**Daily Simple SOFR**” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for syndicated business loans; *provided*, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

“**Debtor Relief Laws**” shall mean the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief laws of the United States of America or other applicable jurisdictions from time to time in effect.

“**Default**” shall mean any event, occurrence or condition which is, or upon notice, lapse of time or both would constitute, an Event of Default.

“**Defaulted Loan**” shall mean any Credit Asset:

(a) (i) with respect to which a default as to the payment of principal and/or interest has occurred and is continuing or (ii) to the extent such Credit Asset contains a financial covenant, with respect to which a default as to such financial covenant has occurred and is continuing, in each case, for more than 30 consecutive days;

(b) with respect to which a default as to the payment of principal and/or interest has occurred and is continuing for more than 30 consecutive days with respect to another full recourse debt obligation of the same Underlying Obligor with a principal amount in excess of the Threshold Amount secured by the same collateral as such Credit Asset and which is senior to, or pari passu with, such Credit Asset in security or priority of payment;

(c) with respect to which the Credit Asset Obligor thereunder has become subject to proceeding under Debtor Relief Laws;

(d) with respect to which there has been effected any distressed exchange or other distressed debt restructuring where the Credit Asset Obligor of such Credit Asset has offered the holder or holders thereof a new security or package of securities that, in the reasonable business judgment of the Administrative Agent, amounts to a diminished financial obligation; or

(e) with respect to which the administrative agent, collateral agent or other secured parties in respect thereof have commenced foreclosure proceedings, accelerated the Credit Asset or otherwise exercised remedies with respect to material portions of the applicable Credit Asset Collateral.

“**Defaulting Lender**” shall mean, subject to **Section 2.22(b)**, any Lender that

(a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due,

(b) has notified the Borrower and the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied),

(c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (*provided* that such Lender shall cease to be a Defaulting Lender pursuant to this **clause (c)** upon receipt of such written confirmation by the Administrative Agent and the Borrower) or

(d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States of America or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of **clauses (a)** through **(d)** above shall be conclusive and binding absent manifest error and such Lender shall be deemed to be a Defaulting Lender (subject to **Section 2.22(b)**) upon delivery of written notice of such determination to the Borrower and each Lender.

“**Deposit Account**” shall mean a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, excluding, for the avoidance of doubt, any investment property (within the meaning of the UCC) or any account evidenced by an instrument (within the meaning of the UCC).

“**Designated Exchange**” shall mean any of The New York Stock Exchange, the NYSE MKT, The Nasdaq Global Market, The Nasdaq Global Select Market or the Nasdaq Capital Market, or (in each case) any successor thereto.

“**Disposition**” shall mean, with respect to any Property, any sale, lease, sublease, assignment, conveyance, transfer, exclusive license or other disposition thereof (including (i) by way of merger or consolidation, (ii) any Sale and Leaseback and (iii) any Synthetic Lease); and the terms “**Dispose**” and “**Disposed of**” shall have correlative meanings.

“**Disqualified Equity Interests**” shall mean any Equity Interests that, by their terms (or by the terms of any security or other Equity Interests into which they are convertible or for which they are exchangeable), or upon the happening of any event or condition,

(a) require the scheduled payment of dividends in cash,

(b) mature or are mandatorily redeemable or subject to mandatory repurchase or redemption or repurchase at the option of the holders thereof (other than solely for Qualified Equity Interests and customary cash outs of fractional interests), in each case in whole or in part and whether upon the occurrence of any event, pursuant to a sinking fund obligation on a fixed date or otherwise (including as the result of a failure to maintain or achieve any financial performance standards) or

(c) are or become convertible into or exchangeable for, automatically or at the option of any holder thereof, any Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in the case of each of **clauses (a), (b) and (c)**, prior to the date that is 91 days after the Latest Maturity Date at the time of issuance of such Equity Interests (other than (i) following or conditioned on the prior Payment in Full or (ii) upon a “change in control”, asset sale, casualty event or other event; **provided** that any payment required pursuant to this **clause (ii)** is subject to the prior Payment in Full; **provided, however**, that if such Equity Interests are issued to any employee or to any plan for the benefit of employees of the Primary Guarantor or its Subsidiaries or by any such plan to such employees, such Equity Interests shall not constitute Disqualified Equity Interests solely because they may be required to be repurchased by a Group Member in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s termination, death or disability.

“**Dollars**” or “**\$**” shall mean lawful money of the United States of America.

“**Domestic Subsidiary**” shall mean (i) any Subsidiary that is organized under the laws of the United States, any state thereof or the District of Columbia or (ii) any direct wholly-owned Subsidiary of Ultimate Parent or of any Subsidiary described in clause (i) above that is disregarded for U.S. tax purposes.

“**DTC**” shall mean The Depository Trust Company or its successor.

“**DTC Shares**” shall mean Public Equities that are registered in the name of DTC or its nominee, maintained in the form of book entries on the books of DTC, and are allowed to be settled through DTC’s regular book-entry settlement services.

“**Early Opt-in Effective Date**” means, with respect to any Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Required Lenders.

“**Early Opt-in Election**” means the occurrence of:

(a) a notification by the Administrative Agent to (or the request by the Borrower to the Administrative Agent to notify) each of the other parties hereto that at least five currently outstanding U.S. dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and

(b) the joint election by the Administrative Agent and the Borrower to trigger a fallback from Eurodollar and the provision by the Administrative Agent of written notice of such election to the Lenders.

“**Eligible Assignee**” shall mean any Person that meets the requirements to be an assignee under **Section 9.06(b)(iii)**, **Section 9.06(b)(v)** and **Section 9.06(b)(vi)** (subject to such consents, if any, as may be required under **Section 9.06(b)(iii)**).

“**Eligible Credit Assets**” shall mean all Credit Assets of a Borrowing Base Loan Party reflected in the most recently delivered Borrowing Base Certificate, except Credit Assets with respect to which any of the exclusionary criteria set forth below applies (except in the case of an applicable Approved Asset). No Credit Asset shall be an Eligible Credit Asset if (except in the case of an applicable Approved Asset):

(a) the applicable Borrowing Base Loan Party does not have good and valid title to such Credit Asset, free and clear of any Lien (other than non-consensual Permitted Liens, Liens securing the Obligations hereunder and Liens in favor of a bank, intermediary or custodian or similar entity arising in connection with any Deposit Account or Securities Account);

(b) the Collateral Agent’s Lien on such Credit Asset, for the benefit of itself and the other Secured Parties, is not a valid first priority perfected Lien (subject to non-consensual Permitted Liens and Liens in favor of a bank, intermediary or custodian or similar entity arising in connection with any Deposit Account or Securities Account, in each case, as to which the Administrative Agent shall establish a Reserve);

(c) any of the representations or warranties in the Loan Documents with respect to such Credit Asset are untrue or inaccurate in any material respect (or, with respect to representations or warranties that are qualified by materiality, any of such representations and warranties are untrue or inaccurate);

(d) such Credit Asset, (i) is a Structured Finance Obligation, a revolving loan, a letter of credit or bank guarantee, a construction loan, a project finance loan or a participation or a commitment to provide a Credit Asset (or otherwise results in the imposition of an obligation to fund future advances or payments to the Credit Asset Obligor by the Borrowing Base Loan Party (or otherwise imposes present or future, actual or contingent, monetary liabilities or obligations upon the Borrowing Base Loan Party)) or (ii) the Credit Asset Collateral in respect of such Credit Asset is principally real property or Margin Stock;

(e) such Credit Asset, had an original term to maturity of more than five years and has a current term to maturity of more than three years;

(f) such Credit Asset, (i) is a Defaulted Loan, (ii) permits the capitalization of periodic interest as principal (unless such Credit Asset also requires cash-pay interest of at least 4.00% per annum) or does not require interest payments at least semi-annually, (iii) without the consent of the Administrative Agent in its Reasonable Credit Judgment, has been amended pursuant to an amendment intended to waive or avoid a default or event of default, that delays or reduces payments of interest or principal or modifies any financial covenant or any other amendment entered into in contemplation of the exclusionary criteria set forth in this definition of “Eligible Credit Assets”, (iv) is subject to any pending or threatened litigation or right or claim of rescission, set-off, netting, counterclaim or defense on the part of the related Credit Asset Obligor or (v) is unsecured and subordinated;

(g) such Credit Asset, is not in “registered” form or does not constitute indebtedness for U.S. federal income tax purposes;

(h) such Credit Asset is not capable of being transferred pursuant to customary documentation to and owned by the Borrowing Base Loan Party (whether directly or by means of a security entitlement) and of being pledged, assigned or novated by the owner thereof or of an interest therein, subject to customary restrictions for assets of the type constituting the Credit Assets (1) to the Collateral Agent, (2) to any assignee of the Collateral Agent permitted or contemplated under this Agreement, (3) to any Person at any foreclosure or strict foreclosure sale or other disposition initiated by a secured creditor in furtherance of its security interest and (4) to commercial banks, financial institutions, offshore and other funds (in each case, including transfer permitted by operation of the UCC);

(i) the Credit Asset Documents in respect of such Credit Asset (i) are not governed by the laws of the United States (or the states thereof), (ii) do not constitute the legal, valid and binding obligations of the related Credit Asset Obligor thereunder and each guarantor thereof, enforceable against such Person in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally or general principles of equity, regardless of whether considered in a proceeding in equity or at law, (iii) are illegal or unenforceable (or the Credit Asset Obligor, a Governmental Authority or any other party, has alleged such illegality or unenforceability), (iv) contain restrictions on transfer which materially limit potential transferees (other than any such restrictions customary for assets of the type constituting Credit Assets), (v) contain confidentiality provisions that would prohibit the Administrative Agent, the Collateral Agent or the Lenders from accessing or receiving all material obligor information with regards to such Credit Asset (subject to customary confidentiality provisions) or (vi) subjects the Borrowing Base Loan Party to withholding tax, fee or governmental charge unless the Credit Asset Obligor is required to make "gross-up" payments constituting 100% of such withholding tax, fee or governmental charge on an after-tax basis;

(j) if a Credit Asset Obligor in respect of such Credit Asset (i) is not a business entity (and not a natural person) duly organized and validly existing under the laws of its jurisdiction of organization (and in the case of the primary borrower in respect of such Credit Asset, such jurisdiction of organization is not the United States), (ii) is not a legal operating entity or holding company, (iii) is a Governmental Authority or (iv) unless approved by the Administrative Agent in its Reasonable Credit Judgment, is an Affiliate of the Ultimate Parent;

(k) such Credit Asset Collateral in respect of such Credit Asset, to the actual knowledge of the Borrowing Base Loan Party, has been used by the related Credit Asset Obligor (or any parent entity, subsidiary or Affiliate thereof) in any manner or for any purpose that would result in any material risk of liability being imposed upon the Administrative Agent, the Borrowing Base Loan Party or any Secured Party under any applicable law (as determined by such party in its reasonable discretion);

(l) the acquisition thereof (i) would (A) violate any Applicable Law on the date of acquisition by the Borrowing Base Loan Party, (B) violate any Applicable Law in any manner which would reasonably be expected to materially and adversely impact the value thereof on any date after the date of acquisition by the Borrowing Base Loan Party or (C) to the actual knowledge of a Responsible Officer of the Borrowing Base Loan Party or the Administrative Agent, cause the Administrative Agent or any Lender to fail to comply with any request or directive from any banking authority or governmental entity having jurisdiction over the Administrative Agent or such Lender or (ii) would cause the Borrowing Base Loan Party to be required to register as an "investment company" under Section 8 of the Investment Company Act;

(m) the Borrowing Base Loan Party does not have all necessary all franchises, permits, licenses, approvals, consents and other authorizations of all Governmental Authorities or otherwise necessary to acquire and own such Credit Asset and enter into the Credit Asset Documents with respect to such Credit Asset;

(n) the Administrative Agent has not received the Credit Asset File in respect of such Credit Asset;

(o) any information provided by the Borrowing Base Loan Party (or its behalf) to the Administrative Agent in writing with respect to such Credit Asset is not true, complete and correct in all material respects as of the date such information is provided; or

(p) such Credit Asset is subject to a Restricted Transaction.

**“Eligible First Lien Credit Assets”** shall mean any Eligible Credit Asset that is secured by all or substantially all of the personal and other property (subject to customary exceptions) of the obligors and guarantors in respect of such Eligible Credit Asset on a valid, perfected first-priority basis (and is not subject to an intercreditor agreement whereby the Lien on the collateral securing such Eligible Credit Asset is subordinated to another Lien).

**“Eligible Private Assets”** shall mean all Private Assets of a Borrowing Base Loan Party reflected in the most recently delivered Borrowing Base Certificate, except Private Assets with respect to which any of the exclusionary criteria set forth below applies (except in the case of an applicable Approved Asset). No Private Asset shall be an Eligible Private Asset if (except in the case of an applicable Approved Asset):

(a) the applicable Borrowing Base Loan Party does not have good and valid title to such Private Asset, free and clear of any Lien (other than non-consensual Permitted Liens, Liens securing the Obligations hereunder and Liens in favor of a bank, intermediary or custodian or similar entity arising in connection with any Deposit Account or Securities Account);

(b) the Collateral Agent’s Lien on such Private Asset, for the benefit of itself and the other Secured Parties, is not a valid first priority perfected Lien (subject to non-consensual Permitted Liens and Liens in favor of a bank, intermediary or custodian or similar entity arising in connection with any Deposit Account or Securities Account, in each case, as to which the Administrative Agent shall establish a Reserve);

(c) any of the representations or warranties in the Loan Documents with respect to such Private Asset are untrue or inaccurate in any material respect (or, with respect to representations or warranties that are qualified by materiality, any of such representations and warranties are untrue or inaccurate);

(d) such Private Asset (**other than preferred equity interests in public companies**), when combined with all other Equity Interests in the applicable Issuer, does not constitute the majority voting or economic interests of the Equity Interests in the applicable Issuer;

(e) such Private Asset is subject to any Restricted Transaction;

(f) the Issuer of such Private Asset is an obligor under any debt obligation with a principal amount in excess of the Threshold Amount (i) with respect to which a default as to the payment of principal and/or interest has occurred and is continuing or (ii) to the extent such debt obligation contains a financial covenant, with respect to which a default as to such financial covenant has occurred and is continuing, in each case for more than 30 days; or

(g) the Issuer (or any material subsidiary thereof) has become subject to a proceeding under Debtor Relief Laws.

**“Eligible Public Equities”** shall mean all Public Equities of a Borrowing Base Loan Party reflected in the most recently delivered Borrowing Base Certificate, except Public Equities with respect to which any of the exclusionary criteria set forth below applies (except in the case of an applicable Approved Asset). No Public Equity shall be an Eligible Public Equity if (except in the case of an applicable Approved Asset):

(a) the applicable Borrowing Base Loan Party does not have good and valid title to such Public Equity, free and clear of any Lien (other than non-consensual Permitted Liens, Liens securing the Obligations hereunder and Liens in favor of a bank, intermediary or custodian or similar entity arising in connection with any Deposit Account or Securities Account);

(b) such Public Equity is not held by the Borrower in a Controlled Account or the Collateral Agent’s Lien on such Public Equity, for the benefit of itself and the other Secured Parties, is not a valid first priority perfected Lien (subject to non-consensual Permitted Liens and Liens in favor of a bank, intermediary or custodian or similar entity arising in connection with any Deposit Account or Securities Account, in each case, as to which the Administrative Agent shall establish a Reserve);

(c) any of the representations or warranties in the Loan Documents with respect to such Public Equity are untrue or inaccurate in any material respect (or, with respect to representations or warranties that are qualified by materiality, any of such representations and warranties are untrue or inaccurate);

(d) the Market Capitalization of the Issuer is less than \$150,000,000;

(e) such Public Equity is not listed a Designated Exchange;

(f) such Public Equity is not any of (i) a Book-Entry Share, (ii) a DTC Share with an unrestrictive CUSIP or (iii) a warrant (x) where the corresponding Public Equity for which such warrant is exercisable would otherwise qualify as an Eligible Public Equity (without giving effect to clauses (a), (b) or (c) of this definition) and (y) the exercise of which is not subject to any contingency or condition;

(g) such Public Equity is subject to (A) any Transfer Restriction, except Approved Transfer Restrictions or otherwise approved by the Administrative Agent, (B) any Lien (other than Permitted Liens) or (C) any Restricted Transaction; or

(h) such Public Equity is not duly authorized, validly issued, fully paid and non-assessable.

**“Eligible Subordinated Credit Assets”** shall mean any Credit Asset that would be an “Eligible Credit Asset” but for the application of **clauses (e), (f) (ii) and (f)(v)** thereof.

**“Environmental Laws”** shall mean any and all laws, rules, orders, regulations, statutes, ordinances, binding guidelines, codes, decrees, or other legally binding requirements (including, without limitation, principles of common law) of any Governmental Authority, regulating, relating to or imposing liability or standards of conduct concerning pollution, the preservation or protection of the environment, natural resources or human health (including employee health and safety) as it relates to exposure to Materials of Environmental Concern, or the generation, manufacture, use, labeling, treatment, storage, handling, transportation or release of, or exposure to, Materials of Environmental Concern, as has been, is now, or may at any time hereafter be, in effect.

**“Environmental Liability”** shall mean any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties, reasonable attorney or consultant fees or indemnities) resulting from or based upon (a) non-compliance with any Environmental Law or any Environmental Permit, (b) exposure to any Materials of Environmental Concern, (c) Release or threatened Release of any Materials of Environmental Concern, (d) any investigation, remediation, removal, clean-up or monitoring required under Environmental Laws or required by a Governmental Authority (including without limitation Governmental Authority oversight costs that the party conducting the investigation, remediation, removal, clean-up or monitoring is required to reimburse) or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

**“Environmental Permits”** shall mean any and all Permits required under any Environmental Law.

**“Equity Interest”** shall mean, with respect to any Person, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents, including membership interests (however designated, whether voting or nonvoting), of equity of such Person, including, if such Person is a partnership, partnership interests (whether general or limited), if such Person is a limited liability company, membership interests, and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of property of, such partnership, whether outstanding on the date hereof or issued on or after the Closing Date, but excluding debt securities convertible or exchangeable into such equity interests.

**“ERISA”** shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, the regulations promulgated thereunder and any successor thereto.

**“ERISA Affiliate”** shall mean any trade or business (whether or not incorporated) that, together with any Group Member, is treated as a single employer under Section 414(b) or (c) of the Code, or solely for purposes of Section 302 or 303 of ERISA or Section 412 or 430 of the Code, is treated as a single employer under Section 414 of the Code. Any former ERISA Affiliate of the Group Members shall continue to be considered an ERISA Affiliate of the Group Members within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of any Group Member and with respect to liabilities arising after such period for which any Group Member could be liable under the Code or ERISA.

**“ERISA Event”** shall mean

(a) a “reportable event” within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Single Employer Plan (excluding those for which the provision for 30 day notice to the PBGC has been waived by regulation in effect on the date hereof);

(b) the failure to meet the minimum funding standard of Sections 412 or 430 of the Code or Sections 302 or 303 of ERISA with respect to any Single Employer Plan, whether or not waived;

(c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Single Employer Plan;

(d) the termination of any Single Employer Plan or the withdrawal or partial withdrawal of any Group Member from any Single Employer Plan or Multiemployer Plan;

(e) a determination that any Single Employer Plan is, or is expected to be, in “at risk” status (as defined in Section 430 of the Code or Section 303 of ERISA);

(f) a determination that any Multiemployer Plan is, or is expected to be, in “critical” or “endangered” status under Section 432 of the Code or Section 305 of ERISA;

(g) the receipt by any Group Member or any of their respective ERISA Affiliates from the PBGC or a plan administrator of any notice relating to an intention to terminate any Single Employer Plan or to appoint a trustee to administer any Single Employer Plan;

(h) the adoption of any amendment to a Single Employer Plan that would require the provision of security pursuant to Section 436(f) of the Code;

(i) the receipt by any Group Member or any of their respective ERISA Affiliates of any notice, or the receipt by any Multiemployer Plan from any Group Member or any of their respective ERISA Affiliates of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent, within the meaning of Title IV of ERISA;

(j) the failure by any Group Member or any of their respective ERISA Affiliates to make a required contribution to a Multiemployer Plan;

(k) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which would reasonably be expected to result in material liability to any Group Member;

(l) the receipt from the IRS of notice of disqualification of any Plan intended to qualify under Section 401(a) of the Code, or the disqualification of any trust forming part of any Plan intended to qualify for exemption from taxation under Section 501(a) of the Code;

(m) the imposition of a lien pursuant to Section 430(k) of the Code or Section 303(k) of ERISA or a violation of Section 436 of the Code with respect to any Single Employer Plan;

(n) the assertion of a material claim (other than routine claims for benefits) against any Plan other than a Multiemployer Plan or the assets thereof, or against any Group Member or any of their respective ERISA Affiliates in connection with any Plan; or

(o) the occurrence of an act or omission which could give rise to the imposition on any Group Member or any of their respective ERISA Affiliates of any fine, penalty, tax or related charge under Chapter 43 of the Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Plan.

“**Erroneous Payment**” has the meaning assigned to it in **Section 8.11(a)**.

“**Erroneous Payment Deficiency Assignment**” has the meaning assigned to it in **Section 8.11(d)**.

“**Erroneous Payment Impacted Class**” has the meaning assigned to it in **Section 8.11(d)**.

“**Erroneous Payment Return Deficiency**” has the meaning assigned to it in **Section 8.11(d)**.

“**Erroneous Payment Subrogation Rights**” has the meaning assigned to it in **Section 8.11(d)**.

“**Eurodollar Base Rate**” shall mean, with respect to any Eurodollar Loan for any Interest Period, the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for U.S. Dollars for a period equal in length to such Interest Period as displayed on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion) (in each case, the “**LIBO Screen Rate**”) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period; *provided* that, if the LIBO Screen Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement; *provided, further*, that, if the LIBO Screen Rate shall not be available at such time for such Interest Period (an “**Impacted Interest Period**”) then the Eurodollar Base Rate shall be the Interpolated Rate; *provided* that, if any Interpolated Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“**Eurodollar Loan**” shall mean a Loan bearing interest at a rate determined by reference to the Eurodollar Rate.

“**Eurodollar Rate**” shall mean, with respect to any Eurodollar Loan for any Interest Period, a *per annum* rate of interest (rounded upward, if necessary, to the next 1/100<sup>th</sup> of 1.00%) equal to the greater of (a) (i) the Eurodollar Base Rate for such Interest Period multiplied by (ii) the Statutory Reserve Rate and (b) 0.00%.

“**Eurodollar Tranche**” shall mean the collective reference to Eurodollar Loans the then current Interest Periods with respect to all of which begin on the same date and end on the same later date (whether or not such Loans shall originally have been made on the same day).

“**Event of Default**” shall mean any of the events specified in **Section 7.01**; *provided* that any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

“**Excess Concentration Amount**” shall mean the amount by which before giving effect to such deduction, the contribution of each Underlying Obligor to the Asset Portfolio Component of the Borrowing Base exceeds:

(a) in the case of the Underlying Obligor whose contribution to the Asset Portfolio Component is the largest, 20% of the Asset Portfolio Component,

(b) in the case of the Underlying Obligors whose contributions to the Asset Portfolio Component are the second and third largest, 15% of the Asset Portfolio Component,

(c) in the case of the Underlying Obligors whose contributions to the Underlying Obligor Borrowing Base Component are the fourth and fifth largest, 12.5% of the Asset Portfolio Component and

(d) in the case of any other Underlying Obligor, 10% of the Asset Portfolio Component.

“**Excess Operating Cash**” shall mean, as to any Person, internally generated cash in excess of operating expenses of such Person as determined in accordance with GAAP (excluding any Non-Ordinary Course Proceeds) and calculated in a manner consistent with the calculation provided by the Borrower to the Administrative Agent prior to the Closing Date.

“**Exchange Act**” shall mean the Securities Exchange Act of 1934, as amended.

“**Excluded Account**” shall mean any Deposit Account or Securities Account owned by a BR Advisory OpCo or BRF Finance Co.

(a) exclusively used for payroll, payroll taxes, or other employee wage and benefit payments for the benefit of any BR Advisory OpCo’s or Borrowing Base Loan Party’s employees or that is a zero balance account,

(b) exclusively used for the making of disbursements in satisfaction of accounts payable as such accounts payable become due in the ordinary course of business and not for purposes of maintaining a balance,

(c) accounts in which the funds consist solely of funds held in trust or pursuant to customary escrow or agency arrangements or

(d) containing an average daily balance for any 30 day period equal to or less than \$500,000.

“**Excluded Assets**” shall mean:

(a) any fee owned Real Property, any leasehold rights and interests in Real Property and any fixtures affixed to any Real Property to the extent a security interest in such fixtures may not be perfected by the filing of a UCC financing statement in the jurisdiction of organization (or other location of a grantor under Section 9-307 of the UCC) of the applicable grantor (other than proceeds of enforcement of a Credit Asset);

(b) commercial tort claims where the amount of damages claimed by the applicable Loan Party is less than \$500,000;

(c) governmental licenses, state or local franchises, charters and authorizations and any other property and assets to the extent that the Administrative Agent may not validly possess a security interest therein under applicable Requirements of Law or the pledge or creation of a security interest in which would require governmental consent, approval, license or authorization that has not been obtained or consent of a third party that has not been obtained pursuant to any contract or agreement binding on such asset at the time of its acquisition and not entered into in contemplation of such acquisition, other than to the extent such prohibition or limitation on possessing a security interest therein is rendered ineffective under the UCC or other applicable Requirements of Law notwithstanding such prohibition or limitation;

(d) any lease, license, Permit or agreement to the extent that a grant of a security interest therein (i) is prohibited by applicable Requirements of Law other than to the extent such prohibition is rendered ineffective under the UCC or other applicable Requirements of Law notwithstanding such prohibition or (ii) to the extent and for so long as it would violate or invalidate the terms thereof (in each case, after giving effect to the relevant provisions of the UCC or other applicable Requirements of Law) or would give rise to a termination right of an unaffiliated third party thereunder or require consent of an unaffiliated third party thereunder (except to the extent such provision is overridden by the UCC or other Requirements of Law);

(e) any intent-to-use trademark application prior to the filing of a “Statement of Use” or “Amendment to Allege Use” with respect thereto and acceptance thereof by the United States Patent and Trademark Office, to the extent, if any, that, and solely during the period, if any, in which the grant of a security interest therein would impair the validity or enforceability of or render void or voidable, or result in the cancellation of, such intent-to-use trademark application or any registration that may issue therefrom under applicable federal law;

(f) (i) as-extracted collateral, (ii) timber to be cut, (iii) farm products, (iv) manufactured homes and (v) healthcare insurance receivables;

(g) any particular asset, if the pledge thereof or the security interest therein would result in material adverse tax consequences to any grantor as reasonably determined by the Borrower in good faith in consultation with the Administrative Agent;

(h) letter-of-credit rights not in excess of \$500,000 or to the extent a security interest therein cannot be perfected by the filing of UCC-1 financing statements;

(i) Excluded Equity Interests (as defined in the Guarantee and Collateral Agreement); and

(j) particular assets if and for so long as, if reasonably agreed by the Administrative Agent and the Borrower in writing, the cost of creating a pledge or security interest in such assets exceed the fair market value thereof (as determined by the Borrower in its reasonable judgement) or the practical benefits to be obtained by the Lenders therefrom;

**provided, however**, that Excluded Assets shall not include any proceeds, substitutions or replacements of any Excluded Assets referred to in **clauses (a)** through **(i)** (unless such Proceeds, substitutions or replacements would independently constitute Excluded Assets referred to in **clauses (a)** through **(i)**) and no Excluded Assets shall be included in the calculation of the Borrowing Base.

**“Excluded Perfection Assets”** shall mean:

(a) motor vehicles, airplanes and other assets subject to certificates of title or ownership;

(b) letter of credit rights, except to the extent constituting support obligations for other Collateral as to which perfection of the security interest in such other Collateral is accomplished solely by the filing of a UCC financing statement or another method that is required by the Security Documents for such other Collateral;

(c) particular assets if and for so long as, if reasonably agreed by the Administrative Agent and the Borrower, the cost of perfecting a pledge or security interest in such assets exceed the practical benefits to be obtained by the Lenders therefrom.

**“Excluded Subsidiaries”** shall mean 6 Brands, TreePeach Management LLC, B. Riley Advisory Services de Mexico, S de RL and any Subsidiary of an Excluded Subsidiary.

**“Excluded Taxes”** shall mean any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment or in this Agreement (other than pursuant to an assignment request by the Borrower under **Section 2.23**) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to **Section 2.19**, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient’s failure to comply with **Section 2.19(g)** and (d) any U.S. federal withholding Taxes imposed under FATCA.

**“Executive Order No. 13224”** shall mean the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, as the same as been, or shall hereafter be, renewed, extended, amended or replaced.

“**FASB ASC**” shall mean the Accounting Standards Codification of the Financial Accounting Standards Board.

“**FATCA**” shall mean Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

“**Federal Funds Effective Rate**” shall mean, for any day, the rate *per annum* equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that (i) if such day is not a Business Day, the Federal Funds Effective Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day and (ii) if no such rate is so published on such next succeeding Business Day, the Federal Funds Effective Rate for such day shall be the average rate charged to the Administrative Agent on such day on such transactions as determined by the Administrative Agent.

“**Fee Letters**” shall mean (a) the fee letter, dated as of the date hereof, between the Borrower and the Administrative Agent and (b) the schedule of fees of the Collateral Agent, accepted by the Borrower on June 8, 2021 and (c) the second amendment fee letter, dated as of December 17, 2021, between the Borrower and the Administrative Agent.

“**Floor**” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to USD LIBOR.

“**Foreign Lender**” shall mean a Lender that is not a U.S. Person.

“**Foreign Subsidiary**” shall mean any direct or indirect Subsidiary of Ultimate Parent that is not a Domestic Subsidiary.

“**GAAP**” shall mean generally accepted accounting principles in the United States, as in effect from time to time.

“**Governmental Authority**” shall mean the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“**Governmental Authorization**” shall mean any permit, license, authorization, certification, registration, approval, clearance, plan, directive, marking, consent order or consent decree of or from any Governmental Authority.

“**Granting Lender**” shall have the meaning set forth in Section 9.06(f).

“**Group Member**” shall mean each of Ultimate Parent and its Subsidiaries and “**Group Members**” shall refer to each such Person, collectively.

**“Guarantee and Collateral Agreement”** shall mean the Guarantee and Collateral Agreement, dated as of the date hereof and executed and delivered by Ultimate Parent, the Borrower, the Primary Guarantor, each other Guarantor, the Administrative Agent and the Collateral Agent, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

**“Guarantee Obligation”** shall mean, with respect to any Person (the **“guaranteeing person”**), any obligation of (x) the guaranteeing person or (y) another Person (including any bank under any letter of credit), if to induce the creation of which the guaranteeing person has issued a reimbursement, counterindemnity or similar obligation, in either case guaranteeing or in effect guaranteeing any Indebtedness, leases, dividends or other obligations (the **“primary obligations”**) of any other third Person (the **“primary obligor”**) in any manner, whether directly or indirectly, including, without limitation, any obligation of the guaranteeing person, whether or not contingent,

(a) to purchase any such primary obligation or any Property constituting direct or indirect security therefor,

(b) to advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor,

(c) to purchase Property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or

(d) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof;

**provided, however**, that the term “Guarantee Obligation” shall not include endorsements of instruments for deposit or collection in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness).

The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the lower of (1) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made and (2) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing person’s maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith.

**“Guarantors”** shall mean the collective reference to Ultimate Parent, Primary Guarantor, the BR Advisory Loan Parties and each other Person who guarantees the Obligations or is required to guarantee the Obligations pursuant to **Section 5.12**.

**“Highest Lawful Rate”** shall mean the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to any Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum non-usurious interest rate than applicable laws now allow.

“**Historical Audited Financial Statements**” shall mean the audited consolidated balance sheets of Ultimate Parent and its Subsidiaries as at the end of the fiscal years ended December 31, 2018, December 31, 2019 and December 31, 2020 and the related consolidated statements of income or operations, changes in stockholders’ equity and cash flows for such fiscal years, including the notes thereto.

“**IFRS**” shall mean international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements delivered under or referred to herein.

“**Impacted Interest Period**” shall have the meaning set forth in the definition of “Eurodollar Base Rate”.

“**Indebtedness**” shall mean, of any Person at any date, without duplication,

(a) all indebtedness of such Person for borrowed money,

(b) all obligations of such Person for the deferred purchase price of Property or services, including seller notes or earn out obligations appearing as a liability on such Person’s balance sheet in accordance with GAAP (other than trade payables incurred in the ordinary course of such Person’s business),

(c) all obligations of such Person evidenced by notes, bonds, debentures, loan agreements or other similar instruments,

(d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to Property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such Property), other than customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business,

(e) all Capital Lease Obligations, Purchase Money Obligations or Attributable Indebtedness of such Person,

(f) all obligations of such Person, contingent or otherwise, as an account party or applicant under bankers’ acceptance, letter of credit or similar facilities,

(g) all obligations of such Person in respect of Disqualified Equity Interests of such Person,

(h) all Guarantee Obligations of such Person in respect of obligations of the kind referred to in **clauses (a) through (g)** above,

(i) all obligations of the kind referred to in **clauses (a) through (h)** above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on Property (including, without limitation, accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligation and

(j) for the purposes of **Section 6.01** and **Section 7.01(e)** only, all obligations of such Person in respect of Swap Contracts;

**provided**, that Indebtedness shall not include (i) trade payables and accrued expenses arising in the ordinary course of business, (ii) prepaid or deferred revenue arising in the ordinary course of business, and (iii) Indebtedness of any direct or indirect parent entity appearing on the balance sheet of such Person solely by reason of push down accounting under GAAP.

“**Indemnified Liabilities**” shall have the meaning set forth in Section 9.05(b).

“**Indemnified Taxes**” shall mean (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

“**Indemnitee**” shall have the meaning set forth in Section 9.05(b).

“**Intellectual Property**” shall mean the collective reference to all intellectual property, whether arising under United States of America, state, multinational or foreign laws or otherwise, including, without limitation, copyrights, copyright licenses, patents, patent licenses, trademarks, trademark licenses, service-marks, know-how, trade secrets, and all rights to sue at law or in equity for any infringement or other violations thereof, including the right to receive all proceeds and damages therefrom.

“**Intellectual Property Security Agreements**” shall have the meaning set forth in the Guarantee and Collateral Agreement.

“**Interest Payment Date**” shall mean:

(a) as to any Eurodollar Loan, the last day of each Interest Period applicable to such Eurodollar Loan and the final maturity date of such Eurodollar Loan; *provided, however*, that, if any Interest Period for a Eurodollar Loan is longer than three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and

(b) as to any Base Rate Loan, the last Business Day of each March, June, September and December to occur while such Loan is outstanding and the applicable Maturity Date of such Loan.

“**Interest Period**” shall mean, with respect to any Eurodollar Loan, the period commencing on the date such Eurodollar Loan is disbursed or converted to or continued as a Eurodollar Loan and ending on the date that is three months thereafter; *provided that*:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such next succeeding Business Day falls in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day,

(b) any Interest Period pertaining to a Eurodollar Loan that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period and

(c) no Interest Period shall extend beyond the applicable Maturity Date.

**“Interpolated Rate”** shall mean, at any time, for any Interest Period, the rate *per annum* (rounded to the same number of decimal places as the LIBO Screen Rate) determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate for the longest period (for which the LIBO Screen Rate is available) that is shorter than the Impacted Interest Period and (b) the LIBO Screen Rate for the shortest period (for which the LIBO Screen Rate is available) that exceeds the Impacted Interest Period, in each case, at such time.

**“Investment”** shall mean, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of:

(a) the purchase or other acquisition of Equity Interests or debt or other securities of another Person,

(b) a loan, advance or capital contribution to, guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person, or

(c) the purchase or other acquisition (in one transaction or a series of transactions) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person;

**provided** that the following shall not constitute an Investment: intercompany advances between and among Group Members relating to their cash management, tax and accounting operations in the ordinary course of business.

For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment but reduced by cash returns actually received on such Investment.

**“IRS”** shall mean the United States Internal Revenue Service.

**“Issuer”** shall mean, with respect to any Private Asset or Public Equity, the issuer thereof.

**“Latest Maturity Date”** shall mean, at any date of determination, the latest Maturity Date applicable to any Loan or Commitment hereunder at such time, including the latest maturity date of any Term Loan, Term Loan Commitment, or Revolving Commitment.

**“Lenders”** shall have the meaning set forth in the preamble hereto.

**“LIBO Screen Rate”** shall have the meaning set forth in the definition of “Eurodollar Base Rate”.

**“Lien”** shall mean, with respect to any property:

(a) any mortgage, deed of trust, lien (statutory or other), judgment liens, pledge, encumbrance, claim, charge, assignment, hypothecation, deposit arrangement, security interest or encumbrance of any kind or any arrangement to provide priority or preference in the nature of a security interest, including any easement, servitude, right-of-way or other encumbrance on title to real property, in each of the foregoing cases whether voluntary or imposed or arising by operation of law,

(b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) and

(c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“**Loan**” shall mean any extension of credit by a Lender to the Borrower under this Agreement in the form of a Term Loan or Revolving Loan.

“**Loan Documents**” shall mean, collectively, (i) this Agreement, (ii) the Notes, (iii) the Security Documents, (iv) the Fee Letters, and (v) all other documents, certificates, instruments or agreements executed and delivered by or on behalf of a Loan Party for the benefit of any Agent or Lender in connection herewith on or after the date hereof.

“**Loan Parties**” shall mean, collectively, the Borrower and each Guarantor.

“**Make Whole Premium**” shall mean, except as provided in **Section 2.09(c)(iii)**, with respect to any prepayment of Term Loans or any termination or reduction of the Total Revolving Commitments made prior to the first anniversary of the Closing Date pursuant to **Section 2.09(a)**, or with respect to Term Loans the principal of which has become or has been declared to be immediately due and payable or Revolving Commitments terminated, in each case, prior to the first anniversary of the Closing Date pursuant to **Section 7.02**, an amount equal to the present value (on a quarterly basis assuming a 360-day year and actual days elapsed at a rate equal to the sum of the Three Month Eurodollar Rate plus 0.50%), as determined by the Administrative Agent in accordance with accepted financial practice at the date of such prepayment or acceleration, of

(a) all required interest payable on (i) the aggregate principal amount of the Term Loans subject to such prepayment or acceleration and (ii) the aggregate amount of the Total Revolving Commitments terminated or reduced (assuming such Revolving Commitments were fully drawn for the relevant period), in each case, from the date of such prepayment or acceleration through and including the first anniversary of the Closing Date calculated using an interest rate equal to (x) the Eurodollar Rate for an Interest Period of three months in effect on the third Business Day prior to such prepayment or acceleration (the “**Three Month Eurodollar Rate**”) plus (y) the Applicable Margin for Eurodollar Rate Loans in effect as of such prepayment date, plus

(b) any prepayment premium that would be payable on the aggregate principal amount of the Term Loans subject to such prepayment or acceleration and such Revolving Commitments subject to such termination or reduction under **Section 2.09(c)** if such prepayment or acceleration were to be made on the day immediately following the first anniversary of the Closing Date.

“**Margin Stock**” shall have the meaning assigned to the term “margin stock” under Section 222.1 of Regulation U of the Board of Governors of the United States Federal Reserve System, or any successor thereto.

“**Market Capitalization**” shall mean an amount equal to:

(a) the total number of issued and outstanding shares of common Equity Interests of the Issuer as of the date of determination multiplied by

(b) the arithmetic mean of the closing prices per share of such common Equity Interests on the principal securities exchange on which such common Equity Interests is traded for the thirty (30) consecutive trading days immediately preceding the date of determination.

“**Master Agreement**” shall have the meaning set forth in the definition of “Swap Contract.”

“**Material Adverse Effect**” shall mean a material adverse effect on and/or material adverse developments with respect to (a) the business, operations, properties, assets or financial condition of the Group Members taken as a whole; (b) the ability of the Loan Parties taken as whole to perform their payment obligation under the Loan Documents; (c) the legality, validity, binding effect or enforceability against any Loan Party of this Agreement or any other Loan Document to which it is a party; or (d) the rights and remedies of any Agent, any Lender or any other Secured Party under any Loan Document.

“**Material Indebtedness**” shall mean Indebtedness (other than the Obligations) of any Group Member in an individual principal amount greater than the Threshold Amount.

“**Material Nonpublic Information**” means information regarding an Issuer and its Subsidiaries that is not generally available to the public that a reasonable investor would likely consider important in deciding whether to buy, sell or hold any of such Issuer’s shares.

“**Materials of Environmental Concern**” shall mean any material, substance or waste that is listed, regulated, or otherwise defined as hazardous, toxic, radioactive, a pollutant or a contaminant (or words of similar regulatory intent or meaning) under applicable Environmental Law, or which could give rise to liability under any Environmental Law.

“**Maturity Date**” shall mean the Term Loan Maturity Date or the Revolving Termination Date, as applicable.

“**Maximum Loan Value**” shall mean, the sum of, without duplication, the following and, in each case, to the extent constituting Collateral:

(a) 60% of the Asset Value of all Eligible First Lien Credit Assets and all other Credit Assets that would constitute Eligible First Lien Credit Assets if owned by a Borrowing Base Loan Party, **plus**

(b) 40% of the Asset Value of all Eligible Credit Assets (other than Eligible First Lien Credit Assets and Eligible Subordinated Credit Assets) and all other Credit Assets that would constitute Eligible Credit Assets (but not Eligible First Lien Credit Assets and Eligible Subordinated Credit Assets) if owned by a Borrowing Base Loan Party, **plus**

(c) 40% of the Asset Value of all Eligible Public Equities and all other Public Equities that would constitute Eligible Public Equities if owned by a Borrowing Base Loan Party, **plus**

(d) 30% of the Asset Value of all Eligible Private Assets and all other Private Assets that would constitute Eligible Private Assets if owned by a Borrowing Base Loan Party, **plus**

(e) 30% of the Asset Value of all Eligible Subordinated Credit Assets and all other Private Assets that would constitute Eligible Subordinated Credit Assets if owned by a Borrowing Base Loan Party, **plus**

(f) 100% of Qualified Cash, **plus**

(g) in the case of all other Collateral (excluding puts, calls or combinations thereof that do not qualify as Margin Stock), an amount equal to the Good Faith Loan Value (as defined in Section 221.2 of Regulation U) of such Collateral.

**provided**, that, notwithstanding anything to the contrary, the Maximum Loan Value attributed to Margin Stock shall not exceed 50% of the Current Market Value (as defined in Section 221.2 of Regulation U) of such Margin Stock.

“**Moody’s**” shall mean Moody’s Investor Service, Inc. and any successor thereto.

“**Multiemployer Plan**” shall mean a Plan that is a “multiemployer plan” as defined in Section 3(37) or Section 4001(a)(3) of ERISA.

“**Net Asset Value**” shall mean, as of any date of determination with respect to any Person,

(a) the total assets of such Person minus

(b) the total liabilities of such Person

in each case, as such amount would, in conformity with GAAP, be set forth on the balance sheet of such Person.

“**Net Cash Proceeds**” shall mean

(a) in connection with any Disposition or any Recovery Event, the proceeds thereof in the form of cash and Cash Equivalents (including any such proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but only as and when received) actually received by any Group Member, net of

(i) attorneys’ fees, accountants’ fees, investment banking fees, consulting fees, amounts required to be applied to the repayment of Indebtedness secured by a Lien expressly permitted hereunder on any asset which is the subject of such Disposition or Recovery Event (other than any Lien pursuant to a Security Document or any Lien on all or any part of the Collateral), and other customary fees and expenses actually incurred by any Group Member in connection therewith;

(ii) taxes paid or reasonably estimated to be payable by any Group Member as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements);

(iii) the amount of any reasonable reserve established in accordance with GAAP against any liabilities (other than any taxes deducted pursuant to **clause (ii)** above) (A) associated with the assets that are the subject of such event and (B) retained by any Group Member, *provided* that the amount of any subsequent reduction of such reserve (other than in connection with a payment in respect of any such liability) shall be deemed to be Net Cash Proceeds of such event occurring on the date of such reduction and

(iv) the pro rata portion of the Net Cash Proceeds thereof (calculated without regard to this **clause (iv)**) attributable to minority interests and not available for distribution to or for the account of any Group Member as a result thereof; **provided further** that in the case of a Recovery Event, such amounts shall be excluded to the extent that (1) no Default or Event of Default shall have occurred and be continuing and (2) the Subsidiary whose property was the subject of such Recovery Event shall invest such Net Cash Proceeds within 360 days of receipt thereof in repair, restoration or replacement of the affected assets, and

(b) in the case of any principal payments in respect of a Credit Asset or special dividends in respect of Public Equities, the amount thereof.

“**Non-Consenting Lender**” shall mean any Lender that does not approve any consent, waiver or amendment that (i) requires the approval of each Lender, each affected Lender or each Lender or each affected Lender with respect to a particular Class of Loans, in each case, in accordance with the terms of **Section 9.01** and (ii) has been approved by the Required Lenders (or, in the case of any consent, waiver or amendment that requires the approval of each Revolving Lender or each affected Revolving Lender with, the Required Revolving Lenders).

“**Non-Defaulting Lender**” shall mean, at any time, each Lender that is not a Defaulting Lender at such time.

“**Non-Guarantor Subsidiary**” shall mean any Subsidiary of the Primary Guarantor other than the BR Advisory Loan Parties or any Subsidiary of the BR Advisory Loan Parties.

“**Non-Ordinary Course Proceeds**” means the Net Cash Proceeds from

(a) a Disposition of (i) Property outside of the ordinary course or (ii) Credit Assets, Public Equities or Private Assets,

(b) any principal payments in respect of a Credit Asset,

(c) any special dividends in respect of Public Equities or Private Assets, or

(d) a Recovery Event.

“**Non-Public Information**” shall mean information which has not been disseminated in a manner making it available to investors generally, within the meaning of Regulation FD promulgated by the SEC under the Securities Act and the Exchange Act.

“**Note**” shall mean any promissory note evidencing any Loan.

“**Obligations**” shall mean the unpaid principal of and interest on (including, without limitation, interest accruing after the maturity of the Loans and interest accruing after the filing of any petition in bankruptcy, or the commencement of any proceeding under any Debtor Relief Law, relating to any Group Member, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) the Loans, Erroneous Payment Subrogation Rights and all other obligations and liabilities owed by any Group Member to any Agent or any Lender, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, this Agreement, any other Loan Document or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses (including, without limitation, all fees, charges and disbursements of counsel to the Agents or any Lender that are required to be paid by the Borrower pursuant hereto) or otherwise.

“**Operating EBITDA**” shall mean, for any period, with respect to Ultimate Parent and its Subsidiaries (but excluding the Borrowing Base Loan Parties and their Subsidiaries and 6 Brands and any of its Subsidiaries):

(a) net income (or net loss) **plus**

(b) the sum (without duplication of):

(i) interest expense,

(ii) income tax expense,

(iii) depreciation expense,

(iv) amortization expense,

(v) to the extent deducted from net income, non-cash charges, non-cash expense or non-cash loss (or non-cash gain reflected as a negative number) for such period excluding any such charge, expense, loss or gain incurred in the ordinary course of business that constitutes an accrual of, or a reserve for, or a reduction in a reserve for, cash charges for any period,

(vi) trading loss (or gain reflected as a negative number) and fair value adjustments (with losses represented as a positive number and gains represented as a negative number) on loans,

(vii) stock based compensation and other non-cash compensation expense,

(viii) charges, costs, losses, expenses or reserves related to: (A) restructuring (including restructuring charges or reserves, whether or not classified as such under GAAP), severance, relocation, consolidation, integration or other similar items, (B) strategic initiatives, business optimization and new systems design and implementation, (C) signing, retention and completion bonuses, (D) severance, relocation or recruiting, (E) charges and expenses incurred in connection with litigation (including threatened litigation), any investigation or proceeding (or any threatened investigation or proceeding) by a regulatory, governmental or law enforcement body (including any attorney general), and (F) expenses incurred in connection with casualty events or asset sales outside the ordinary course of business, in an amount not to exceed \$20,000,000 for any such period in the aggregate pursuant to this **clause (viii)** and **clauses (ix)** and **(x)**,

(ix) all (A) costs, fees and expenses relating to the Transactions and (B) costs, fees and expenses (including diligence and integration costs) incurred in connection with (x) investments in any Person, acquisitions of the Equity Interests of any Person, acquisitions of all or a material portion of the assets of any Person or constituting a line of business of any Person, and financings related to any of the foregoing or to the capitalization of any Group Member or (y) other transactions that are out of the ordinary course of business of such Person and its Subsidiaries (in each case of **clauses (x)** and **(y)**, including transactions considered or proposed but not consummated), including equity issuances, Investments, acquisitions, dispositions, recapitalizations, mergers, option buyouts and the incurrence, modification or repayment of Indebtedness (including all consent fees, premium and other amounts payable in connection therewith) in an amount not to exceed \$20,000,000 for any such period in the aggregate pursuant to this **clause (ix)** and **clauses (viii)** and **(x)**;

(x) all amounts paid during such period in respect of settlements of litigation against any Subsidiary of Ultimate Parent pending at the time such Person became a Subsidiary of Ultimate Parent (net of insurance proceeds received during such period in respect of such litigation) and all costs and expenses related thereto, in an amount not to exceed \$20,000,000 for any such period in the aggregate pursuant to this **clause (x)** and **clauses (viii)** and **(ix)**, and

(xi) investment performance advisory fee related to Vintage Management Capital, LLC portfolio gain or loss

in each case, determined in accordance with GAAP for such period.

**“Organizational Documents”** shall mean, collectively, with respect to any Person, (i) in the case of any corporation, the certificate of incorporation or articles of incorporation and by-laws (or similar constitutive documents) of such Person, (ii) in the case of any limited liability company, the certificate or articles of formation or organization and operating agreement or memorandum and articles of association (or similar constitutive documents) of such Person, (iii) in the case of any limited partnership, the certificate of formation and limited partnership agreement (or similar constitutive documents) of such Person (and, where applicable, the equity holders or shareholders registry of such Person), (iv) in the case of any general partnership, the partnership agreement (or similar constitutive document) of such Person, (v) in any other case, the functional equivalent of the foregoing, and (vi) any shareholder, voting trust or similar agreement between or among any holders of Equity Interests of such Person.

**“Other Connection Taxes”** shall mean, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

**“Other Taxes”** shall mean all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to **Section 2.23**).

**“Participant”** shall have the meaning set forth in **Section 9.06(d)**.

**“Participant Register”** shall have the meaning set forth in **Section 9.06(d)**.

**“PATRIOT Act”** shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

**“Payment in Full”** shall mean (a) the termination of all Commitments and (b) the payment in full in cash of all Loans and other amounts owing to the Lenders and the Agents in respect of the Obligations (other than contingent or indemnification obligations not then due).

**“Payment Office”** shall mean the office specified from time to time by the Administrative Agent as its payment office by notice to the Borrower and the Lenders.

**“Payment Recipient”** has the meaning assigned to it in **Section 8.11(a)**.

“**PBGC**” shall mean the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA (or any successor).

“**Perfection Certificate**” shall mean a certificate substantially in the form of **Exhibit B**.

“**Permits**” shall mean any and all franchises, licenses, leases, permits, approvals, notifications, certifications, registrations, authorizations, exemptions, qualifications, easements, and rights of way.

“**Permitted Equity Liens**” shall mean Liens permitted under **Section 6.02(c)**.

“**Permitted Liens**” shall mean the collective reference to Liens permitted by **Section 6.02**.

“**Permitted Prior Liens**” shall mean Liens permitted pursuant to **Section 6.02(c)**.

“**Permitted Refinancing Debt**” shall mean any modification, refinancing, refunding, renewal or extension of any Indebtedness; *provided that*

(a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness being modified, refinanced, refunded, renewed or extended except by an amount equal to unpaid accrued interest and premium thereon *plus* other reasonable amounts paid, and fees and expenses reasonably incurred, in connection with such modification, refinancing, refunding, renewal or extension and by an amount equal to any existing commitments unutilized thereunder;

(b) such modification, refinancing, refunding, renewal or extension has a maturity no earlier and a Weighted Average Life to Maturity no shorter than the Indebtedness being modified, refinanced, refunded, renewed or extended;

(c) at the time thereof, no Default or Event of Default shall have occurred and be continuing;

(d) if the Indebtedness being modified, refinanced, refunded, renewed or extended is unsecured, such modification, refinancing, refunding, renewal or extension is unsecured;

(e) if the Indebtedness being modified, refinanced, refunded, renewed or extended is secured, such modification, refinancing, refunding, renewal or extension is secured by no more collateral than the Indebtedness being modified, refinanced, refunded, renewed or extended; and

(f) the primary obligors and guarantors in respect of such Indebtedness being modified, refinanced, refunded, renewed or extended remain the same (or constitute a subset thereof).

“**Person**” shall mean any natural Person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“**Plan**” shall mean any “employee benefit plan” as defined in Section 3(3) of ERISA which is sponsored, maintained or contributed to by, or required to be contributed to by Ultimate Parent or any of its ERISA Affiliates or with respect to which Ultimate Parent or any of its ERISA Affiliates has or would reasonably be expected to have liability, contingent or otherwise, under ERISA.

“**Platform**” shall mean Debt Domain, IntraLinks, SyndTrak or a substantially similar electronic transmission system.

“**Pledged Equity Interests**” shall have the meaning set forth in the Guarantee and Collateral Agreement.

“**Prime Rate**” shall mean the rate of interest quoted in the print edition of *The Wall Street Journal*, Money Rates Section as the Prime Rate (currently defined as the base rate on corporate loans posted by at least 75% of the nation’s 30 largest banks), as in effect from time to time. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. The Administrative Agent or any other Lender may make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

“**Primary Guarantor**” shall have the meaning set forth in the preamble hereto.

“**Private Assets**” shall mean equity interests in private operating companies [and preferred equity interests in public companies](#).

“**Proceeds**” has, with reference to any asset or property, the meaning assigned to it under Section 9-102(a)(64) of the UCC and, in any event, shall include, but not be limited to, any and all amounts from time to time paid or payable under or in connection with such asset or property.

“**Pro Forma Basis**” shall mean, with respect to the calculation of any financial ratio or test (including Net Asset Value, Operating EBITDA and, in each case, any financial calculations or components required to be made or included therein), as of any date, that pro forma effect will be given to the Transactions, any permitted acquisition or Investment, any issuance, incurrence, assumption or permanent repayment of Indebtedness for borrowed money (including Indebtedness issued, incurred or assumed as a result of, or to finance, any relevant transaction and for which any such financial ratio is being calculated) and all sales, transfers and other dispositions or discontinuance of any subsidiary, line of business or division, in each case that have occurred during the four consecutive fiscal quarter period of the Borrower being used to calculate such financial ratio (the “**Reference Period**”), or subsequent to the end of the Reference Period but prior to such date or prior to or simultaneously with the event for which a determination under this definition is made (including any such event occurring at a person who became a Subsidiary after the commencement of the Reference Period), as if each such event occurred on the first day of the Reference Period.

“**Property**” shall mean any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including, without limitation, Equity Interests.

“**PTE**” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“**Public Equities**” shall mean any equity interests that are listed or traded on a Designated Exchange or warrants exercisable for such equity interests.

“**Public Lender**” shall mean any Lender that does not wish to receive Non-Public Information with respect to Ultimate Parent, the Primary Guarantor or its Subsidiaries or their respective securities.

“**Purchase Money Obligation**” shall mean, for any Person, the obligations of such Person in respect of Indebtedness (including Capital Lease Obligations) incurred for the purpose of financing all or any part of the purchase price of any fixed or capital assets or the cost of installation, construction or improvement of any fixed or capital assets; *provided, however*, that (i) such Indebtedness is incurred within 30 days after such acquisition, installation, construction or improvement of such fixed or capital assets by such Person and (ii) the amount of such Indebtedness does not exceed the lesser of 100% of the fair market value of such fixed or capital asset or the cost of the acquisition, installation, construction or improvement thereof, as the case may be.

“**Qualified Cash**” shall mean unrestricted cash and Cash Equivalents of any Borrowing Base Loan Party that are on deposit in Deposit Accounts and Securities Accounts, in each case, located in the United States that are subject to an Account Control Agreement.

“**Qualified Cash Deposit Account**” means a Deposit Account or Securities Account that holds Qualified Cash.

“**Qualified Equity Interests**” shall mean Equity Interests that are not Disqualified Equity Interests.

“**Real Property**” shall mean all real property held or used by any Group Member, which relevant Group Member owns in fee or in which it holds a leasehold interest as a tenant, including as of the Closing Date.

“**Recipient**” shall mean (a) each Agent and (b) any Lender, as applicable.

“**Recovery Event**” shall mean the receipt by any Group Member of any cash payments or proceeds under any casualty insurance policy in respect of a covered loss thereunder or as a result of the taking of any assets of any Group Member by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking.

“**Register**” shall have the meaning set forth in **Section 9.06(c)**.

“**Regulation D**” shall mean Regulation D of the Board of Governors as in effect from time to time.

“**Regulation H**” shall mean Regulation H of the Board of Governors as in effect from time to time.

“**Regulation T**” shall mean Regulation T of the Board of Governors as in effect from time to time.

“**Regulation U**” shall mean Regulation U of the Board of Governors as in effect from time to time.

“**Regulation X**” shall mean Regulation X of the Board of Governors as in effect from time to time.

“**Relevant Governmental Body**” means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

“**Reasonable Credit Judgment**” shall mean, the Administrative Agent’s commercially reasonable credit judgment (from the perspective of a secured asset-based lender), in accordance with customary business practices for comparable asset-based lending transactions exercised in good faith; *provided*, that as it relates to the establishment of Reserves or the adjustment or imposition of exclusionary criteria, Reasonable Credit Judgment will require that:

(a) such establishment, adjustment or imposition after the Closing Date be based on the analysis of facts, events, conditions or contingencies first occurring or first discovered by the Administrative Agent after the Closing Date or that are materially different from facts, events, conditions or contingencies known to the Administrative Agent on the Closing Date,

(b) the imposition or increase of any Reserve shall not duplicate any Reserves deducted in computing book value, and

(c) the amount of any such Reserve so established or the effect of any adjustment or imposition of exclusionary criteria shall bear a reasonable relationship to the effects that form the basis thereunder.

**“Related Parties”** shall mean, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

**“Release”** shall mean, with respect to Materials of Environmental Concern, any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration into or through the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Materials of Environmental Concern).

**“Required Lenders”** shall mean, at any time, Lenders having Total Credit Exposures representing more than 50% of the Total Credit Exposures of all Lenders; **provided** that the Required Lenders shall include at least two Lenders that are not Affiliates. The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

**“Required Revolving Lenders”** shall mean, at any time, Revolving Lenders having Revolving Outstanding Amounts representing more than 50% of the Total Revolving Outstanding Amount of all Revolving Lenders; **provided** that the Required Revolving Lenders shall include at least two Lenders that are not Affiliates. The Revolving Outstanding Amount of any Defaulting Lender shall be disregarded in determining Required Revolving Lenders at any time.

**“Requirement of Law”** shall mean, as to any Person, any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

**“Reserves”** shall mean reserves established or maintained by the Administrative Agent in its Reasonable Credit Judgment to the extent such reserves relate to facts, events, conditions or contingencies first occurring or first discovered by the Administrative Agent after the Closing Date (or that are materially different from facts, events, conditions or contingencies known to the Administrative Agent on the Closing Date), and for which no reserves were imposed on the Closing Date, and which have, or could reasonably be expected to have, an adverse effect on the value of the Collateral included in the Borrowing Base or the Liens of the Administrative Agent thereon.

**“Responsible Officer”** shall mean, as to any Person, the chief executive officer, president or chief financial officer of such Person, but in any event, with respect to financial matters, the chief financial officer of such Person. Unless otherwise qualified, all references to a “Responsible Officer” shall refer to a Responsible Officer of the Borrower.

**“Restricted Payment”** shall mean any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of any Person, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to any Person’s stockholders, partners or members (or the equivalent of any thereof), or any option, warrant or other right to acquire any such dividend or other distribution or payment through capital stock or other Equity Interest.

“**Restricted Transaction**” shall mean, (i) any financing transaction secured by any Private Asset, Public Equity or Credit Asset, (ii) any grant, occurrence or existence of any Lien or other encumbrance on any Private Asset, Public Equity or Credit Asset (other than any Permitted Lien) or (iii) any sale, participation, swap, hedge (including by means of a physically- or cash-settled derivative or otherwise) or other transfer of, or where the underlying asset is, any Private Asset, Public Equity or Credit Asset; **provided** that Restricted Transaction shall not include any transactions under the Loan Documents.

“**Revolving Commitment**” shall mean, as to each Revolving Lender, its obligation to make Revolving Loans to the Borrower pursuant to **Section 2.04(a)**.

“**Revolving Commitment Period**” shall mean the period beginning on the Closing Date and ending on the Revolving Termination Date.

“**Revolving Lender**” shall mean each Lender that has a Revolving Commitment or holds a Revolving Outstanding Amount.

“**Revolving Loan**” shall mean any Revolving Loan made pursuant to **Section 2.04(a)**.

“**Revolving Note**” shall have the meaning set forth in **Section 2.07(d)**.

“**Revolving Outstanding Amount**” shall mean, with respect to any Revolving Lender as of any date of determination, an amount equal to the sum of the aggregate outstanding principal amount of all outstanding Revolving Loans of such Revolving Lender.

“**Revolving Percentage**” shall mean, as to any Revolving Lender at any time, the percentage which such Lender’s Revolving Commitment then constitutes of the Total Revolving Commitments (or, at any time after the Revolving Commitments shall have expired or terminated, the percentage which the aggregate amount of such Lender’s Revolving Outstanding Amount then outstanding constitutes of the amount of the Total Revolving Outstanding Amount then outstanding); **provided** that, in the case of **Section 2.22** (but not the definition of Fronting Exposure used therein), when a Defaulting Lender shall exist, “Revolving Percentage” shall mean the percentage which such Lender’s Revolving Commitment then constitutes of the Total Revolving Commitments (disregarding any Defaulting Lender’s Revolving Commitment).

“**Revolving Termination Date**” shall mean the earliest to occur of

(a) with respect to the Revolving Commitments and Revolving Loans, the 4<sup>th</sup> anniversary of the Closing Date, which date is June 23, 2025,

(b) the date that the applicable Revolving Commitments are permanently reduced to zero pursuant to **Section 2.09** or **Section 2.10** and

(c) the date of the termination of the applicable Revolving Commitments pursuant to **Section 7.01**.

“**Rule 144**” shall mean Rule 144 under the Securities Act, as amended.

“**S&P**” shall mean Standard & Poor’s, a division of The McGraw-Hill Companies, Inc., and any successor thereto.

“**Sale and Leaseback**” shall mean any arrangement, directly or indirectly, with any Person whereby Ultimate Parent, the Primary Guarantor, the Borrower or any Subsidiary shall Dispose of any Property used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such Property or other Property which it intends to use for substantially the same purpose or purposes as the Property being sold or transferred.

“**Sanctioned Country**” shall mean, at any time, a country or territory that is subject to comprehensive Sanctions. For the avoidance of doubt, as of the Closing Date, Sanctioned Countries are the Crimea region of Ukraine, Cuba, Iran, North Korea and Syria.

“**Sanctioned Person**” shall mean, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, by the United Nations Security Council, Canada, the European Union or any EU member state, Her Majesty’s Treasury of the United Kingdom or the government of Japan, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person.

“**Sanctions**” shall mean economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the United Nations Security Council, Canada, the European Union or any EU member state, Her Majesty’s Treasury of the United Kingdom or the government of Japan.

“**SEC**” shall mean the Securities and Exchange Commission or any Governmental Authority succeeding to any of its principal functions.

“**Second Amendment**” shall mean that certain Second Incremental Amendment to Credit Agreement, dated as of December 17, 2021, by and among Ultimate Parent, Primary Guarantor, the Borrower, the Lenders party thereto, the Administrative Agent and the Collateral Agent.

“**Second Amendment Closing Date**” shall have the meaning assigned to such term in the Second Amendment.

“**Secured Parties**” shall have the meaning set forth in the Guarantee and Collateral Agreement.

“**Securities Act**” shall mean the Securities Act of 1933, as amended from time to time, and any successor statute.

“**Securities Account**” shall have the meaning provided to such term in the UCC.

“**Security Documents**” shall mean the collective reference to the Guarantee and Collateral Agreement and any agreements executed and delivered pursuant thereto, the Perfection Certificate, the Intellectual Property Security Agreements, the Account Control Agreements, the Uncertificated Securities Control Agreement, any other control agreements required to be delivered pursuant to the Guarantee and Collateral Agreement or any other Loan Document and all other security documents hereafter delivered to any Agent for the purpose of granting or perfecting a Lien on any Property of any Loan Party to secure the Obligations.

“**Single Employer Plan**” shall mean any Plan that is covered by Title IV of ERISA, but which is not a Multiemployer Plan.

“**SOFR**” means a rate per annum equal to the secured overnight financing rate for such Business Day published by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate) on the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org> (or any successor source for the secured overnight financing rate identified as such by the administrator of the secured overnight financing rate from time to time).

“**Solvent**” shall mean, with respect to any Person, as of any date of determination:

(a) the amount of the “present fair saleable value” of the assets of such Person will, as of such date, exceed the amount of all “liabilities of such Person, contingent or otherwise,” as of such date,

(b) the “present fair saleable value” of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the probable liability of such Person on its debts as such debts become absolute and matured,

(c) such Person will not have, as of such date, an unreasonably small amount of capital with which to conduct its business, and

(d) such Person will be able to pay its debts as they mature.

For purposes of this definition:

(i) “**debt**” shall mean liability on a “claim,”

(ii) “**claim**” shall mean any (A) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured,

(iii) the amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability, and

(iv) such other quoted terms used in this definition shall be determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors.

“**SPC**” shall have the meaning set forth in [Section 9.06\(f\)](#).

“**Statutory Reserve Rate**” shall mean a fraction (expressed as a decimal), (a) the numerator of which is the number one and (b) the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board of Governors to which the Administrative Agent is subject with respect to the Eurodollar Rate for eurocurrency funding (currently referred to as “**Eurocurrency Liabilities**” in Regulation D of the Board of Governors). Such reserve percentage shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of, or credit for, proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“**Structured Finance Obligation**” shall mean any debt obligation owing by a special purpose finance vehicle that is secured directly and primarily by, primarily referenced to, and/or primarily representing ownership of, a pool of receivables or a pool of other assets, including collateralized debt obligations, residential mortgage-backed securities, commercial mortgage-backed securities, other asset-backed securities, “future flow” receivable transactions and other similar obligations.

“**Subordinated Intercompany Note**” shall mean the Subordinated Intercompany Note, substantially in the form of **Exhibit H**.

“**Subsidiary**” shall mean, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise qualified, all references to a “Subsidiary” or to “Subsidiaries” in this Agreement shall refer to a Subsidiary or Subsidiaries of the Primary Guarantor.

“**Swap Contract**” shall mean:

(a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and

(b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “**Master Agreement**”), including any such obligations or liabilities under any Master Agreement, in each case for the purpose of hedging the foreign currency, interest rate or commodity risk associated with the operations of the Group Members.

“**Swap Termination Value**” shall mean, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) have been determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in **clause (a)**, the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“**Synthetic Lease**” shall mean, as to any Person:

(a) any lease (including leases that may be terminated by the lessee at any time) of any property (whether real, personal or mixed) (i) that is accounted for as an operating lease under GAAP and (ii) in respect of which the lessee retains or obtains ownership of the property so leased for U.S. federal income tax purposes; or

(b) (i) a synthetic, off-balance sheet or tax retention lease or (ii) an agreement for the use or possession of property (including a Sale and Leaseback), in each case under this **clause (b)**, creating obligations that do not appear on the balance sheet of such person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“**Taxes**” shall mean all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“**Term Loan**” shall mean a Term Loan made by a Lender pursuant to **Section 2.01(a)**. **For the avoidance of doubt, the 2021 Incremental Term Loans and the Closing Date Term Loans shall form a single Class of Term Loans.**

“**Term Loan Commitment**” shall mean, as to each Term Lender, any commitment of such Term Lender. obligation of such Lender, if any, to make a Term Loan to the Borrower hereunder in a principal amount not to exceed the amount set forth under the heading “Term Loan Commitment” opposite such Lender’s name on **Annex A-2** or, as the case may be, in the Assignment and Assumption pursuant to which such Lender became a party hereto, as the same may be changed from time to time pursuant to the terms hereof. The aggregate principal amount of the Term Loan Commitments on the Closing Date is \$200,000,000. **The aggregate principal amount of the Term Loan Commitments on the Second Amendment Closing Date is \$300,000,000.**

“**Term Loan Maturity Date**” shall mean the earlier of:

(a) the 4<sup>th</sup> anniversary of the Closing Date, which date is June 23, 2025 and

(b) the date on which all Term Loans shall become due and payable in full hereunder, whether by acceleration or otherwise; *provided that*, if any such day is not a Business Day, the Term Loan Maturity Date shall be the Business Day immediately succeeding such day.

“**Term Loan Notes**” shall have the meaning set forth in **Section 2.07(d)**.

“**Term SOFR**” means, for the applicable corresponding tenor, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“**Test Period**” shall mean, as of any date of determination, the period of four consecutive fiscal quarters of Ultimate Parent or the Primary Guarantor (taken as one accounting period)

(a) most recently ended on or prior to such date for which financial statements have been or are required to be delivered pursuant to **Section 5.01(a)**, or **Section 5.01(b)** or

(b) in the case of any calculation pursuant to **Section 6.13**, ended on the last date of the fiscal quarter in question.

“**Three Month Eurodollar Rate**” shall have the meaning set forth in the definition of “Make Whole Premium”.

“**Threshold Amount**” shall mean \$10,000,000.

“**Total Credit Exposure**” shall mean, as to any Lender at any time, the unused Commitments, Revolving Outstanding Amount and outstanding Term Loans of such Lender at such time.

“**Total Outstanding Amount**” shall mean the sum of (x) the Total Revolving Outstanding Amount *plus* (y) the aggregate principal amount of the Term Loans.

“**Total Revolving Commitments**” shall mean, at any time, the aggregate amount of the Revolving Commitments then in effect. The aggregate principal amount of the Total Revolving Commitments on the Closing Date is \$80,000,000.

“**Total Revolving Outstanding Amount**” shall mean, at any time, the aggregate amount of the Revolving Outstanding Amounts of the Revolving Lenders outstanding at such time.

“**Term Lender**” shall mean each Lender that has a Term Loan Commitment or is the holder of a Term Loan.

“**Transactions**” shall mean the execution, delivery and performance of the Loan Documents, the initial borrowings hereunder and the use of proceeds thereof.

“**Transfer Restrictions**” shall mean, with respect to any Public Equity, any condition to, requirement or restriction (whether or not under any law, rule, regulation, regulatory order or the Issuer’s organization documents or contracts) on the ability of the owner or any pledgee thereof to pledge, sell, assign or otherwise transfer such Public Equity (including any beneficial interest therein) or enforce the provisions thereof or of any document related thereto whether set forth in such Public Equity itself or in any document related thereto, including, without limitation,

(a) any requirement that any sale, assignment or other transfer or enforcement for such item of Public Equity be consented to or approved by any Person, including, without limitation, the Issuer or any other obligor thereon,

(b) any limitation on the type or status, financial or otherwise, of any purchaser, pledgee, assignee or transferee of such Public Equity,

(c) any requirement for the delivery of any certificate, consent, opinion of counsel or any other document of any Person to the Issuer of, any other obligor on or any registrar or transfer agent for, such Public Equity, prior to the sale, pledge, assignment or other transfer of such Public Equity,

(d) any registration or qualification requirement or prospectus delivery requirement for such item of Collateral pursuant to any federal, state, local or foreign securities law (including, without limitation, any such requirement arising under Section 5 of the Securities Act as a result of such Public Equity being a “restricted security” or any Loan Party being an “affiliate” of the Issuer of such Public Equity, as such terms are defined in Rule 144),

(e) any shareholders’ agreement, voting agreement, investor rights agreement, lock-up agreement or any similar agreement relating to any Public Equity, and

(f) any mandatory redemption or transfer; *provided* that the required delivery of any assignment, instruction or entitlement order from the seller, assignor or transferor of such Public Equity, together with evidence of the corporate or other authority of such Person, shall not constitute a “Transfer Restriction”.

“**Type**” shall mean, as to any Loan, its nature as a Base Rate Loan or a Eurodollar Loan.

“**Ultimate Parent**” shall have the meaning set forth in the preamble hereto.

“**Uncertificated Securities Control Agreement**” shall mean that certain Uncertificated Securities Control Agreement, dated as of the Closing Date, among GLASSRATNER ADVISORY & CAPITAL GROUP, LLC, a Delaware limited liability company, the Collateral Agent, GlassRatner Brokerage Services, Inc., a Georgia corporation and GlassRatner International, Inc., a Delaware corporation.

“**Underlying Obligor**” shall mean:

- (a) with respect to any Credit Asset, any borrower, guarantor or other obligor thereunder,
- (b) with respect to any Private Asset, any Person designated as such by the Administrative Agent and the Borrower; and
- (c) with respect to any Public Equity, the Issuer;

**provided**, that to the extent that any such entities are Affiliates, such entities shall be deemed to be a single Underlying Obligor.

“**Uniform Commercial Code**” or “**UCC**” shall mean the Uniform Commercial Code, as in effect from time to time in any applicable jurisdiction.

“**USD LIBOR**” means the London interbank offered rate for U.S. dollars.

“**U.S. Person**” shall mean any Person that is a “United States person” as defined in Section 7701(a)(30) of the Code.

“**U.S. Tax Compliance Certificate**” shall have the meaning set forth in **Section 2.19(g)**.

“**Valuation Report**” shall mean the valuation reports substantially in the form of **Exhibit I** related to the Credit Assets and Private Assets provided by Stout Risius and Ross, LLC or such other appraisal firm reasonably acceptable to the Administrative Agent.

“**Waterfall Certificate**” shall mean a certificate of a Responsible Officer substantially in the form of **Exhibit K**.

“**Weighted Average Life to Maturity**” shall mean, when applied to any Indebtedness at any date, the number of years obtained by dividing:

(a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by

(b) the then outstanding principal amount of such Indebtedness.

“**Withdrawal Liability**” shall mean any liability to a Multiemployer Plan as a result of a “complete withdrawal” or “partial withdrawal” from such Multiemployer Plan, as such terms are defined in Section 4201(b) of ERISA.

“**Withholding Agent**” shall mean any Loan Party and the Administrative Agent.

**Section 1.02 Other Interpretive Provisions.** With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise,

(i) any definition of or reference to any agreement, instrument or other document (including any Organizational Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document),

(ii) any reference herein to any Person shall be construed to include such Person’s permitted successors and assigns,

(iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof,

(iv) all references in a Loan Document to Articles, Sections, recitals, Annexes, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and recitals, Annexes, Exhibits and Schedules to, the Loan Document in which such references appear,

(v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time and

(vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” shall mean “from and excluding”, the words “to” and “until” each mean “to but excluding” and the word “through” shall mean “to and including”.

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

### **Section 1.03 Accounting Terms.**

(a) **Generally.** All accounting terms not specifically defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis and in good faith, as in effect from time to time, applied in a manner consistent with that used in preparing the Historical Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Primary Guarantor and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) **Accounting Change.** If at any time any Accounting Change (including the adoption of IFRS) shall occur and such change results in a change in the method of calculation of any financial covenant, standard or term in this Agreement, then upon the written request of the Borrower or the Administrative Agent (acting upon the request of the Required Lenders), the Borrower, the Administrative Agent and the Lenders shall negotiate in good faith in order to amend such provisions so as to equitably reflect such Accounting Change with the desired result that the criteria for evaluating Ultimate Parent's, Primary Guarantor's and the Borrower's financial condition shall be the same after such Accounting Change as if such Accounting Change had not occurred (subject to the approval of the Required Lenders, not to be unreasonably withheld, conditioned or delayed); *provided* that, until such time as an amendment shall have been executed and delivered by Ultimate Parent, Primary Guarantor, the Borrower, the Administrative Agent and the Required Lenders, (A) all such financial covenants, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting Change had not occurred and (B) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such financial covenants, standards and terms made before and after giving effect to such Accounting Change. Without limiting the foregoing, leases shall continue to be classified and accounted for on a basis consistent with that reflected in the Historical Audited Financial Statements for all purposes of this Agreement, notwithstanding any Accounting Change relating thereto, unless the parties hereto shall enter into a mutually acceptable amendment addressing such changes, as provided for above.

(c) **Pro Form Calculations.** The parties hereto acknowledge and agree that, for purposes of all calculations made in determining compliance for any applicable period with any test or covenant hereunder,

(i) all financial ratios and tests (including Net Asset Value, Operating EBITDA and, in each case, any financial calculations or components required to be made or included therein) shall be calculated on a Pro Forma Basis for the most recent four consecutive fiscal quarters for which financial statements with respect to the Primary Guarantor and Ultimate Parent, as applicable, have been or are required to be delivered pursuant to **Section 5.01** prior to the relevant date of determination,

(ii) after consummation of any permitted acquisition or other Investment,

(A) income statement items, cash flow items and balance sheet items (whether positive or negative) attributable to the target acquired in such transaction shall be included in such calculations to the extent relating to such applicable period, subject to adjustments mutually acceptable to the Borrower and the Administrative Agent and

(B) Indebtedness which is retired in connection with a permitted acquisition shall be excluded from such calculations and deemed to have been retired as of the first day of such applicable period and

(iii) after any Disposition permitted by **Section 6.04** to a third party of Equity Interests in a Subsidiary, a division or line of business, or any assets constituting discontinued operations,

(A) income statement items, cash flow statement items and balance sheet items (whether positive or negative) attributable to the property or assets disposed of shall be excluded in such calculations to the extent relating to such applicable period, subject to adjustments mutually acceptable to the Borrower and the Administrative Agent and

(B) Indebtedness that is repaid with the proceeds of such Disposition shall be excluded from such calculations and deemed to have been repaid as of the first day of such applicable period.

**Section 1.04 Rounding.** Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

**Section 1.05 Times of Day.** Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

**Section 1.06 Rates.** The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of “Eurodollar Rate” or with respect to any comparable or successor rate thereto.

**Section 1.07 Cashless Rolls.** Notwithstanding anything to the contrary contained in this Agreement or in any other Loan Document, any Lender may exchange, continue or roll over all or a portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by the Borrower, the Administrative Agent and such Lender.

## **ARTICLE II.**

### **LOANS**

#### **Section 2.01 Term Loan Commitments.**

(a) Subject to the terms and conditions set forth herein each Term Lender agrees, severally and not jointly, to make a Term Loan in Dollars to the Borrower on the Closing Date in an amount equal to the Term Loan Commitment of such Term Lender; *provided, however*, that after giving effect to any Term Borrowing, the Total Outstanding Amount of all Lenders shall not exceed the Borrowing Base.

(b) The Borrower may make only one borrowing under the Term Loan Commitment, which in each case shall be on the Closing Date. Any amount borrowed under this **Section 2.01** and subsequently repaid or prepaid may not be reborrowed. Subject to **Section 2.10** and **Section 2.11**, all amounts owed hereunder with respect to the Term Loans shall be paid in full no later than the Term Loan Maturity Date. Each Lender’s Term Loan Commitment shall terminate immediately and without further action on the Closing Date after giving effect to the funding of such Lender’s Term Loan Commitment on the Closing Date.

**Section 2.02 Procedure for Term Loan Borrowing.**

(a) The Borrower shall deliver to the Administrative Agent (for delivery to the Lenders) a fully executed Borrowing Notice no later than three Business Days in advance of the proposed Borrowing Date (or such shorter period as may be acceptable to the Administrative Agent). Each Borrowing of Term Loans shall be a Eurodollar Borrowing with an Interest Period of three months' duration. The Administrative Agent shall promptly advise the applicable Lenders of any notice given pursuant to this **Section 2.02** (and the contents thereof), and of each Lender's portion of the requested borrowing.

(b) Upon satisfaction or waiver of the conditions precedent specified herein, each Term Lender shall make its Term Loan available to (x) the Administrative Agent by wire transfer of same day funds in Dollars, to the account designated by the Administrative Agent or (y) at such Term Lender's election, the Borrower by wire transfer of same day funds in Dollars to be credited to the account designated in writing by the Borrower, in each case not later than 12:00 p.m. (New York City time) on the applicable Borrowing Date. The Administrative Agent shall make the proceeds of the Term Loans available to the Borrower on the applicable Borrowing Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Term Loans received by Administrative Agent from the Term Lenders to be credited to such account as may be designated in writing to the Administrative Agent by the Borrower.

**Section 2.03 Repayment of Term Loans.** The Borrower shall repay to the Term Lenders on the last Business Day of each March, June, September and December (commencing on September 30, 2022), in an amount equal to 1.25% of the sum of the aggregate principal amount of, **in the case of the Term Loans borrowed on the Closing Date, the Term Loans as of the Closing Date and, in the case of the Term Loans borrowed on the Second Amendment Closing Date, the Term Loans as of the Second Amendment Closing Date** (which amounts shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in **Section 2.11**); provided, however, that the final principal repayment installment of the Term Loans shall be repaid on the Term Loan Maturity Date and in any event shall be in an amount equal to the aggregate principal amount of all Term Loans outstanding on such date.

**Section 2.04 Revolving Commitments.**

(a) Subject to the terms and conditions set forth herein, each Revolving Lender agrees, severally and not jointly, to make Revolving Loans in Dollars to the Borrower from time to time on the 15<sup>th</sup> day of any calendar month (or if such day is not a Business Day, the first Business Day after the 15<sup>th</sup> of such calendar month), last Business Day of each calendar month or, twice per calendar year, any other Business Day during the applicable Revolving Commitment Period in an aggregate amount not to exceed at any one time outstanding the Revolving Commitment of such Revolving Lender; *provided, however*, that after giving effect to any Revolving Credit Borrowing,

(i) the Total Revolving Outstanding Amount shall not exceed the Total Revolving Commitments,

(ii) the Revolving Outstanding Amount of any Revolving Lender shall not exceed the Revolving Commitment of such Revolving Lender and

(iii) the Total Outstanding Amount of all Lenders shall not exceed the Borrowing Base.

Amounts borrowed pursuant to this **Section 2.04** may be repaid and reborrowed during the applicable Revolving Commitment Period.

(b) The Borrower shall repay to the applicable Revolving Lenders on the applicable Revolving Termination Date the aggregate principal amount of the applicable Revolving Loans outstanding on such date.

**Section 2.05 Procedure for Revolving Borrowing.**

(a) Revolving Loans shall be in an aggregate minimum amount of \$5,000,000 and integral multiples of \$1,000,000 in excess of that amount.

(b) Whenever the Borrower desires that Lenders make Revolving Loans, the Borrower shall deliver to the Administrative Agent a fully executed Borrowing Notice no later than 12:00 p.m. (New York City time) at least three Business Days in advance of the proposed Borrowing Date (or, if such Borrowing Date is the Closing Date, such shorter period as may be acceptable to the Administrative Agent). Each Borrowing of Revolving Loans shall be a Eurodollar Borrowing with an Interest Period of three month's duration.

(c) Notice of receipt of each Borrowing Notice in respect of Revolving Loans, together with the amount of each Lender's Revolving Percentage thereof, if any, together with the applicable interest rate, shall be provided by the Administrative Agent to each applicable Lender in writing with reasonable promptness.

(d) Upon satisfaction or waiver of the conditions precedent specified herein, each Revolving Lender shall make the amount of its Revolving Loan available to Administrative Agent not later than 12:00 p.m. (New York City time) on the applicable Borrowing Date by wire transfer of same day funds in Dollars, to the account designated by the Administrative Agent. The Administrative Agent shall make the proceeds of such Revolving Loans available to the Borrower on the applicable Borrowing Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Revolving Loans received by the Administrative Agent from the Lenders to be credited to such account as may be designated in writing to the Administrative Agent by the Borrower.

**Section 2.06 Benchmark Replacement Setting**

Notwithstanding anything to the contrary herein or in any other Loan Document (and any Swap Contract shall be deemed not to be a "Loan Document" for purposes of this Section):

(a) On March 5, 2021 the Financial Conduct Authority ("**FCA**"), the regulatory supervisor of USD LIBOR administrator ("**IBA**"), announced in a public statement the future cessation or loss of representativeness of overnight/Spot Next, 1-month, 3-month, 6-month and 12- month USD LIBOR tenor settings. On the earlier of (i) the date that all Available Tenors of USD LIBOR have either permanently or indefinitely ceased to be provided by IBA or have been announced by the FCA pursuant to public statement or publication of information to be no longer representative and (ii) the Early Opt-in Effective Date, if the then-current Benchmark is USD LIBOR, the Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Loan Document. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a quarterly basis.

(b) Upon the occurrence of a Benchmark Transition Event, the Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders of each Class. At any time that the administrator of the then-current Benchmark has permanently or indefinitely ceased to provide such Benchmark or such Benchmark has been announced by the regulatory supervisor for the administrator of such Benchmark pursuant to public statement or publication of information to be no longer representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored, the Borrower may revoke any request for a borrowing of, conversion to or continuation of Loans to be made, converted or continued that would bear interest by reference to such Benchmark until the Borrower's receipt of notice from the Administrative Agent that a Benchmark Replacement has replaced such Benchmark, and, failing that, the Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans. During the period referenced in the foregoing sentence, the component of Base Rate based upon the Benchmark will not be used in any determination of Base Rate.

(c) In connection with the implementation and administration of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(d) The Administrative Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Benchmark Replacement Conforming Changes. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this **Section 2.06**.

(e) At any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR or USD LIBOR), then the Administrative Agent may remove any tenor of such Benchmark that is unavailable or non-representative for Benchmark (including Benchmark Replacement) settings and (ii) the Administrative Agent may reinstate any such previously removed tenor for Benchmark (including Benchmark Replacement) settings.

#### **Section 2.07 Repayment of Loans; Evidence of Debt.**

(a) The Borrower hereby unconditionally promises to pay to the Administrative Agent, for the account of the appropriate Revolving Lender or the appropriate Term Lender, as the case may be,

(i) the then unpaid principal amount of the applicable Revolving Loans of such Revolving Lender on the applicable Revolving Termination Date (or on such earlier date on which the Loans become due and payable pursuant to **Section 7.02**) or

(ii) the principal amount of each Term Loan of such Term Lender in installments according to the amortization schedule set forth in **Section 2.03** (or on such earlier date on which the Loans become due and payable pursuant to **Section 7.02**).

(b) **Lenders' Evidence of Debt.** Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Obligations of the Borrower to such Lender, including the amounts of the Loans made by it and each repayment and prepayment in respect thereof. Any such recordation shall be conclusive and binding on the Borrower, absent manifest error; *provided* that the failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Commitments or the Borrower's Obligations in respect of any applicable Loans; *provided, further*, in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register shall govern.

(c) **Register.** The Administrative Agent (or its agent or sub-agent appointed by it) shall maintain the Register pursuant to **Section 9.06(c)**, in which shall be recorded

- (i) the amount of each Loan made hereunder, the Type of such Loan and each Interest Period applicable thereto,
- (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and
- (iii) the amount of any sum received by the Administrative Agent hereunder from the Borrower and each Lender's share thereof.

The entries made in the Register shall be conclusive and binding on the Borrower and each Lender, absent manifest error; *provided* that failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Revolving Commitments or the Borrower's Obligations in respect of any Loans. The Borrower hereby designates the Administrative Agent to serve as the Borrower's non-fiduciary agent solely for purposes of maintaining the Register as provided in this **Section 2.07(c)**, and the Borrower hereby agrees that, to the extent the Administrative Agent serves in such capacity, the Administrative Agent and its officers, directors, employees, agents, sub-agents and affiliates shall constitute "Indemnitees."

(d) **Notes.** The Borrower agrees that, upon the request by any Lender, the Borrower will promptly execute and deliver to such Lender a promissory note of the Borrower evidencing any Term Loans or Revolving Loans, as the case may be, of such Lender, substantially in the forms of **Exhibit D-1** or **Exhibit D-2**, respectively (a "**Term Loan Note**" or "**Revolving Note**", respectively), with appropriate insertions as to date and principal amount; *provided* that the obligations of the Borrower in respect of each Loan shall be enforceable in accordance with the Loan Documents whether or not evidenced by any Note. Any Notes, or other evidence of indebtedness issued under the Loan Documents, need not be presented or surrendered for any payment made by the Agents.

#### **Section 2.08 Fees.**

(a) The Borrower agrees to pay to the Administrative Agent, for the account of each Revolving Lender holding a Revolving Commitment of a given Class, a commitment fee (the "**Commitment Fee**") for the period from and including the date on which such Class of Revolving Commitments was established hereunder to the last day of the Revolving Commitment Period in respect of such Class of Revolving Commitments, computed at the Commitment Fee Rate on the average daily unused amount of the Revolving Commitment of such Revolving Lender during the period for which payment is made. The Commitment Fee shall be payable quarterly in arrears on the last Business Day of each March, June, September and December and on the Revolving Termination Date, commencing on the first of such dates to occur after the Closing Date.

(b) The Borrower agrees to pay to the Administrative Agent the fees in the amounts and on the dates from time to time agreed to in writing by the Borrower and the Administrative Agent.

(c) The Borrower agrees to pay to the Collateral Agent for its own account the fees in the amounts and on the dates from time to time agreed to in writing by the Borrower and the Collateral Agent.

**Section 2.09 Voluntary Prepayments and Commitment Reductions.**

**(a) Voluntary Prepayments.**

(i) Any time and from time to time (subject to the payment of any prepayment premium set forth in **Section 2.09(c)**) the Borrower may prepay Loans on any Business Day in whole or in part in an aggregate minimum amount of \$5,000,000 and integral multiples of \$1,000,000 in excess of that amount.

(ii) All such prepayments shall be made by 12:00 p.m. (New York City time) on a prepayment date upon not less than three Business Days' prior written notice given to the Administrative Agent (and the Administrative Agent will promptly deliver such notice for Term Loans or Revolving Loans, as the case may be, to each applicable Lender). Upon the giving of any such notice, the principal amount of the Loans specified in such notice shall become due and payable on the prepayment date specified therein. Any such voluntary prepayment shall be applied as specified in **Section 2.11(a)**.

**(b) Voluntary Commitment Reductions.**

(i) The Borrower may, upon not less than three Business Days' prior written notice thereof to the Administrative Agent (which notice the Administrative Agent will promptly deliver to each applicable Lender), at any time and from time to time, terminate in whole or permanently reduce in part, without premium or penalty, the Revolving Commitments on a pro rata basis as among the various Classes thereof (in accordance with the respective amounts thereof) in an aggregate amount not to exceed the amount by which the Total Revolving Commitments exceed the Total Revolving Outstanding Amount at the time of such proposed termination or reduction; *provided* that any such partial reduction of the Revolving Commitments shall be in an aggregate minimum amount of \$5,000,000 and integral multiples of \$1,000,000 in excess of that amount.

(ii) The Borrower's notice to the Administrative Agent shall designate the date (which shall be a Business Day) of such termination or reduction and the amount of any partial reduction, and such termination or reduction of the Revolving Commitments shall be effective on the date specified in the Borrower's notice and shall reduce the Revolving Commitment of each Lender proportionately to its Revolving Percentage thereof.

(c) **Call Protection.** In the event all or any portion of the Term Loans are repaid or prepaid or the Total Revolving Commitments are terminated or reduced (including pursuant to **Section 2.23(b)**) as a result of, or in connection with, any Lender not agreeing or otherwise consenting to any waiver, consent or amendment in connection with a Repricing Event), repriced or effectively refinanced through any amendment of the Term Loans or the Revolving Commitments or accelerated for any reason (including following an Event of Default) prior to the second anniversary of the Closing Date, such repayment, prepayment, repricing, acceleration, termination or reduction:

(i) except as provided in **clause (iii)** below, if such repayment, prepayment, repricing, acceleration, termination or reduction occurs on or prior to the first anniversary of the Closing Date, will be made in an amount equal to the sum of (A) 100.0% of the principal amount of the Term Loans repaid, prepaid, repriced or accelerated, *plus* accrued and unpaid interest, if any, thereon to the date fixed for prepayment *plus* (B) the Make Whole Premium applicable to the principal amount of the Term Loans repaid, prepaid, repriced or accelerated and the amount of the Total Revolving Commitments terminated or reduced on such date and,

(ii) if such repayment, prepayment, repricing, acceleration, termination or reduction occurs after the first anniversary of the Closing Date, but on or prior to the second anniversary of the Closing Date, 102.0% of the amount of Term Loans repaid, prepaid, repriced or accelerated and 2.0% of the amount of the Total Revolving Commitments terminated or reduced,

(iii) if such voluntary repayment or voluntary prepayment occurs on or prior to the second anniversary of the Closing Date and within 60 days following consummation of a Disposition with a fair market value of greater than \$25,000,000 pursuant to **Section 6.04(m)** with respect to which the Borrower requested a waiver of the requirement that at least 80% of the consideration for such Disposition consist of Cash or Cash Equivalents which waiver request was not granted by the Administrative Agent and the Required Lenders, 102.0% of the amount of Term Loans voluntarily repaid or voluntarily prepaid (and for the avoidance of doubt, no Make Whole Premium shall be due with respect to such voluntary repayment or voluntary prepayment).

#### **Section 2.10 Mandatory Prepayments and Commitment Reductions.**

(a) **Mandatory Revolver Commitment Reductions.** Any voluntary or mandatory prepayment of Term Loans and any repayment of Term Loans pursuant to **Section 2.03** shall be accompanied by a proportional mandatory reduction in the Total Revolving Commitments in an amount equal to the product of (x) 0.4 multiplied by (y) the amount of the principal of the Term Loans repaid or prepaid.

(b) **Issuance of Debt.** No later than the first Business Day following the date of receipt by any Group Member of any Net Cash Proceeds from the incurrence of any Indebtedness of any Group Member (other than with respect to any Indebtedness permitted to be incurred pursuant to **Section 6.01**) the Borrower shall prepay (subject to the payment of any prepayment premium set forth in **Section 2.09(c)**) the Term Loans and/or the Revolving Commitments shall be permanently reduced as set forth in **Section 2.11(b)** in an aggregate amount equal to 100% of such Net Cash Proceeds.

(c) **Revolving Loans.** The Borrower shall from time to time prepay the Revolving Loans to the extent necessary so that the Total Revolving Exposure shall not at any time exceed the Total Revolving Commitments then in effect.

(d) **Prepayment Certificate.** Concurrently with any prepayment of the Term Loans pursuant to **Section 2.10(b)**, the Borrower shall deliver to the Administrative Agent a certificate of a Responsible Officer demonstrating the calculation of the amount of the applicable net proceeds. In the event that the Borrower shall subsequently determine that the actual amount received exceeded the amount set forth in such certificate, the Borrower shall promptly make an additional prepayment of the Term Loans in an amount equal to such excess, and the Borrower shall concurrently therewith deliver to the Administrative Agent a certificate of a Responsible Officer demonstrating the derivation of such excess.

(e) **Borrowing Base Overadvance.** In the event that the Total Outstanding Amount exceeds the Borrowing Base then in effect, the Borrower shall

(i) promptly (and no later than three Business Days after such event) prepay the Loans in an aggregate principal amount equal such excess; and/or

(ii) promptly (and no later than three Business Days after such event) deposit Cash in a Qualified Cash Deposit Account in an amount sufficient to cause the aggregate principal amount of the Loans to no longer exceed the Borrowing Base.

(f) **Margin Regulation.** In the event that the aggregate principal amount of the Loans exceeds the Maximum Loan Value of the Collateral, the Borrower shall promptly (and no later than one Business Day after such event) deposit Cash in a Qualified Cash Deposit Account in an amount sufficient to cause the aggregate principal amount of the Loans no longer to exceed the Maximum Loan Value of the Collateral.

**Section 2.11 Application of Prepayments/Reductions.**

(a) **Application of Voluntary Prepayments and Overadvance Prepayments.** Any prepayment of any Class of Loan pursuant to **Section 2.09(a)**, **2.10(c)** and **2.10(e)** shall be applied as specified by the Borrower in the applicable notice of prepayment; *provided*, that any payment of Revolving Loans shall be made on a pro rata basis as among the various Classes thereof (in accordance with the respective outstanding principal amounts thereof); *provided, further*, in the event the Borrower fails to specify the Class of Loans to which any such prepayment shall be applied, such prepayment shall be applied as follows:

*first*, to repay outstanding Revolving Loans on a pro rata basis as among the various Classes thereof (in accordance with the respective outstanding principal amounts thereof) to the full extent thereof; and

*second*, to prepay the Term Loans on a pro rata basis as among the various Classes thereof (in accordance with the respective outstanding principal amounts thereof), applied to each such Class to reduce the scheduled remaining installments of principal in direct order of maturity.

(b) **Application of Mandatory Prepayments.** Any amount required to be paid pursuant to **Section 2.10(b)** shall be applied as follows:

*first*, ratably in accordance with the principal amount of the Term Loans and the Total Revolving Commitments to (i) prepay the Term Loans on a pro rata basis as among the various Classes thereof (in accordance with the respective outstanding principal amounts thereof), applied to each such Class to reduce the scheduled remaining installments of principal in direct order of maturity and (ii) prepay the Revolving Loans; and

*second*, to prepay the Term Loans on a pro rata basis as among the various Classes thereof (in accordance with the respective outstanding principal amounts thereof), applied to each such Class to reduce the scheduled remaining installments of principal in direct order of maturity.

(c) **Application of Prepayments of Loans to Base Rate Loans and Eurodollar Loans.** Considering each Class of Loans being prepaid separately, any prepayment thereof shall be applied first to Base Rate Loans to the full extent thereof before application to Eurodollar Loans, in each case in a manner which minimizes the amount of any payments required to be made by Borrower pursuant to **Section 2.20**.

**Section 2.12 Conversion and Continuation Options.** Upon the expiration of the then-current Interest Period with respect to any Loan, such Loan shall automatically be continued as a Eurodollar Loan with an Interest Period of three months' duration; *provided* that when any Event of Default has occurred and is continuing for a period of 30 days or more or during the continuance of an Event of Default described in **Section 7.01(f)** or **Section 7.01(g)**, (x) no Base Rate Loan may be converted to a Eurodollar Loan and (y) all Loans shall be immediately converted automatically to Base Rate Loans at such time.

**Section 2.13 Minimum Amounts and Maximum Number of Eurodollar Tranches.** Notwithstanding anything to the contrary in this Agreement, all borrowings, conversions, continuations and optional prepayments of Eurodollar Loans and all selections of Interest Periods shall be in such amounts and be made pursuant to such elections so that, (a) after giving effect thereto, the aggregate principal amount of the Eurodollar Loans comprising each Eurodollar Tranche shall be equal to \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof and (b) no more than 10 Eurodollar Tranches shall be outstanding at any one time.

**Section 2.14 Interest Rates and Payment Dates.**

(a) Each Eurodollar Loan shall bear interest for each day during each Interest Period with respect thereto at a rate *per annum* equal to the Eurodollar Rate determined for such day plus the Applicable Margin in effect for such day.

(b) Each Base Rate Loan shall bear interest for each day on which it is outstanding at a rate *per annum* equal to the Base Rate in effect for such day plus the Applicable Margin in effect for such day.

(c) (i) Automatically, after the occurrence and during the continuance of an Event of Default described in **Section 7.01(a)**, **Section 7.01(f)** or **Section 7.01(g)** and

(ii) after notice to the Borrower from the Administrative Agent acting at the direction of the Required Lenders, after the occurrence and during the continuance of any other Event of Default,

the Borrower shall pay interest on all amounts (whether or not past due) owing by it hereunder at a rate *per annum* at all times, after as well as before judgment, equal to

(x) in the case of principal, at the rate otherwise applicable to such Loan pursuant to **Section 2.14(a)** or **Section 2.14(b)**, as applicable, plus 2.00% *per annum*; and

(y) in all other cases, at a rate *per annum* (computed on the basis of the actual number of days elapsed over a year of 360 days) equal to the rate that would be applicable to Base Rate Loans under the Revolving Facility plus 2.00% *per annum*,

in each case, from the date of such Event of Default or if later, the date specified in any such notice until such Event of Default is cured or waived.

(d) Interest shall be due and payable by the Borrower in arrears on each Interest Payment Date; *provided* that interest accruing pursuant to **Section 2.14(c)** shall be due and payable upon demand. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

(e) All computations of interest for Base Rate Loans determined by reference to the "Prime Rate" shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; *provided* that any Loan that is repaid on the same day on which it is made shall bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

**Section 2.15 Illegality.** If any Lender determines that any law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to perform any of its obligations hereunder or to make, maintain or fund or charge interest with respect to any Credit Extension or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) any obligation of such Lender to issue, make, maintain, fund or charge interest with respect to any such Credit Extension or continue Eurodollar Loans or to convert Base Rate Loans to Eurodollar Loans shall be suspended and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurodollar Rate component of the Base Rate, the interest rate on such Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurodollar Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurodollar Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurodollar Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

**Section 2.16 Inability to Determine Interest Rate.** If, in connection with any request for a Eurodollar Loan or a conversion to or continuation thereof, (a) the Administrative Agent determines that (i) Dollar deposits are not being offered to banks in the London interbank Eurodollar market for the applicable amount and Interest Period of such Eurodollar Loan, or (ii) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Loan or in connection with an existing or proposed Base Rate Loan (in each case, "**Impacted Loans**"), or (b) the Administrative Agent or the affected Lenders determine that for any reason the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Loan does not adequately and fairly reflect the cost to such Lenders of funding such Eurodollar Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Loans shall be suspended (to the extent of the affected Eurodollar Loans or Interest Periods) and (y) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent upon the instruction of the affected Lenders revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of Eurodollar Loans (to the extent of the affected Eurodollar Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for Base Rate Loans in the amount specified therein.

Notwithstanding the foregoing, if the Administrative Agent has made the determination described in **clause (a)** above, the Administrative Agent, in consultation with the Borrower and the affected Lenders, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (1) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans under **clause (a)** above, (2) the Administrative Agent notifies or the affected Lenders notify the Administrative Agent and the Borrower that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Impacted Loans or (3) any Lender determines that any law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable lending office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Borrower written notice thereof.

**Section 2.17 Payments Generally; Administrative Agent's Clawback.**

(a) **General.** All payments to be made by the Borrower hereunder, whether on account of principal, interest, fees or otherwise, shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. All payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Payment Office, in Dollars and in immediately available funds prior to 12:00 p.m. (New York City time) on the date specified herein. Any payment made by the Borrower hereunder that is received by the Administrative Agent after 12:00 p.m. (New York City time) on any Business Day shall be deemed to have been received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. The Administrative Agent shall distribute such payments to the Lenders by wire transfer promptly upon receipt in like funds as received. If any payment hereunder (other than payments on the Eurodollar Loans) becomes due and payable on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be. If any payment on a Eurodollar Loan becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day. In the case of any extension of any payment of principal pursuant to the preceding two sentences, interest thereon shall be payable at the then applicable rate during such extension.

(b) **Funding by Lenders; Presumption by Administrative Agent.** Unless the Administrative Agent shall have received written notice from a Lender prior to the proposed date of such borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with **Section 2.02** or **Section 2.05**, as applicable, and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of a payment to be made by such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, and (ii) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(c) **Payments by Borrower; Presumptions by Administrative Agent.** Unless the Administrative Agent shall have received written notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(d) **Obligations of Lenders Several.** The obligations of the Lenders hereunder to make Term Loans and Revolving Loans and to make payments pursuant to **Section 9.05(c)** are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under **Section 9.05(c)** on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under **Section 9.05(c)**.

(e) **Funding Source.** Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(f) **Insufficient Funds.** Except in the case of any funds to be applied pursuant to Section 7.03, if at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) *first*, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) *second*, toward payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

#### **Section 2.18 Increased Costs; Capital Adequacy.**

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the Eurodollar Rate);

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes and (B) Excluded Taxes) on its Loans, Loan principal, Commitments or other Obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining any Loan, or to reduce the amount of any sum received or receivable by such Lender or other Recipient hereunder (whether of principal, interest or any other amount) then, upon the request of such Lender or other Recipient, the Borrower will promptly pay to such Lender or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender, as the case may be, such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in **Section 2.18(a)** or **Section 2.18(b)**, and delivered to the Borrower (with a copy to the Administrative Agent), shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this **Section 2.18** shall not constitute a waiver of such Lender's right to demand such compensation; *provided* that the Borrower shall not be required to compensate a Lender pursuant to this **Section 2.18** for any increased costs incurred or reductions suffered more than twelve months prior to the date that such Lender, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the twelve-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) The obligations of the Borrower pursuant to this **Section 2.18** shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

#### **Section 2.19 Taxes.**

(a) **Defined Terms.** For purposes of this **Section 2.19**, the term "applicable law" includes FATCA.

(b) **Payments Free of Taxes.** Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this **Section 2.19**) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) **Payment of Other Taxes by the Loan Parties.** The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) **Indemnification by the Loan Parties.** The Loan Parties shall jointly and severally indemnify each Recipient, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this **Section 2.19**) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender or Agent (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or Agent, shall be conclusive absent manifest error.

(e) **Indemnification by the Lenders.** Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of **Section 9.06(d)** relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this **Section 2.19(e)**.

(f) **Evidence of Payments.** As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this **Section 2.19**, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(g) **Status of Lenders.**

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in **Section 2.19(g)(ii)(A)**, **Section 2.19(g)(ii)(B)** and **Section 2.19(g)(ii)(D)** below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, executed copies of IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(2) executed copies of IRS Form W-8ECI or W-8EXP;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of **Exhibit E-1** to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10-percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “**U.S. Tax Compliance Certificate**”) and (y) executed copies of IRS Form W-8BEN or W-8BEN-E; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of **Exhibit E-2** or **Exhibit E-3**, IRS Form W-9 and/or other certification documents from each beneficial owner, as applicable; *provided* that, if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of **Exhibit E-4** on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this **Section 2.19(g)(ii)(D)**, "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(h) Any successor or supplemental Administrative Agent that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code, shall deliver to the Borrower, on or prior to the date on which it becomes a party to this Agreement, two duly completed copies of IRS Form W-8IMY, with the effect that the Borrower may make payments to the Administrative Agent, to the extent such payments are received by the Administrative Agent as an intermediary, without deduction or withholding of any Taxes imposed by the United States.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so. The Lenders and any transferees or assignees after the Closing Date will be required to provide to the Administrative Agent or its agents all information, documentation or certifications reasonably requested by the Administrative Agent to permit the Administrative Agent to comply with its tax reporting obligations under applicable laws, including any applicable cost basis reporting obligations.

(i) **Treatment of Certain Refunds.** If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this **Section 2.19** (including by the payment of additional amounts pursuant to this **Section 2.19**), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this **Section 2.19** with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this **Section 2.19(i)** (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this **Section 2.19(i)** in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this **Section 2.19(i)** the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This **Section 2.19(i)** shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(j) Borrower shall provide to Administrative Agent, upon reasonable request, an applicable IRS Tax Form W-9 indicating its "US person" tax status and any other Tax form or other documentation that will avoid or minimize any withholding Tax upon receipt of payments of upon a foreclosure sale or other disposition of, or otherwise with respect to, any Public Equities, Credit Assets, or other Collateral. The Administrative Agent and Lenders shall be entitled to calculate any amounts or valuation with respect to Public Equities, Credit Assets, or other Collateral under the Loan Documents net of (and shall, without duplication, be entitled to adjust one or more of the terms of provisions of the facility as necessary in its good faith discretion to account for the effect of) any withholding Tax or other Tax that may be imposed upon the holding or any prospective sale or transfer of any Public Equities, Credit Assets, or other Collateral (including upon an exercise of remedies by the Administrative Agent or Lenders).

(k) **Survival.** Each party's obligations under this **Section 2.19** shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

**Section 2.20 Breakage Payments.** In the event of (a) default by the Borrower in making a borrowing of, conversion into or continuation of Eurodollar Loans after the Borrower has given a notice requesting the same in accordance with the provisions of this Agreement, (b) default by the Borrower in making any prepayment after the Borrower has given a notice thereof in accordance with the provisions of this Agreement, (c) the making of a prepayment or conversion of Eurodollar Loans on a day that is not the last day of an Interest Period with respect thereto or (d) the assignment of any Eurodollar Loan on a day that is not the last day of an Interest Period applicable thereto as a result of a request by the Borrower pursuant to **Section 2.23**, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest that would have accrued on the principal amount of such Loan had such event not occurred, at the Eurodollar Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest that would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for Dollar deposits of a comparable amount and period from other banks in the Eurodollar market. A certificate as to any amounts payable pursuant to this **Section 2.20** submitted to the Borrower (with a copy to the Administrative Agent) by any Lender shall be conclusive in the absence of manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within three Business Days after receipt thereof. This **Section 2.20** shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

**Section 2.21 Pro Rata Treatment.**

(a) Each borrowing of Term Loans of a given Class by the Borrower and any reduction of the Term Loan Commitments of a given Class shall be allocated pro rata as among the Lenders of such Class in accordance with their respective Term Loan Commitments with respect to such Class. Each borrowing of Revolving Loans by the Borrower, each payment by the Borrower on account of any Commitment Fee and any reduction of the Revolving Commitments of the Lenders shall be allocated pro rata as among the various Classes of Revolving Commitments and as among the Lenders of each Class of Revolving Commitments in accordance with their respective Revolving Commitments with respect to such Class (or, if such Revolving Commitments shall have expired or been terminated, in accordance with the Revolving Commitments as in effect immediately prior to such expiration or termination).

(b) Each repayment by the Borrower in respect of principal or interest on the Term Loans and each payment in respect of fees or expenses payable hereunder shall be applied to the amounts of such obligations owing to the Lenders entitled thereto pro rata in accordance with the respective amounts then due and owing to such Lenders. Each voluntary prepayment by the Borrower of a Class of Term Loans shall be applied to the amounts of such obligations owing to the Term Lenders of such Class pro rata in accordance with the respective amounts then due and owing to the Term Lenders of such Class. Each mandatory prepayment by the Borrower of the Term Loans shall be applied pro rata in accordance with the respective principal amounts of the outstanding Term Loans of all Classes then held by the Term Lenders (unless a given Class of Term Loans has elected to receive a lesser allocation). Each payment (including each prepayment) by the Borrower in respect of principal or interest on the Revolving Loans shall be made pro rata in accordance with the respective principal amounts of the outstanding Revolving Loans then held by the Revolving Lenders.

(c) The application of any payment of Loans under any Credit Facility shall be made, *first*, to Base Rate Loans under such Credit Facility and, *second*, to Eurodollar Loans under such Credit Facility. Each payment of the Loans (except for any Revolving Loans that are Base Rate Loans that does not result in Payment in Full) shall be accompanied by accrued interest to the date of such payment on the amount paid.

## **Section 2.22 Defaulting Lenders.**

(a) **Defaulting Lender Adjustments.** Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) **Waivers and Amendments.** Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in **Section 9.01(a)** and the definitions of "Required Lenders" and "Required Revolving Lenders".

(ii) **Defaulting Lender Waterfall.** Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to **Section 7.02** or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to **Section 9.07** shall be applied at such time or times as may be determined by the Administrative Agent as follows:

*first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder;

*second*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent;

*third*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement;

*fourth*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement;

*fifth*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and

*sixth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction;

*provided* that if (x) such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made at a time when the conditions set forth in **Section 4.02** were satisfied or waived, such payment shall be applied solely to pay the Loans of all Non-Defaulting Lenders of the same Class as such Defaulting Lender on a pro rata basis prior to being applied to the payment of any Loans of such Defaulting Lender until such time as all Loans are held by the Lenders pro rata in accordance with the Commitments under the applicable Credit Facility. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender pursuant to this **Section 2.22(a)(ii)** shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) **Certain Fees.** No Defaulting Lender shall be entitled to receive any Commitment Fee for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(b) **Defaulting Lender Cure.** If the Borrower and the Administrative Agent agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans to be held pro rata by the Lenders in accordance with the Commitments under the applicable Credit Facility, whereupon such Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; *provided, further*, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

**Section 2.23 Mitigation Obligations; Replacement of Lenders.**

(a) **Designation of a Different Lending Office.** If any Lender requests compensation under **Section 2.18**, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to **Section 2.19**, then such Lender shall (at the request of the Borrower) use reasonable efforts (subject to overall policy considerations of such Lender) to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the sole judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to **Section 2.18** or **Section 2.19**, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) **Replacement of Lenders.** If any Lender requests compensation under **Section 2.18**, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to **Section 2.19** and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with **Section 2.23(a)**, or if any Lender is a Defaulting Lender and failed to cure the circumstances as a result of which it has become a Defaulting Lender within five Business Days after the Borrower's request that it cure such circumstances or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, **Section 9.06**), all of its interests, rights (other than its existing rights to payments pursuant to **Section 2.18** or **Section 2.19**) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that any Non-Consenting Lender shall be deemed to have consented to the assignment and delegation of its interests, rights and obligations if it does not execute and deliver an Assignment and Assumption to the Administrative Agent within one Business Day after having received a request therefor; *provided, further, that:*

(i) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in **Section 9.06**;

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under **Section 2.09(c)** and **Section 2.20**) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under **Section 2.18** or payments required to be made pursuant to **Section 2.19**, such assignment will result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with applicable law; and

(v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

(c) **Termination of Defaulting Lenders.** The Borrower may terminate the unused amount of the Commitment of any Revolving Lender that is a Defaulting Lender upon not less than five Business Days' prior notice to the Administrative Agent (which shall promptly notify the Lenders thereof), and in such event the provisions of **Section 2.22(a)(ii)** will apply to all amounts thereafter paid by the Borrower for the account of such Defaulting Lender under this Agreement (whether on account of principal, interest, fees, indemnity or other amounts); *provided* that (i) no Event of Default shall have occurred and be continuing and (ii) such termination shall not be deemed to be a waiver or release of any claim the Borrower, the Administrative Agent or any Lender may have against such Defaulting Lender.

**ARTICLE III.**  
**REPRESENTATIONS AND WARRANTIES**

To induce the Agents and the Lenders to enter into this Agreement and the Lenders to make the Loans, each of Ultimate Parent, the Primary Guarantor and the Borrower hereby jointly and severally represents and warrants to each Agent and each Lender on the Closing Date and upon each Credit Extension thereafter that:

**Section 3.01 Existence, Qualification and Power.** Each Group Member (a) is duly incorporated or organized, validly existing and, as applicable, in good standing under the laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to own or lease its assets and carry on its business as now conducted and (c) is duly qualified and licensed and, as applicable, in good standing under the laws of each jurisdiction where such qualification or license or, if applicable, good standing is required; except, in the case of **clauses (a)** (other than with respect to Ultimate Parent, Primary Guarantor and any BR Advisory Loan Party), **(b)** and **(c)** above, where such failure could not reasonably be expected to have a Material Adverse Effect.

**Section 3.02 Authorization; Enforceability.** The Transactions to be entered into by each Loan Party are within such Loan Party's powers and have been duly authorized by all necessary corporate or other organizational action on the part of each such Loan Party. This Agreement has been duly executed and delivered by each Loan Party party hereto and constitutes, and each other Loan Document to which any Loan Party is to be a party, when executed and delivered by such Loan Party, will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally, regardless of whether considered in a proceeding in equity or at law.

**Section 3.03 No Conflicts.** The Transactions (i) do not require any consent, exemption, authorization or approval of, registration or filing with, or any other action by, any Governmental Authority, except (A) such as have been obtained or made and are in full force and effect, (B) filings necessary to perfect or maintain the perfection or priority of the Liens created by the Security Documents and (C) consents, approvals, exemptions, authorizations, registrations, filings, permits or actions the failure of which to obtain or perform could not reasonably be expected to have a Material Adverse Effect, (ii) will not violate the Organizational Documents of any Group Member, (iii) will not violate or result in a default or require any consent or approval under any indenture, instrument, agreement, or other document binding upon any Group Member or its property or to which any Group Member or its property is subject, or give rise to a right thereunder to require any payment to be made by any Group Member, except for violations, defaults or the creation of such rights that could not reasonably be expected to have a Material Adverse Effect, (iv) will not violate any Requirement of Law in any material respect and (v) will not result in the creation or imposition of any Lien on any property of any Group Member, except Liens created by the Security Documents.

**Section 3.04 Financial Statements; No Material Adverse Effect.**

(a) The Borrower has heretofore delivered to the Administrative Agent and the Lenders (i) the Historical Audited Financial Statements, audited by and accompanied by the unqualified opinion of Marcum LLP, independent public accountants, and (ii) the consolidated balance sheets of Ultimate Parent and its Subsidiaries and the related consolidated statements of income or operations, changes in stockholders' equity and cash flows as of and for the three-month period ended March 31, 2021 and for the comparable period of the preceding fiscal year, in each case, certified by the chief financial officer of Ultimate Parent. Such financial statements, and all financial statements delivered pursuant to **Section 5.01(a)** and **Section 5.01(b)**, have been prepared in accordance with GAAP consistently applied throughout the applicable period covered thereby and present fairly and accurately the consolidated financial condition and results of operations and cash flows of Ultimate Parent as of the dates and for the periods to which they relate (subject to normal year-end audit adjustments and the absence of footnotes). Except as set forth in such financial statements, there are no material liabilities of Ultimate Parent or any of its Subsidiaries of any kind, whether accrued, contingent, absolute, determined, determinable or otherwise, and there is no existing condition, situation or set of circumstances which would reasonably be expected to result in such a liability.

(b) Since the Closing Date, there has been no event, change, circumstance, condition, development or occurrence that has had, or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

**Section 3.05 Intellectual Property.** Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect:

(a) Each Group Member owns or is licensed to use, free and clear of all Liens (other than Permitted Liens), all Intellectual Property, necessary for the conduct of its business as currently conducted.

(b) No claim has been asserted and is pending by any person challenging the validity, enforceability, registration or ownership of any Intellectual Property owned by any of the Group Members. Neither any Group Member nor the conduct of the respective businesses of such Group Member infringes, misappropriates, dilutes or otherwise violates the Intellectual Property of any third party. No proceedings have been instituted or are pending against any Group Member or, to the knowledge of the Primary Guarantor, are threatened, alleging any such infringement. Each Group Member has taken commercially reasonable actions to protect the confidentiality of all trade secrets used in such Group Member's business.

(c) No third party is infringing, misappropriating, diluting or otherwise violating any Intellectual Property owned by any of the Group Members.

(d) **No Impairment.** Neither the execution, delivery or performance of this Agreement and the other Loan Documents, nor the consummation of the Transactions and the other transactions contemplated hereby and thereby, will negatively alter, impair or otherwise affect or require the consent, approval or other authorization of any other person in respect of any right of any Group Member in any Intellectual Property.

(e) **No Agreement or Order Materially Affecting Intellectual Property.** No Group Member is subject to any settlement, covenant not to sue or other instrument, agreement or other document, or any outstanding order, which may affect the validity or enforceability of any Intellectual Property owned by any of the Group Members.

**Section 3.06 Properties.**

(a) Each Group Member has good and marketable title to, or valid leasehold interests in, all its property material to its business, free and clear of all Liens and irregularities, deficiencies and defects in title, except for Permitted Liens and minor irregularities, deficiencies and defects in title that, individually or in the aggregate, do not, and would not reasonably be expected to, interfere with its ability to conduct its business as currently conducted or to utilize such property for its intended purpose.

(b) Each Group Member owns or has rights to use all of its property and all rights with respect to any of the foregoing which are required for the business and operations of the Group Members as presently conducted, except where the failure to have such ownership or rights would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The use by each Group Member of its property and all such rights with respect to the foregoing do not infringe on the rights or other interests of any person, other than any infringement that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No claim has been made and remains outstanding that any Group Member's use of any of its property does or may violate the rights of any third party that, individually or in the aggregate, has had, or would reasonably be expected to result in, a Material Adverse Effect.

**Section 3.07 Equity Interests and Subsidiaries.** **Schedule 3.07** sets forth (i) each Loan Party and its jurisdiction of incorporation or organization as of the Closing Date and (ii) the number of each class of its Equity Interests authorized, and the number outstanding, on the Closing Date and the number of Equity Interests covered by all outstanding options, warrants, rights of conversion or purchase and similar rights on the Closing Date. All Equity Interests of each Loan Party are duly and validly issued and are fully paid and non-assessable (to the extent such concepts are applicable) and are owned by the Primary Guarantor, directly or indirectly, through Wholly Owned Subsidiaries. All Equity Interests of the Primary Guarantor are owned directly by Ultimate Parent. Each Loan Party is the record and beneficial owner of, and has good and marketable title to, the Equity Interests pledged by (or purported to be pledged by) it under the Security Documents, free of any and all Liens, rights or claims of other persons (other than Permitted Equity Liens), and, as of the Closing Date, there are no outstanding warrants, options or other rights (including derivatives) to purchase, or shareholder, voting trust or similar agreements outstanding with respect to, or property that is convertible into, or that requires the issuance or sale of, any such Equity Interests (or any economic or voting interests therein).

**Section 3.08 Litigation.** There are no actions, suits, claims, disputes or proceedings at law or in equity by or before any Governmental Authority now pending or, to the best of the knowledge of the Primary Guarantor, threatened in writing against or affecting any Group Member or any business, property or rights of any Group Member (i) that purport to affect or involve any Loan Document or any of the Transactions or (ii) that have resulted, or that have a reasonable probability of being determined adversely and if so determined would, individually or in the aggregate, reasonably be expected to result, in a Material Adverse Effect.

**Section 3.09 Investment Company Act.** No Group Member is an "investment company" or a company "controlled" by an "investment company," as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

**Section 3.10 Taxes.** Each Group Member has (a) filed or caused to be filed all material Tax returns that are required to be filed by it and (b) paid or caused to be paid all material Taxes required to be paid by it, except Taxes that are being contested in good faith by appropriate proceedings and for which such Group Member has set aside on its books adequate reserves in accordance with GAAP, so long as such Taxes would not reasonably be expected to subject the Collateral to forfeiture or loss. Each Group Member has made adequate provisions in accordance with GAAP for all Taxes not yet due and payable. No Group Member has knowledge (or could reasonably have knowledge upon due inquiry) of any proposed or pending tax assessments, deficiencies, audits or other proceedings and no proposed or pending tax assessments, deficiencies, audits or other proceedings have had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. No Group Member has ever "participated" in a "reportable transaction" within the meaning of Treasury Regulation Section 1.6011-4. No Group Member is party to any tax sharing or similar agreement. No transaction, stamp, capital, issuance, registration, transfer, withholding or other Taxes are required to be paid by Administrative Agent or any Lender in connection with any transfer of Public Equities, Credit Assets, or other Collateral to Administrative Agent or such Lender exercising its rights with respect thereto under the Loan Documents (including a foreclosure sale or other disposition).

**Section 3.11 No Material Misstatements.**

(a) On the Closing Date, all reports, financial statements, certificates or other information furnished in writing (other than forward-looking information, budgets, estimates and information of a general economic or industry-specific nature) by or on behalf of the Primary Guarantor or the Borrower to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (as modified or supplemented by other information so furnished), when taken as a whole, do not contain any material misstatement of fact or omit to state any material fact necessary to make the statements therein when taken as a whole, in light of the circumstances under which they were made, not materially misleading.

(b) The forward-looking information, budgets, estimates and information of a general economic or industry-specific nature that have been furnished to the Administrative Agent prior to the Closing Date, when taken as a whole, have been prepared in good faith based upon assumptions believed by the Borrower to be reasonable at the time made and at the time furnished (it being recognized that such information is not to be viewed as facts and that no assurance can be given that any particular financial projections will be realized, that actual results may differ significantly from projected results and that such projections are not a guarantee of performance).

**Section 3.12 Labor Matters.**

(a) There are no strikes, lockouts, stoppages or slowdowns or other labor disputes affecting any Group Member pending or, to the knowledge of the Loan Parties, threatened in writing that have had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) All payments due from any Group Member, or for which any claim may be made against any Group Member, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of such Group Member except to the extent that the failure to do so has not had, and would not reasonably be expected to have, a Material Adverse Effect.

(c) The hours worked by and payments made to employees of any Group Member have not been in violation of the Fair Labor Standards Act of 1938, as amended.

**Section 3.13 ERISA.** Each Plan and, with respect to each Plan, each Group Member and their respective ERISA Affiliates are in compliance in all material respects with the applicable provisions of ERISA and the Code. Each Plan which is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS indicating that such Plan is so qualified and nothing has occurred subsequent to the issuance of such determination letter which would cause such Plan to lose its qualified status. No liability to the PBGC (other than required premium payments), the IRS, any Plan (other than in the ordinary course) or any trust established under Title IV of ERISA has been or is expected to be incurred by any Group Member or any of their respective ERISA Affiliates with respect to any Plan. No ERISA Event has occurred or is reasonably expected to occur that, individually or together with any other ERISA Events, has had or could reasonably be expected to have a Material Adverse Effect. The present value of all accrued benefit obligations under each Single Employer Plan (based on those assumptions used to fund such Single Employer Plans) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Single Employer Plan allocable to such accrued benefit obligations by a material amount. As of the most recent valuation date for each Multiemployer Plan, the potential liability of the Group Members and each of their respective ERISA Affiliates for a complete withdrawal from such Multiemployer Plan (within the meaning of Section 4203 or Section 4205 of ERISA), when aggregated with such potential liability for a complete withdrawal from all Multiemployer Plans, is zero. The Group Members and each of their respective ERISA Affiliates have complied with the requirements of Section 515 of ERISA with respect to each Multiemployer Plan and are not in material "default" (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan. No Group Member or any of their respective ERISA Affiliates contributes to, or has any liability with respect to, any Multiemployer Plan or has any contingent liability with respect to any post-retirement welfare benefit under a Plan that is subject to ERISA, other than liability for continuation coverage described in Part 6 of Title I of ERISA. No Group Member or any of their respective ERISA Affiliates maintains or contributes to any employee benefit plan that is subject to the laws of any jurisdiction outside the United States of America.

**Section 3.14 Environmental Matters.** Other than exceptions to any of the following that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect:

(a) the Group Members: (i) are, and have been, in compliance with all applicable Environmental Laws including obtaining, maintaining and complying with all Environmental Permits required for their current or intended operations or for any property owned, leased, or otherwise operated by any of them; and (ii) reasonably believe that compliance with any Environmental Law that is or is expected to become applicable to any of them will be timely attained and maintained, without material expense;

(b) Materials of Environmental Concern have not been Released and are not present at, on, under, in, or about any real property currently owned, leased or operated by any Group Member in violation of, or as would result in liability under, any Environmental Law, or to the knowledge of the Primary Guarantor at any real property formerly owned, leased or operated by any Group Member, or at any other location (including, without limitation, any location to which Materials of Environmental Concern have been sent for re-use, recycling, treatment, storage, or disposal);

(c) there are no pending or, to the knowledge of the Primary Guarantor threatened actions, suits, claims, disputes or proceedings at law or in equity, administrative or judicial, by or before any Governmental Authority (including any notice of violation or alleged violation or seeking to revoke, cancel, or amend any Environmental Permit) under or relating to any Environmental Law to which any Group Member is, or to the knowledge of the Primary Guarantor, will be, named as a party or affecting any Group Member or any business, property or rights of any Group Member;

(d) no Group Member has received any written request for information, or been otherwise notified that it is a potentially responsible party under or relating to the federal Comprehensive Environmental Response, Compensation, and Liability Act or any similar Environmental Law, or with respect to any Release of Materials of Environmental Concern;

(e) no Group Member has entered into or agreed to any consent decree, order, or settlement or other agreement, or is subject to any judgment, decree, or order or other agreement, in any judicial, administrative, arbitral, or other forum for dispute resolution, relating to compliance with Environmental Law or any Environmental Liability; and

(f) no Group Member has assumed or retained, by contract or, to the knowledge of the Primary Guarantor, by operation of law, any Environmental Liabilities of any kind, whether fixed or contingent, known or unknown.

**Section 3.15 Insurance.** Each Group Member is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are customarily maintained by similarly situated companies engaged in the same or similar businesses operating in the same or similar locations (after giving effect to any self-insurance).

**Section 3.16 Security Documents.** The Guarantee and Collateral Agreement is effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid, binding and enforceable security interest in the Collateral described therein and proceeds and products thereof as required thereby. In the case of (i) Pledged Equity Interests represented by certificates, (x) when such certificates are delivered to the Collateral Agent or (y) when financing statements in appropriate form are filed in the offices specified on **Schedule 3.16(a)**, (ii) the other Collateral described in the Guarantee and Collateral Agreement, when financing statements in appropriate form are filed in the offices specified on **Schedule 3.16(a)** and such other filings as are specified on **Schedule 3** to the Guarantee and Collateral Agreement have been completed and (iii) the Deposit Accounts and Securities Accounts, when Account Control Agreements have been executed by the parties contemplated thereby, the Lien created by the Guarantee and Collateral Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral and the proceeds and products thereof, as security for the Secured Obligations (as defined in the Guarantee and Collateral Agreement), in each case, prior and superior in right to any other Person (except, with respect to priority only, Permitted Prior Liens and, in the case of collateral constituting Equity Interests, Permitted Equity Liens), in each case, to the extent such Lien can be perfected by delivery of such collateral, the filing of any UCC financing statements or execution and delivery of any account control agreements.

**Section 3.17 Material Nonpublic Information.** At the time of delivery of any Clear Period Notice (as defined in the Guaranty and Collateral Agreement) with respect to any Public Equity, no Loan Party or any Affiliate thereof shall be in possession of any Material Nonpublic Information with respect to such Public Equity or the Issuer thereof.

**Section 3.18 Solvency.** Ultimate Parent and its Subsidiaries, on a consolidated basis, both immediately before and immediately after the consummation of the Transactions to occur on the Closing Date and immediately following the making of each Credit Extension are Solvent.

**Section 3.19 PATRIOT Act, etc.** To the extent applicable, each Group Member is in compliance, in all material respects, with (i) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (ii) the PATRIOT Act. No part of the proceeds of the Loans will be used, directly or indirectly, for any corrupt payment to any Person (including any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity), in order to obtain, retain or direct business or obtain any improper advantage, in violation of Anti-Corruption Laws.

**Section 3.20 Anti-Terrorism Laws.**

(a) None of the Loan Parties or any of their respective Affiliates is in violation of any Anti-Terrorism Law or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(b) None of the Loan Parties or any of their respective Affiliates or their respective agents acting or benefiting in any capacity in connection with the Loans, the Transactions or the other transactions hereunder, is any of the following (each a "**Blocked Person**"):

- (i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224;

(ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224;

(iii) a Person with which any Agent or Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a Person that commits, threatens or conspires to commit or supports “terrorism” (as defined in Executive Order No. 13224);

(v) a Person that is named as a “specially designated national” on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website or any replacement website or other replacement official publication of such list; or

(vi) a Person owned or controlled by with any Person described in **Section 3.20(b)(i)** through **Section 3.20(b)(y)** above.

(c) No Group Member or, to the knowledge of any Group Member, any of its agents acting in any capacity in connection with the Loans, the Transactions or the other transactions hereunder (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person or a Canada Blocked Person or (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224.

### **Section 3.21 Anti-Corruption Laws and Sanctions.**

(a) Ultimate Parent has implemented and maintains in effect policies and procedures reasonably designed to ensure compliance by Ultimate Parent and its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

(b) Ultimate Parent and its Subsidiaries, and to the knowledge of the Ultimate Parent, the respective officers, directors, employees and agents of the Ultimate Parent and its Subsidiaries, are in material compliance, and have complied for the past five years in all material respects, with Anti-Corruption Laws and applicable Sanctions.

(c) (i) No Group Member and none of its directors, officers or employees, and (ii) to the knowledge of any Group Member, no agent of such Group Member that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person.

**Section 3.22 Use of Proceeds.** The Borrower will use the proceeds of the Loans only as set forth in **Section 5.11**. The proceeds of the Loans will not be used directly or indirectly in violation of Anti-Corruption Laws or applicable Sanctions.

**Section 3.23 Borrowing Base Certificate.** The information set forth in each Borrowing Base Certificate, at the time of submission, is true and correct in all material respects and has been prepared in all material respects in the accordance with the requirements of this Agreement. The Credit Assets, Private Assets and Public Equities that are identified by the Primary Guarantor as Eligible Credit Assets (or Eligible Subordinated Credit Assets or Eligible First Lien Credit Assets), Eligible Private Assets and Eligible Public Equities in each Borrowing Base Certificate submitted to the Administrative Agent, at the time of submission, comply in all material respects with the criteria set forth in the definitions of Eligible Credit Assets (or Eligible Subordinated Credit Assets or Eligible First Lien Credit Assets), Eligible Private Assets and Eligible Public Equities, respectively, or are otherwise Approved Assets.

The Administrative Agent may rely, in determining which Credit Assets are Eligible Credit Assets (or Eligible Subordinated Credit Assets or Eligible First Lien Credit Assets), Private Assets are Eligible Private Assets and Public Equities are Eligible Public Equities on all statements and representations made by the Loan Parties in respect of such Credit Assets, Private Assets and Public Equities.

**Section 3.24 Deposit Accounts.** Attached hereto as **Schedule 3.24** is a schedule of all Deposit Accounts and Securities Accounts maintained by the Loan Parties as of the Closing Date.

**Section 3.25 Bona Fide Loan; Full Recourse.** The Transactions contemplated hereunder are collectively intended to constitute a *bona fide* loan and are not intended to be an offer or sale of Public Equities within the meaning of the Securities Act. The Loans are “full recourse” (as such term is used in clause (d)(2)(i) of Rule 144) to the Loan Parties.

#### **ARTICLE IV. CONDITIONS PRECEDENT**

**Section 4.01 Conditions to Initial Credit Extension.** The obligation of each Lender to make the initial Credit Extension requested to be made by it hereunder is subject to the satisfaction (or waiver), prior to or concurrently with the making of such Credit Extension on the Closing Date, of each of the following conditions precedent:

(a) **Loan Documents.** The Administrative Agent shall have received (i) this Agreement, executed and delivered by a duly authorized officer of Ultimate Parent, the Primary Guarantor, the Borrower, each Agent and each Lender, (ii) a Note, executed and delivered by the Borrower in favor of each Lender that has requested a Note at least two Business Days prior to the Closing Date and (iii) each Security Document set forth on **Schedule 4.01(a)**, executed and delivered by a duly authorized officer of each party thereto.

**(b) Personal Property Collateral.**

(i) Each Loan Party shall have delivered to the Administrative Agent and the Collateral Agent, a completed Perfection Certificate, dated as of the Closing Date, executed by a duly authorized officer of such Loan Party, together with all attachments contemplated thereby;

(ii) each Loan Party shall have delivered to the Administrative Agent, evidence that such Loan Party shall have taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument (including any amendments to the articles of incorporation or other constitutional documents of agreements of such Loan Party pursuant to which any restrictions or inhibitions relating to the enforcement of any Lien created by the Security Documents are removed) and authorized, made or caused to be made any other filing and recording required under the Security Documents, and each UCC financing statement required to perfect the Liens granted under the Security Documents shall have been delivered to the Administrative Agent and shall be in proper form for filing, registration or recordation;

(iii) the Collateral Agent shall have received (1) the certificates representing the shares of certificated Equity Interests pledged pursuant to the Guarantee and Collateral Agreement, together with an undated stock power or other instrument of transfer for each such certificate and, with respect to uncertificated securities, the Uncertificated Securities Control Agreement, executed by a duly authorized officer of each Loan Party party thereto, (2) to the extent required under the Guarantee and Collateral Agreement, each promissory note pledged pursuant to the Guarantee and Collateral Agreement duly executed (without recourse) in blank (or accompanied by an undated instrument of transfer executed in blank and satisfactory to the Administrative Agent) by the pledgor thereof and (3) the Subordinated Intercompany Note executed by the parties thereto accompanied by an undated instrument of transfer duly executed in blank and satisfactory to the Administrative Agent; and

(iv) each BR Advisory Loan Party shall have delivered to the Administrative Agent and the Collateral Agent, Account Control Agreements with respect to each Deposit Account and each Securities Account maintained by such BR Advisory Loan Party, other than any Excluded Account, executed by such party and the relevant account institution.

(c) **Fees and Expenses.** The Lenders and the Agents shall have received all fees and other amounts due and payable on or prior to the Closing Date, including, to the extent invoiced at least two Business Days prior to the Closing Date, reimbursement or payment of all reasonable and documented out-of-pocket expenses (including reasonable and documented fees, disbursements and other charges of Latham & Watkins LLP) required to be reimbursed or paid under the Commitment Letter or any Loan Document.

(d) **Solvency Certificate.** The Administrative Agent shall have received a solvency certificate (a "**Solvency Certificate**") substantially in the form attached hereto as **Exhibit G**, dated the Closing Date and signed by the chief financial officer, chief accounting officer or other authorized officer with equivalent duties of Ultimate Parent reasonably acceptable to the Administrative Agent.

(e) **Searches.** The Administrative Agent shall have received the results of a recent lien, tax lien, judgment and litigation search in each of the jurisdictions or offices (including, without limitation, in the United States Patent and Trademark Office and the United States Copyright Office) in which UCC financing statement or other filings or recordations should be made to evidence or perfect security interests in all assets of the Loan Parties (or would have been made at any time during the five years immediately preceding the Closing Date to evidence or perfect Liens on any assets of the Loan Parties), and such search shall reveal no Liens or judgments on any of the assets of the Loan Parties, except for Permitted Liens or Liens and judgments to be terminated on the Closing Date pursuant to documentation reasonably satisfactory to the Administrative Agent.

(f) **Closing Certificate.** The Administrative Agent shall have received a certificate of the Borrower, dated the Closing Date, confirming satisfaction of the conditions set forth in **Section 4.02(a)** and **Section 4.02(b)**.

(g) **Secretary's Certificates.** The Administrative Agent shall have received with respect to the Borrower and each other Loan Party:

(i) copies of the Organizational Documents of such Loan Party (including each amendment thereto) certified as of a date reasonably near the Closing Date as being a true and complete copy thereof by the Secretary of State or other applicable Governmental Authority of the jurisdiction in which each such Loan Party is organized;

(ii) a certificate of the secretary or assistant secretary of each Loan Party dated the Closing Date and certifying (A) that attached thereto is a true and complete copy of the Organizational Documents of such Loan Party as in effect on the Closing Date, (B) that attached thereto is a true and complete copy of resolutions duly adopted by the board of directors or similar governing body of such Loan Party (and, if applicable, any parent company of such Loan Party) approving and authorizing the execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party and the consummation of the Transactions, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, (C) that the certificate or articles of incorporation, formation or organization, as applicable, of such Loan Party have not been amended since the date of the last amendment thereto shown on the certificate of good standing furnished pursuant to **clause (iv)** below and (D) as to the incumbency and specimen signature of each Person authorized to execute any Loan Document or any other document delivered in connection herewith on behalf of such Loan Party;

(iii) a certificate of another officer as to the incumbency and specimen signature of the secretary or assistant secretary executing the certificate pursuant to **clause (ii)** above; and

(iv) a copy of the certificate of good standing of such Loan Party from the Secretary of State or other applicable Governmental Authority of the jurisdiction in which each such Loan Party is organized (dated as of a date reasonably near the Closing Date).

(h) **Legal Opinions.** The Administrative Agent shall have received the following customary executed legal opinions:

(i) the legal opinion of Sullivan and Cromwell LLP, special counsel to the Loan Parties; and

(ii) the legal opinion of local counsel in each jurisdiction in which a Loan Party is organized, to the extent such Loan Party is not covered by the opinion referenced in **Section 4.01(h)(i)**, as may be required by the Administrative Agent.

Each such legal opinion shall (a) be dated as of the Closing Date, (b) be addressed to the Agents and the Lenders and (c) cover such matters relating to the Loan Documents and the Transactions as the Administrative Agent may reasonably require. Each Loan Party hereby instructs such counsel to deliver such opinions to the Agents and the Lenders.

(i) **Bank Regulatory Information.** At least three Business Days prior to the Closing Date, the Agents and the Lenders shall have received all documentation and other information required by bank regulatory authorities and requested by any Agent or any Lender under or in respect of applicable “know-your-customer” and anti-money laundering rules and regulations, including the PATRIOT Act that was requested at least 10 Business Days prior to the Closing Date and a Beneficial Ownership Certification in relation to the Borrower.

(j) **No Material Adverse Effect.** Since December 31, 2020, no event, change or circumstance shall have occurred that has had, or would reasonably be expected to result in, a Material Adverse Effect.

(k) **Insurance.** The Administrative Agent shall have received a copy of, or a certificate as to coverage under, the insurance policies required by **Section 5.07**.

(l) **No Litigation.** There shall not exist any action, suit, investigation, litigation, proceeding, injunction, hearing or other legal or regulatory developments, pending or threatened in any court or before any arbitrator or Governmental Authority that individually or in the aggregate materially impairs the Transactions, the financing thereof or any of the other transactions contemplated by the Loan Documents.

(m) **Governmental Authorizations and Consents.** Each Loan Party shall have obtained all Governmental Authorizations and all consents of other Persons, in each case that are necessary in connection with the financing contemplated by the Loan Documents, and each of the foregoing shall be in full force and effect and in form and substance reasonably satisfactory to the Administrative Agent.

(n) **Borrowing Base Certificate.** The Primary Guarantor shall have delivered a Borrowing Base Certificate dated as of the Closing Date.

Each Lender, by delivering its signature page to this Agreement and funding a Loan on the Closing Date, shall be deemed to have consented to, approved or accepted or to be satisfied with, each Loan Document and each other document required thereunder to be consented to, approved by or acceptable or satisfactory to a Lender, unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

**Section 4.02 Conditions to Each Credit Extension.** The obligation of each Lender to make any Credit Extension requested to be made by it hereunder on any date is subject to the satisfaction or waiver of the following conditions precedent:

(a) **Representations and Warranties.** Each of the representations and warranties made by any Loan Party in or pursuant to the Loan Documents shall be true and correct in all material respects on and as of the date of such Credit Extension with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date); *provided* that any representation and warranty that is qualified by “materiality”, “Material Adverse Effect” or similar language shall be true and correct (after giving effect to any qualification therein) in all respects.

(b) **No Default.** No Default or Event of Default shall exist or would result from such Credit Extension or from the application of the proceeds thereof.

(c) **Borrowing Notice.** The Administrative Agent shall have received a fully executed Borrowing Notice in accordance with **Section 2.02(a)** or **Section 2.05(b)**, as applicable.

(d) **Revolving Commitments.** After making the Credit Extensions requested on such date, (x) the Total Revolving Outstanding Amount shall not exceed the Revolving Commitments then in effect and (y) the Total Outstanding Amount shall not exceed the Borrowing Base.

Each delivery of a Borrowing Notice or notice requesting the issuance, amendment, extension and the acceptance by the Borrower of the proceeds of such Credit Extension shall constitute a representation and warranty by the Primary Guarantor that on the date of such Credit Extension (both immediately before and after giving effect to such Credit Extension and the application of the proceeds thereof) the conditions contained in this **Section 4.02** have been satisfied. The Primary Guarantor shall provide such information as the Administrative Agent may reasonably request to confirm that the conditions in this **Section 4.02** have been satisfied.

**ARTICLE V.**  
**AFFIRMATIVE COVENANTS**

Each of Ultimate Parent, the Primary Guarantor and the Borrower hereby jointly and severally agrees that, until Payment in Full, each of Ultimate Parent, the Primary Guarantor and the Borrower shall, and shall (except in the case of the covenants set forth in **Section 5.01**, **Section 5.02** and **Section 5.03**) cause each of the Loan Parties to:

**Section 5.01 Financial Statements.** Deliver to the Administrative Agent:

(a) within 90 days after the end of each fiscal year of Ultimate Parent (commencing with the fiscal year ended December 31, 2021),

(i) a copy of the consolidated balance sheet of Ultimate Parent and its Subsidiaries as at the end of such fiscal year and the related consolidated statements of income or operations, changes in stockholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, prepared in accordance with GAAP, audited and accompanied by a report and opinion of Marcum LLP or any other independent certified public accounting firm of nationally recognized standing reasonably acceptable to the Administrative Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit (excluding any "emphasis of matter" paragraph or any explanatory statement), other than any such qualification or exception resulting from or relating to (x) an actual or anticipated breach of a financial covenant contained in **Section 6.13** or (y) an upcoming maturity date of the Indebtedness hereunder;

(ii) within (x) in the case of the balance sheet, 90 and (y) otherwise, 120 days after the end of each fiscal year of Primary Guarantor (commencing with the fiscal year ended December 31, 2021), a copy of the unaudited consolidated balance sheet of Primary Guarantor and its Subsidiaries as at the end of such fiscal year and the related consolidated statements of income or operations, changes in stockholders' equity and cash flows for such fiscal year, certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations, and cash flows of Primary Guarantor and its Subsidiaries in accordance with GAAP (subject only to normal year-end audit adjustments and the absence of footnotes);

(b) (i) within 45 days after the end of each of the first three fiscal quarters of each fiscal year of Ultimate Parent (commencing with the fiscal quarter ended June 30, 2021), a copy of the consolidated balance sheet of Ultimate Parent and its Subsidiaries as at the end of such fiscal quarter and the related consolidated statements of income or operations, changes in stockholders' equity and cash flows for such fiscal quarter and the portion of the fiscal year through the end of such fiscal quarter, setting forth in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations, stockholders' equity and cash flows of Ultimate Parent and its Subsidiaries in accordance with GAAP (subject only to normal year-end audit adjustments and the absence of footnotes); and

(ii) within (x) in the case of the balance sheet, 45 and (y) otherwise, 60 days after the end of each fiscal quarter of each fiscal year of the Primary Guarantor (commencing with the fiscal quarter ended September 30, 2021), a copy of the consolidated balance sheet of Primary Guarantor and its Subsidiaries as at the end of such fiscal quarter and the related consolidated statements of income or operations, and cash flows for such fiscal quarter and the portion of the fiscal year through the end of such fiscal quarter, certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations, and cash flows of Primary Guarantor and its Subsidiaries in accordance with GAAP (subject only to normal year-end audit adjustments and the absence of footnotes);

(c) solely to the extent prepared in the ordinary course of business, if so available within 60 days after the commencement of each fiscal year of Ultimate Parent, budgeted statements of income for each of Ultimate Parent', the Borrower's and the Primary Guarantor's and its Subsidiaries' business units;

(d) with respect to any Underlying Obligor for which the aggregate Asset Values of the related Credit Assets and Private Assets exceed \$30,000,000, as soon as available, but in any event within 10 Business Days of receipt thereof, any financial statements, compliance certificates, budgets or similar materials delivered to any Loan Party pursuant to the provisions of the relevant Credit Asset Loan Documents or as owner of the relevant Private Assets (other than an Material Nonpublic Information).

Any documents required to be delivered pursuant to this **Section 5.01** may be delivered by posting such documents electronically with notice of such posting to the Administrative Agent and if so posted, shall be deemed to have been delivered on the date on which such documents are posted on the Borrower's behalf on IntraLinks/IntraAgency or another relevant website sponsored by the Administrative Agent to which each Lender has access.

**Section 5.02 Certificates; Other Information.** Deliver to the Administrative Agent:

(a) concurrently with the delivery of the financial statements pursuant to **Section 5.01(a)** and **Section 5.01(b)**, a duly completed Compliance Certificate;

(b) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of Ultimate Parent, and copies of all annual, regular, periodic and special reports and registration statements which Ultimate Parent may file or be required to file with the SEC under Section 13 or 15(d) of the Exchange Act, or with any national securities exchange, and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto; *provided* that notwithstanding the foregoing, the obligations in **Section 5.01** and this **Section 5.02(b)** may be satisfied if such information is publicly available on the SEC's EDGAR website;

(c) concurrently with the pledge of any Public Equities pledged as Collateral, a certificate duly executed by a Responsible Officer of the Borrower, which shall specify whether such Public Equities being pledged constitute "restricted securities" within the meaning of Rule 144, and if so, shall specify (i) whether or not the holding period for purposes of Rule 144(d) of such Public Equities exceeds one year as of the date of such pledge and (ii) whether or not the Issuer of such Public Equities is an "issuer" described in Rule 144(i)(1);

(d) promptly, and in any event within 10 Business Days of the end of each fiscal quarter of Ultimate Parent, the Valuation Report for the third fiscal month of such fiscal quarter;

(e) [reserved];

(f) promptly, and in any event within five Business Days after receipt thereof by Ultimate Parent or any of its Subsidiaries, copies of all notices of default or event of default and amendments, waivers and other modifications received under or pursuant to any material instrument, indenture, loan or credit or similar agreement governing Indebtedness in an aggregate principal amount in excess of Threshold Amendment;

(g) as soon as available, but in any event within 90 days after the end of each fiscal year of Ultimate Parent,

(i) a report supplementing **Schedule II.B** of the Perfection Certificate, setting forth

(A) a list of registration numbers for all patents, trademarks, service marks, trade names and copyrights awarded to any BR Advisory Loan Party, the Primary Guarantor or any Subsidiary thereof during such fiscal year and

(B) a list of all patent applications, trademark applications, service mark applications, trade name applications and copyright applications submitted by any BR Advisory Loan Party during such fiscal year and the status of each such application, each such report to be signed by a Responsible Officer of the Borrower and to be in a form reasonably satisfactory to the Administrative Agent;

(ii) a report supplementing **Schedule I** of the Perfection Certificate and a certificate of a Responsible Officer of the Borrower certifying that all UCC financing statements (including fixture filings, as applicable) and other appropriate filings, recordings or registrations, including all re-filings, re-recordings and re-registrations, have been filed of record in each governmental, municipal or other appropriate office in each jurisdiction necessary to protect and perfect the Liens under the Security Documents for a period of not less than 12 months after the date of such certificate (except as noted therein with respect to any continuation statements to be filed within such period); and

(iii) a report supplementing **Schedules II.A.2** and **3** of the Perfection Certificate, setting forth each Deposit Account and Securities Account established by any Borrowing Base Loan Party and each BR Advisory OpCo during such fiscal year; and

(h) promptly, such additional information regarding the business operation, financial, legal or corporate affairs of Ultimate Parent or any of its Subsidiaries, or compliance with the terms of the Loan Documents, as the Administrative Agent or the Required Lenders may from time to time reasonably request.

**Section 5.03 Notices.** Promptly after a Responsible Officer of the Borrower or any Guarantor has obtained knowledge thereof give written notice to the Administrative Agent of:

(a) the occurrence of any Default or Event of Default;

(b) any development or event that has had, or would reasonably be expected to have, a Material Adverse Effect;

(c) the occurrence of any of the following events, as soon as possible and in any event within ten (10) days after any Group Member knows or has reason to know thereof:

(i) any ERISA Event,

(ii) the adoption of any new Single Employer Plan by any Group Member or any of their respective ERISA Affiliates,

(iii) the adoption of an amendment to a Single Employer Plan if such amendment results in a material increase in benefits or unfunded liabilities or

(iv) the commencement of contributions by any Group Member or any of their respective ERISA Affiliates to a Multiemployer Plan or Single Employer Plan, which, in the case of each of the foregoing **clauses (i)** through **(iv)**, shall specify the nature thereof, what action such Group Member or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known (and if applicable), any action taken or threatened by the IRS, the Department of Labor or the PBGC with respect thereto; and

(d) any material change in accounting policies or financial reporting practices by Ultimate Parent or any of its Subsidiaries;

Each notice pursuant to this **Section 5.03** shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken or proposes to take with respect thereto. Each notice pursuant to **Section 5.03(a)** shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

**Section 5.04 Payment of Taxes.** Pay, discharge or otherwise satisfy as the same shall become due and payable all its obligations and liabilities in respect of Taxes imposed upon it or upon its income or profits or in respect of its property, except, in each case, (i) to the extent any such Tax is being contested in good faith and by appropriate proceedings for which appropriate reserves have been established in accordance with GAAP, or (ii) if such failure to pay or discharge such obligations and liabilities would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, in either case, so long as such item would not reasonably be expected to subject the Collateral to forfeiture or loss, and timely and accurately file all federal, state and other material Tax returns required to be filed.

**Section 5.05 Preservation of Existence, Etc.**

(a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the laws of the jurisdiction of its organization, except in a transaction permitted by **Section 6.03** and **Section 6.04** or, solely with respect to Loan Parties other than Ultimate Parent, Primary Guarantor, Borrower and Borrowing Base Loan Parties, where the failure to do so would not reasonably be expected to have a Material Adverse Effect;

(b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect; and

(c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which would reasonably be expected to have a Material Adverse Effect.

**Section 5.06 Maintenance of Property.** Maintain and preserve all of its material properties and equipment necessary in the normal operation of its business in good working order and condition, ordinary wear and tear and any casualty or condemnation excepted, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

**Section 5.07 Maintenance of Insurance.** Except where the failure to do so would not reasonably be expected to have a Material Adverse Effect, maintain with financially sound and reputable insurance companies insurance with respect to its properties and business in such amounts and against such risks as are customarily maintained by similarly situated companies engaged in the same or similar businesses operating in the same or similar locations (after giving effect to any self-insurance). The Borrower shall cause that each such policy of insurance shall, subject to **Section 5.16**, (i) name the Collateral Agent on behalf of the Secured Parties as a loss payee or an additional insured, as applicable, thereunder as its interests may appear and (ii) to the extent available from the relevant insurance carrier, in the case of each casualty insurance policy (excluding any business interruption insurance policy), contain a loss payable clause or endorsement that names the Collateral Agent, on behalf of the Secured Parties, as the loss payee thereunder and, to the extent available from the relevant insurance carrier after submission of a request by the applicable Loan Party to obtain the same, provide for at least 30 days' prior written notice to the Administrative Agent of any modification or cancellation of such policy (or 10 days' prior written notice in the case of the failure to pay any premiums thereunder).

**Section 5.08 Books and Records; Inspection Rights.**

(a) (i) Maintain proper books of record and account, in which full, true and correct entries in all material respects in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Primary Guarantor or such Subsidiary, as the case may be (it being understood and agreed that Foreign Subsidiaries may maintain individual books and records in conformity with generally accepted accounting principles in their respective countries of organization or operations and that such maintenance shall not constitute a breach of the representations, warranties or covenants hereunder); and

(ii) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over the Primary Guarantor or such Subsidiary, as the case may be.

(b) Permit representatives and independent contractors of the Administrative Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, at such reasonable times during normal business hours at time to be mutually agreed and as often as may be reasonably desired, upon reasonable advance written notice to the Borrower; *provided, however*, that

(i) unless a Default or an Event of Default has occurred and is continuing, only one visit and inspection shall be permitted per calendar year;

(ii) when a Default or an Event of Default exists, the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time on an unlimited basis with reasonable advance written notice and during normal business hours;

(iii) no Group Member will be required to disclose or permit the inspection or discussion of, any document, information or other matter (x) that constitutes non-financial trade secrets or non-financial proprietary information, (y) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or independent contractors) is prohibited by law or any binding agreement or (z) that is subject to attorney client or similar privilege or constitutes attorney work product, in each case so long as the relevant Group Member uses commercially reasonable efforts to inform the Administrative Agent of the nature of the information withheld to the extent it may do so in compliance with Requirements of Law and without waiving any relevant privilege; and

(iv) the Administrative Agent shall give each applicable Party the opportunity to participate in any discussions with such Party's independent public accountants.

**Section 5.09 Compliance with Laws.** Comply with all Requirements of Law and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such Requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

**Section 5.10 Compliance with Environmental Laws; Preparation of Environmental Reports.**

(a) (i) Comply, and cause all lessees and other Persons operating or occupying its properties to comply, with all applicable Environmental Laws and Environmental Permits; (ii) obtain and renew all Environmental Permits necessary for its operations and properties; (iii) conduct any investigation, study, sampling and testing, and undertake any cleanup, response or other corrective action necessary to address any Releases of Materials of Environmental Concern at, on, under or emanating from any property owned, leased or operated by it in accordance with the requirements of all Environmental Laws, and (iv) make an appropriate response to any investigation, notice, demand, claim, suit or other proceeding asserting Environmental Liability against the Primary Guarantor or any of its Subsidiaries and discharge any obligations it may have to any Person thereunder, except in the case of each of **clauses (i)** through **(iv)**, where the failure to do so would not reasonably be expected to have a Material Adverse Effect; **provided** that neither the Primary Guarantor nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other responsive action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP.

(b) After the occurrence and during the continuance of an Event of Default, or based upon a reasonable belief that a material Environmental Liability may exist (described in writing to Borrower in reasonable detail), or at any other time (but not more frequently than one time per year) at the request of the Administrative Agent or the Required Lenders, provide to the Lenders within 60 days after such request, at the expense of the Borrower, an environmental assessment report for such properties owned, leased or operated by it described in such request, prepared by an environmental consulting firm acceptable to the Administrative Agent, indicating the presence or absence of Materials of Environmental Concern or noncompliance with Environmental Law and the estimated cost of any compliance, response or other corrective action to address any such Materials of Environmental Concern or noncompliance; without limiting the generality of the foregoing, if the Administrative Agent determines at any time that a material risk exists that any such report will not be provided within the time referred to above, the Administrative Agent may retain an environmental consulting firm to prepare such report at the expense of the Borrower, and the Primary Guarantor hereby grants and agrees to cause any Subsidiary that owns or leases any property described in such request to grant the Administrative Agent, the Lenders and their consultants, agents or representatives an irrevocable non-exclusive license, subject to the rights of tenants or necessary consent of landlords, to enter onto their respective properties to undertake such an assessment.

**Section 5.11 Use of Proceed.** Use the proceeds of the Loans (**other than the 2021 Incremental Term Loans**) only for general corporate purposes of Ultimate Parent and any of its Subsidiaries. The Borrower will not request any Credit Extension, and the Borrower shall not use, and shall procure that its Affiliates and its or their respective directors, officers, employees and agents shall not use, directly or indirectly, the proceeds of any Credit Extension (a) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (b) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country or (c) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

**Section 5.12 Covenant to Guarantee Obligations and Give Security.**

(a) Execute any and all further documents, financing statements, agreements and instruments, and take all further action (including filing Uniform Commercial Code and other financing statements, and deeds of trust) that are required under applicable Requirements of Law, or that the Required Lenders or the Administrative Agent may reasonably request, in order to effectuate the Transactions contemplated by the Loan Documents and in order to grant, preserve, protect and perfect the validity and priority of the security interests created or intended to be created by the Security Documents.

(b) In the event that any Person becomes a Subsidiary of the Borrower after the Closing Date (other than any Excluded Subsidiary), the Borrower shall, and shall cause each other such Person to (a) within 30 days after such event (or such longer period of time reasonably acceptable to the Administrative Agent), cause such Person referred to in **clause (x)** or **(y)**, as applicable, to become a Guarantor and a Grantor under (and as defined in) the Guarantee and Collateral Agreement by executing and delivering to the Collateral Agent a counterpart agreement or supplement to the Guarantee and Collateral Agreement in accordance with its terms and (b) take all such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, agreements, and certificates reasonably requested by Administrative Agent in order to cause the Collateral Agent, for the benefit of the Secured Parties, to have a Lien on all assets of such Person (other than Excluded Assets), which Lien shall (other than with respect to assets constituting Excluded Perfection Assets) be perfected and shall be of first priority (subject to (i) in the case of all such assets constituting Equity Interests, Permitted Equity Liens and (ii) in the case of all such other assets, Permitted Liens) and shall deliver or cause to be delivered to the Administrative Agent and the Collateral Agent, items as are similar to those described in **Section 4.01(b)**, **Section 4.01(e)**, **Section 4.01(g)**, **Section 4.01(h)** and **Section 4.01(k)** hereof, and **Section 5.10** of the Guarantee and Collateral Agreement. With respect to each such Subsidiary of the Borrower that is not an Excluded Subsidiary, the Borrower shall, within 30 days of such event (or such longer period of time reasonably acceptable to the Administrative Agent), send to Administrative Agent written notice setting forth with respect to such Person (i) the date on which such Person became a Subsidiary of the Borrower and (ii) all of the data required to be set forth in **Schedule 3.16(a)** with respect to all Subsidiaries of the Borrower, and such written notice shall be deemed to supplement **Schedule 3.16(a)** for all purposes hereof. Notwithstanding anything to the contrary set forth herein, in no event shall this **Section 5.12(b)** require the granting of any Lien on any Excluded Assets or the perfection of any Lien on any Excluded Perfection Assets.

**Section 5.13 Further Assurances.** Promptly upon request by the Administrative Agent, or any Lender through the Administrative Agent,

(a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and

(b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to

(i) to the fullest extent permitted by applicable law, subject any Loan Party's properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Security Documents,

(ii) perfect and maintain the validity, effectiveness and priority of any of the Security Documents and any of the Liens intended to be created thereunder and

(iii) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party or any of its Subsidiaries is or is to be a party.

**Section 5.14 Borrowing Base Certificate.**

(a) The Borrower will deliver to the Administrative Agent for delivery by the Administrative Agent to each Lender, on or prior to the 10<sup>th</sup> day after the last day of each fiscal month, a Borrowing Base Certificate as of the close of business on the last day of the applicable preceding fiscal month, which shall include, among other things, monthly cash flow details for the Eligible Credit Assets (and Eligible Subordinated Credit Assets and Eligible First Lien Credit Assets), Eligible Private Assets and Eligible Public Equities; *provided* that after the occurrence and during the continuance of an Event of Default, the Borrower shall deliver a Borrowing Base Certificate (as of the close of business on the last Business Day of the immediately preceding week) on or before the close of business of the third Business Day after the end of each week.

(b) No later than the later of (i) the next scheduled date of delivery of the Borrowing Base Certificate in accordance with **Section 5.14(a)** and (ii) ten (10) Business Days after the Borrower obtains actual knowledge of the incurrence of Indebtedness by 6 Brands or any Subsidiary of 6 Brands pursuant to **Section 6.01(p)**, the Borrower will deliver to the Administrative Agent for delivery by the Administrative Agent to each Lender a pro forma Borrowing Base Certificate showing the incurrence of such Indebtedness and any assets purchased with the proceeds thereof. Prior to delivery by the Borrower of the first Borrowing Base Certificate following delivery of financial statements pursuant to either **Section 5.01(a)(i)** or **(b)(i)** covering the fiscal quarter in which such Indebtedness was incurred, (i) the Administrative Agent shall be entitled to establish a Reserve in the amount of 110% of the principal amount of such Indebtedness (and following delivery of such Borrowing Base Certificate, no such Reserve shall be taken) and (ii) for the avoidance of doubt, any assets purchased with the proceeds of Indebtedness referenced in this **Section 5.14(b)** shall be considered in determining the Asset Value of the Equity Interests in 6 Brands.

**Section 5.15 Cash Management; Registration of Public Equities.**

(a) The Borrower shall, and shall cause each other BR Advisory Loan Party to, enter into Account Control Agreements with respect to (i) each Deposit Account and each Securities Account maintained by such BR Advisory Loan Party as of the Closing Date, on the Closing Date and (ii) each Deposit Account and each Securities Account opened by such BR Advisory Loan Party following the Closing Date, within 30 days thereof, in each case, other than Excluded Accounts. Each such Account Control Agreement shall provide for “springing control” in favor of the Collateral Agent. Each BR Advisory Loan Party shall ensure that all payments made to it are made directly to a Controlled Account and shall deposit any cash or Cash Equivalents that it otherwise has or receives from time to time into a Controlled Account.

(b) [Reserved].

(c) The Borrower shall, and shall cause each Borrowing Base Loan Party to ensure that

(i) all of such Borrowing Base Loan parties’ Deposit Accounts and Securities Accounts are established with Wells Fargo Bank, N.A. (or an Affiliate thereof),

(ii) all payments and distributions made to it (including in respect of any Credit Assets, Private Assets or Public Equities) are made directly to a Controlled Account and shall deposit any cash or Cash Equivalents and other proceeds, or distribution in respect, of any Credit Assets, Private Assets or Public Equities that it otherwise has or receives from time to time into a Controlled Account,

(iii) all Public Equities owned by it are maintained in a Securities Account that is a Controlled Account and

(iv) cause all Public Equities to be (A)(x) transferred through the facilities of DTC to the name of the securities intermediary with which the relevant Controlled Account is maintained or (y) registered in the name of the securities intermediary with which the relevant Controlled Account is maintained on the share register maintained by the transfer agent of the relevant Issuer, as applicable, and (B) credited to such Controlled Account.

(d) Concurrently with delivery of the Borrowing Base Certificate, the Borrower shall deliver a Waterfall Certificate setting forth any proposed distributions of funds from the Controlled Accounts held by the Borrowing Base Loan Parties (other than transfers of funds from a Controlled Account held by BRF Investments, LLC or BRF Finance Co, LLC to another Controlled Account held by either BRF Investments, LLC or BRF Finance Co, LLC) and the application of such funds and certifying that the distribution is permitted under this Agreement. All withdrawals from any Controlled Account of a Borrowing Base Loan Party shall be in accordance with such Waterfall Certificate during the period beginning five Business Days and ending ten Business Days following the delivery of such Waterfall Certificate; provided that transfers of funds from a Controlled Account held by BRF Investments, LLC or BRF Finance Co, LLC to another Controlled Account held by either BRF Investments, LLC or BRF Finance Co, LLC shall be permitted at any time. The Borrower shall not make or otherwise permit any withdrawals from such Deposit Accounts or Security Accounts to the contrary of this Section 5.15(d).

**Section 5.16 Post-Closing Undertakings.** Within the time periods specified on **Schedule 5.16** (or such later date to which the Administrative Agent consents), comply with the provisions set forth in **Schedule 5.16**.

## **ARTICLE VI. NEGATIVE COVENANTS**

Each of Ultimate Parent, the Primary Guarantor and the Borrower hereby jointly and severally agrees that, until Payment in Full, each of Ultimate Parent, the Primary Guarantor and the Borrower shall not, and shall not permit any Group Member to, directly or indirectly:

**Section 6.01 Limitation on Indebtedness.** Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness of any Loan Party created hereunder and under the other Loan Documents;

(b) Indebtedness outstanding on the Closing Date, which in the case of any Indebtedness for borrowed money (or guarantees thereof), which is listed on **Schedule 6.01** and Permitted Refinancing Debt in respect thereof;

(c) Indebtedness of the Primary Guarantor or any of its Subsidiaries (other than the BR Advisory Loan Parties and 6 Brands and its Subsidiaries) in an aggregate principal amount not to exceed \$~~150,000,000~~**200,000,000** outstanding at any time;

(d) unsecured Indebtedness of Ultimate Parent;

(e) Indebtedness of any Subsidiary of Primary Guarantor (other than Borrowing Base Loan Parties) other than debt for borrowed money (and guarantees thereof) incurred in the ordinary course of business and consistent with past practices;

(f) Indebtedness of (i) any BR Advisory OpCo owing to any other BR Advisory OpCo and (ii) any Non-Guarantor Subsidiary owing to any other Group Member other than Ultimate Parent;

(g) Indebtedness of Non-Guarantor Subsidiaries in respect of Swap Contracts entered into in the ordinary course of business and incurred not for speculative purposes, and Guarantees thereof by Non-Guarantor Subsidiaries;

(h) Indebtedness of BR Advisory OpCos, Non-Guarantor Subsidiaries and Ultimate Parent representing deferred compensation to employees of any Group Member incurred in the ordinary course of business;

(i) Indebtedness of BR Advisory OpCos, Non-Guarantor Subsidiaries and Ultimate Parent to current or former officers, directors, managers, consultants, and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of Ultimate Parent permitted by **Section 6.05**;

(j) Indebtedness of BR Advisory OpCos, Non-Guarantor Subsidiaries and Ultimate Parent in respect of letters of credit, bank guarantees, bankers' acceptances, warehouse receipts or similar instruments issued or created in the ordinary course of business, including such Indebtedness that is consistent with past practices in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims and letters of credit that are cash collateralized;

(k) Indebtedness of BR Advisory OpCos, Non-Guarantor Subsidiaries and Ultimate Parent consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, incurred in the ordinary course of business;

(l) obligations of BR Advisory OpCos, Non-Guarantor Subsidiaries and Ultimate Parent in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by any Group Member or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case, in the ordinary course of business or consistent with past practices;

(m) Indebtedness of BR Advisory OpCos, Non-Guarantor Subsidiaries and Ultimate Parent in respect of netting services, automatic clearinghouse arrangements, overdraft protections, employee credit card programs and other cash management and similar arrangements, incurred in the ordinary course of business or consistent with past practices and any Guarantees thereof;

(n) Guarantees by (i) Non-Guarantor Subsidiaries in respect of Indebtedness of any Group Member (other than Ultimate Parent) and (ii) BR Advisory OpCos in respect of Indebtedness of any BR Advisory OpCo, in each case, otherwise permitted hereunder and which would have been permitted to be incurred directly by such guarantor;

(o) in the case of any Non-Guarantor Subsidiary that is a registered broker and/or dealer under the Securities Exchange Act, liabilities payable to brokers, dealers, clearing organizations, clients and correspondents, and liabilities in respect of securities sold but not yet purchased, in each case incurred in the ordinary course of the "broker-dealer" business of such Non-Guarantor Subsidiary, including the provision of margin for forward, future, option, swap, repurchase or similar transactions, the making of advances to customers and the establishment of performance or surety bonds or guarantees;

(p) Indebtedness of 6 Brands or any of its Subsidiaries; and

(q) all premium (if any), interest (including post-petition interest), fees, expenses, charges, amortization of original issue discount, interest paid in kind and additional or contingent interest on obligations described in **Section 6.01(b)** through **(p)** above.

Notwithstanding the foregoing, the Primary Guarantor and its Subsidiaries shall not guarantee Intendedness of or otherwise provide direct credit support to Ultimate Parent.

Notwithstanding the foregoing, the aggregate amount of Indebtedness permitted to be at any time outstanding pursuant to **Sections 6.01(h), (i), (j), (k), (l)** and **(m)** shall not exceed \$10,000,000.

**Section 6.02 Limitation on Liens.** Create, incur, assume or suffer to exist any Lien upon any of its Property, whether now owned or hereafter acquired, except for:

(a) Liens pursuant to any Loan Document;

(b) Liens on property of any Non-Guarantor Subsidiary;

(c) non-consensual Liens arising by operation of law;

(d) Liens routinely imposed on all securities by the facilities of DTC or the relevant Exchange;

(e) Liens existing on the Closing Date and listed on **Schedule 6.02**;

(f) [reserved];

(g) Liens in favor of any BR Advisory Loan Party (other than on the assets of any Borrowing Base Loan Party);

(h) [reserved];

(i) Liens on property owned by any Excluded Subsidiary;

(j) customary restrictions on transfers of assets contained in agreements related to the sale by any BR Advisory Loan Party (other than a Borrowing Base Loan Party) of such assets pending their sale, **provided** that such restrictions apply only to the assets to be sold and such sale is permitted hereunder;

(k) Liens on cash advances by Ultimate Parent in favor of the seller of any property to be acquired in an Investment permitted hereunder to be applied against the purchase price for such Investment;

(l) customary Liens on Equity Interests of any joint venture (i) securing obligations of such joint venture or (ii) pursuant to the relevant joint venture agreement or arrangement;

(m) pledges and deposits by BR Advisory OpCos to secure the performance of bids, trade contracts and leases (other than debt for borrowed money), statutory or regulatory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(n) Liens securing judgments for the payment of money not constituting an Event of Default under **Section 7.01(i)** or securing appeal or other surety bonds related to such judgments;

(o) easements, rights of way, covenants, zoning, use restrictions and other encumbrances on title to real property of any BR Advisory OpCo and title defects or irregularities that do not in, the aggregate, interfere in any material respect with the ordinary conduct of the business of any BR Advisory OpCo;

(p) any interest or title of a lessor, sublessor, licensee or licensor under any operating lease or license agreement of any BR Advisory OpCo entered into in the ordinary course of business and not interfering in any material respect with the business of any BR Advisory OpCo;

(q) banker's liens, rights of set off or similar rights and remedies as to deposit accounts or other funds maintained with depository institutions and securities accounts and other financial assets maintained with a securities intermediary, in each case granted in the ordinary course of business;

(r) [reserved];

(s) Liens encumbering reasonable and customary initial deposits and margin deposits and similar Liens attaching to brokerage accounts of Ultimate Parent incurred in the ordinary course of business and not for speculative purposes;

(t) Liens on premium refunds granted in favor of insurance companies (or their financing affiliates) in the ordinary course of business in connection with the financing of insurance premiums;

(u) [reserved];

(v) non-exclusive licenses of Intellectual Property entered in the ordinary course of business; and

(w) the replacement, extension or renewal of any Lien permitted by **clauses (e), (h) and (i)** above upon or on the same property subject thereto arising out of the replacement, extension or renewal of the Indebtedness secured thereby (to the extent such replacement, extension or renewal of such Debt is not prohibited under **Section 6.01**).

**Section 6.03 Limitation on Fundamental Changes.** Merge, acquire, consolidate or amalgamate, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its Property or business (whether now owned or hereafter acquired), except that:

(a) (i) any Non-Guarantor Subsidiary may be merged, amalgamated or consolidated with or into (x) any other Subsidiary of Primary Guarantor (so long as, in the case of a merger, amalgamation or consolidation with a Loan Party, such Loan Party is the surviving entity) or (y) any other Person in a transaction that is permitted under **Section 6.04(m)**;

(ii) any Borrowing Base Loan Party may be merged, amalgamated or consolidated with or into any other Person, so long as a Borrowing Base Loan Party is the surviving entity; and

(iii) any BR Advisory OpCo may be merged, amalgamated or consolidated with or into any other Person (other than a Borrowing Base Loan Party), so long as a BR Advisory OpCo is the surviving entity;

(b) (i) any Non-Guarantor Subsidiary may Dispose of all or substantially all of its assets or business (upon voluntary liquidation or otherwise) to (x) the Primary Guarantor or any Subsidiary thereof or (y) any other Person in a transaction that is permitted under **Section 6.04(m)**;

(ii) any Borrowing Base Loan Party may Dispose of all or substantially all of its assets or business (upon voluntary liquidation or otherwise) to any other Borrowing Base Loan party; and

(iii) any BR Advisory OpCo may Dispose of all or substantially all of its assets or business (upon voluntary liquidation or otherwise) to any other BR Advisory OpCo;

(c) any merger the purpose of which is to reincorporate or reorganize a Group Member in another jurisdiction shall be permitted; *provided* that, in the case of any Loan Party, such reincorporation or reorganization shall be subject to the prior written consent of the Administrative Agent not to be unreasonably withheld;

(d) any Subsidiary of the Primary Guarantor (other than the BR Advisory Loan Parties) may liquidate or dissolve or change its legal form if the Primary Guarantor determines in good faith that such action is not materially adverse to the interests of the Lenders, *provided*

(i) no Event of Default shall result therefrom, and

(ii) the surviving Person (or the Person who receives the assets of such dissolving or liquidated Subsidiary) shall be a Subsidiary of the Primary Guarantor;

(e) [reserved];

(f) any Subsidiary (other than a Loan Party) may merge or consolidate with any other Person in order to effect an Investment permitted by the Loan Documents; and

(g) any Subsidiary (other than a Loan Party) may conduct a division that produces two or more surviving or resulting Persons.

**Section 6.04 Limitations on Dispositions.** Dispose of any of its Property (including, without limitation, receivables and leasehold interests), whether now owned or hereafter acquired, or, in the case of any Subsidiary, issue or sell any Equity Interests of such Subsidiary to any Person, except:

(a) Dispositions in the ordinary course of business;

(b) with respect to a Non-Guarantor Subsidiary or a BR Advisory OpCo, Dispositions of obsolete, damaged, worn out, used or surplus property (including for purposes of recycling), whether now owned or hereafter acquired and Dispositions of property that is no longer used or useful in the conduct of the business of the Group Members or economically practicable or commercially desirable to maintain;

(c) with respect to a Non-Guarantor Subsidiary or a BR Advisory OpCo, Dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are promptly applied to the purchase price of such replacement property; *provided* that to the extent the property being transferred constitutes Collateral such replacement property shall constitute Collateral;

(d) Dispositions of Cash Equivalents; *provided*, that such Disposition shall be for no less than the fair market value of such property at the time of such Disposition;

(e) [reserved];

(f) with respect to a Non-Guarantor Subsidiary or a BR Advisory OpCo, subleases, licenses or sublicenses (including the provision of software under an open source license), which do not materially interfere with the business of the Group Members, taken as a whole; *provided*, that such Disposition shall be for no less than the fair market value of such property at the time of such Disposition;

(g) with respect to a Non-Guarantor Subsidiary or a BR Advisory OpCo, Dispositions of property subject to casualty events;

(h) with respect to a Non-Guarantor Subsidiary or Excluded Subsidiary, Dispositions of Investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(i) with respect to a Non-Guarantor Subsidiary or a BR Advisory OpCo, Dispositions or discounts of accounts receivable and related assets in connection with the collection, compromise or factoring thereof;

(j) with respect to a Non-Guarantor Subsidiary, Dispositions in connection with the unwinding of any Swap Contract;

(k) with respect to a Non-Guarantor Subsidiary, the abandonment or discontinuance of the maintenance of any Intellectual Property that is no longer material to the conduct of the Borrower or any other Group Member, or otherwise of material value;

(l) Dispositions by a Non-Guarantor Subsidiary to any Subsidiary of the Primary Guarantor;

(m) Dispositions by the Primary Guarantor or any Subsidiary of the Primary Guarantor (other than Borrowing Base Loan Parties) of assets for fair market value; *provided* that with respect to any such Disposition (or series of related Dispositions) with a fair market value of \$25,000,000 or more, at least 80% of the consideration shall consist of Cash or Cash Equivalents; *provided further* that the Primary Guarantor and any Non-Guarantor Subsidiary may make such Dispositions (or series of related Dispositions) with a fair market value of \$25,000,000 or more under this **clause (m)** where less than 80% of the consideration consists of Cash or Cash Equivalents so long as (i) the Primary Guarantor or such Non-Guarantor Subsidiary shall have delivered a prior written request to the Administrative Agent for a waiver of such requirement at least ten (10) Business Days prior to such Disposition and (ii) if such request is denied, the Term Loans shall have been prepaid in an amount equal to the fair market value of such non-Cash consideration (as determined by the Primary Guarantor in good faith), together with any prepayment premium due under **Section 2.09(c)(iii)**, within 60 days of consummation of such Disposition;

(n) Any sale or issuance of:

(i) Equity Interests of any Subsidiary of the Primary Guarantor (other than BR Advisory Loan Parties);

(ii) Equity Interests of any BR Advisory Loan Party to another BR Advisory Loan Party; and

(iii) Equity Interests of the Borrower to the Primary Guarantor; and

(o) To the extent constituting Dispositions, Liens permitted pursuant to **Section 6.02**, Restricted Payments pursuant to **Section 6.05** and Investments pursuant to **Section 6.06**.

**Section 6.05 Limitation on Restricted Payments.** Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that:

(a) Primary Guarantor may declare and make Restricted Payments in the form of Cash, in the ordinary course of business and consistent with past practice so long as before and after giving effect to such Restricted Payment, no Default or Event of Default has occurred and is continuing and Ultimate Parent is pro forma compliance with **Section 6.13**; *provided* that Restricted Payments with the direct or indirect proceeds of Dispositions by any Non-Guarantor Subsidiary or the Primary Guarantor, in each case, outside the ordinary course of business or of any business line thereof, shall not exceed \$200,000,000 in the aggregate;

(b) (i) Any BR Advisory OpCo may declare and make cash Restricted Payments of Excess Operating Cash, so long as before and after giving effect to such Restricted Payment,

(A) no Default or Event of Default has occurred and is continuing;

(B) the aggregate principal amount of the Loans does not exceed the Borrowing Base in effect at such time; and

(C) the Borrower is in pro forma compliance with **Section 6.09**;

(ii) Any Borrowing Base Loan Party may declare and make cash Restricted Payments of Non-Ordinary Course Proceeds as set forth in a Waterfall Certificate so long as before and after giving effect to such Restricted Payment,

(A) no Default or Event of Default has occurred and is continuing and

(B) the Borrower has delivered a pro forma Borrowing Base Certificate pursuant to **Section 5.14** calculating the Borrowing Base as of the date of such Restricted Payment demonstrating that the Borrowing Base is not less than ~~\$400,000,000~~**\$25,000,000**;

(iii) Any Borrowing Base Loan Party may declare and make cash Restricted Payments of amounts received in respect of Credit Assets, Public Equities or Private Assets (excluding Non-Ordinary Course Proceeds) as set forth in a Waterfall Certificate, so long as before and after giving effect to such Restricted Payment

(A) no Default or Event of Default has occurred and is continuing;

(B) the aggregate principal amount of the Loans does not exceed the Borrowing Base in effect at such time; and

(C) the Borrower is in pro forma compliance with **Section 6.09**;

(iv) the Borrower may declare and make Restricted Payments of the proceeds of any Restricted Payment made pursuant to **Sections 6.05(b)(i) through (iii)**, so long as before and after giving effect to such Restricted Payment,

(A) no Default or Event of Default has occurred and is continuing;

(B) the aggregate principal amount of the Loans does not exceed the Borrowing Base in effect at such time; and

(C) the Borrower is in pro forma compliance with **Section 6.09**;

(c) Any Non-Guarantor Subsidiary and any Subsidiary of a Non-Guarantor Subsidiary may declare and make Restricted Payments to Primary Guarantor or any Subsidiary thereof;

(d) Ultimate Parent may declare and make Restricted Payments; and

(e) Each of Great American Group Advisory and Valuation Services, LLC and 6 Brands and its Subsidiaries may, in each case, declare and make Restricted Payments to all holders of its Equity Interests ratably based on their relative ownership interests according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made, or otherwise as provided pursuant to such entity's Organizational Documents, so long as no Event of Default has occurred and is continuing.

**Section 6.06 Limitation on Investments.** Make or hold, directly or indirectly, any Investments, except:

(a) (i) Investments in any Borrowing Base Loan Party;

(ii) Investments by Primary Guarantor or any Subsidiary thereof (other than a Borrowing Base Loan Party) in any BR Advisory Loan Party; and

(iii) Investments by Primary Guarantor or any Non-Guarantor Subsidiary in the Primary Guarantor or any Subsidiary thereof (other than an Excluded Subsidiary);

(b) (i) Investments by any Subsidiary of the Primary Guarantor, (ii) Investments by Ultimate Parent (x) in the Primary Guarantor, (y) in any Person to the extent such Investment is a guarantee of Indebtedness or other liabilities or commitments of such Person, and (z) in any Person to the extent such Investment is contributed by Ultimate Parent to any Group Member substantially concurrently with the making of such Investment (*provided* that (A) such contribution by Ultimate Parent and (B) such Investment, following its contribution to such Group Member, are, in each case, permitted under **Section 6.06** without reference to this **clause (b)(ii)(z)**), and (iii) Investments by the Primary Guarantor in Subsidiaries of the Primary Guarantor, in each case, in the ordinary course of business and consistent with past practice (which shall in no event include (A) Investments in Ultimate Parent or (B) investments by any Borrowing Base Loan Party in any other Subsidiary of the Ultimate Parent); and

(c) Investments existing on the Closing Date and set forth on **Schedule 6.06** and any modification, replacement, renewal or extension thereof (but without increasing the size of such Investment).

**Section 6.07 Modifications of Organizational Documents.** Amend, restate, supplement or otherwise modify any of its Organizational Documents or any agreement to which it is a party with respect to its Equity Interests (including any stockholders' agreement), or enter into any new agreement with respect to its Equity Interests, other than any such amendments, modifications or changes or such new agreements which are not, and would not reasonably be expected to be, materially adverse to the rights of the Lenders.

**Section 6.08 Limitation on Transactions with Affiliates.** Enter into, directly or indirectly, any transaction or series of related transactions involving aggregate consideration in excess of \$5,000,000, whether or not in the ordinary course of business, with any Affiliate of the Primary Guarantor, the Borrower or any Subsidiary (other than between or among BR Advisory Loan Parties or between or among any Group Members (other than the BR Advisory Loan Parties)), unless such transaction is (i) otherwise not prohibited under this Agreement and (ii) upon fair and reasonable terms no less favorable to the Loan Parties than they would obtain in a comparable arm's length transaction with a Person that is not an Affiliate, except that the following shall be permitted:

(a) Restricted Payments permitted under **Section 6.05**;

(b) employment and severance arrangements between the Primary Guarantor and its Subsidiaries and their respective officers and employees in the ordinary course of business and transactions pursuant to stock option plans, stock incentive plans and employee benefit plans and arrangements in the ordinary course of business;

(c) payments to or from, and transactions with, Subsidiaries to the extent otherwise permitted under **Section 6.06**;

(d) transactions pursuant to agreements, instruments or arrangements in existence on the Closing Date and set forth in **Schedule 6.08** or any amendment thereto to the extent such an amendment is not adverse to the Lenders in any material respect.

**Section 6.09 Limitations in Respect of Margin Stock.** So long as Margin Stock secures, directly or indirectly, the Obligations, permit the aggregate principal amount of the Loans to exceed the Maximum Loan Value of the Collateral, subject to the ability to cure such deficiency within the time frame provided in **Section 2.10(f)**.

**Section 6.10 Limitation on Changes in Fiscal Periods.** Permit the fiscal year of Ultimate Parent to end on a day other than December 31 or change Ultimate Parent's method of determining fiscal quarters.

**Section 6.11 Limitation on Burdensome Agreements.** Enter into or suffer to exist or become effective any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of any Loan Party to create, incur, assume or suffer to exist any Lien upon any of its properties or revenues, whether now owned or hereafter acquired, to secure the Obligations or (b) the ability of any Subsidiary to (i) make Restricted Payments in respect of any Equity Interests of such Subsidiary held by, or pay any Indebtedness owed to, the Primary Guarantor or any Subsidiary thereof, (ii) make loans or advances to, or other Investments in, the Borrower or any Subsidiary thereof or (iii) transfer any of its properties to the Borrower or any Subsidiary thereof or the Primary Guarantor, except for any such restrictions that:

(a) exist under this Agreement and the other Loan Documents;

(b) exist on the date hereof and (to the extent not otherwise permitted by this **Section 6.11**) are listed on **Schedule 6.11** hereto;

- (c) are binding on a Subsidiary at the time such Subsidiary first becomes a Subsidiary, so long as such restrictions were not entered into solely in contemplation of such Person becoming a Subsidiary;
- (d) are restrictions that are binding on a Subsidiary that is not a Loan Party (provided that such restrictions are not prohibited by this Agreement);
- (e) are customary restrictions and conditions that arise in connection with any Permitted Lien or that are contained in any agreement relating to any Disposition permitted by **Section 6.04** pending the consummation of such Disposition; *provided* that such restrictions and conditions apply only to the property that is the subject of such Disposition and not to the proceeds to be received by the Group Members in connection with such Disposition;
- (f) with respect to any Non-Guarantor Subsidiary or Excluded Subsidiary, are customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted under **Section 6.06**;
- (g) are negative pledges and restrictions on Liens in favor of any holder of Indebtedness permitted under **Section 6.01** but solely to the extent any negative pledge relates to the property financed by or the subject of or that secures such Indebtedness and the proceeds and products thereof;
- (h) are customary restrictions in leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate solely to the assets subject thereto;
- (i) are restrictions on cash or other deposits imposed by customers or trade counterparties under contracts entered into in the ordinary course of business;
- (j) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest;
- (k) arise in connection with cash or other deposits permitted under **Section 6.02**;
- (l) are customary provisions restricting assignment or transfer of any agreement entered into in the ordinary course of business;
- (m) comprise restrictions that are, taken as a whole, in the good faith judgment of the Borrower (i) no more restrictive than the restrictions contained in this Agreement, and not reasonably anticipated to materially and adversely affect the Loan Parties' ability to make any payments required hereunder;
- (n) apply by reason of any applicable law, rule, regulation or order or are required by any Governmental Authority having jurisdiction over the Borrower or any Group Member;
- (o) are subject to the applicable override of provisions of the UCC;
- (p) are customary provisions (including provisions limiting the Disposition, distribution or encumbrance of assets or property) included in Sale and Leaseback agreements or other similar agreements;
- (q) are net worth provisions contained in agreements entered into by the Borrower or any Group Member, so long as the Borrower has determined in good faith that such net worth provisions would not reasonably be expected to impair the ability of the Borrower or any Group Member to meet its ongoing obligations;

(r) are restrictions arising in any agreement relating to any cash management obligation to the extent such restrictions relate solely to the cash, bank accounts or other assets or activities subject to the applicable cash management services;

(s) are customary restrictions and conditions contained in any (x) software license or (y) agreement relating to the sale of any property permitted under **Section 6.04** pending the consummation of such sale; and

(t) are amendments, modifications, restatements, refinancings or renewals of the agreements, contracts or instruments referred to in **Section 6.11(a)** through **Section 6.11(s)** above; *provided* that such amendments, modifications, restatements, refinancings or renewals, taken as a whole, are not materially more restrictive with respect to such encumbrances and restrictions than those contained in such predecessor agreements, contracts or instruments.

**Section 6.12 Limitation on Lines of Business.** With respect to any BR Advisory Loan Party, enter into any material line of business, except for those lines of business in which the BR Advisory Loan Parties are engaged on the Closing Date or that are reasonably related thereto or are reasonable extensions thereof.

#### **Section 6.13 Financial Covenants.**

(a) **Minimum Operating EBITDA.** Permit Operating EBITDA for the Ultimate Parent and its Subsidiaries, as of the last day of any Test Period, to be less than \$~~115,000,000~~135,000,000.

(b) **Minimum Net Asset Value.** Permit the Net Asset Value for the Primary Guarantor, as of the last day of any Test Period, to be less than \$~~900,000,000~~1,100,000,000.

Compliance with this **Section 6.13** shall be tested on the date that the financial statements for the applicable Test Period have been or are required to be delivered pursuant to **Section 5.01(a)(ii)(x)** or **(b)(ii)(x)**, as applicable, and not prior to such date.

**Section 6.14 Limitation on Activities of the Primary Guarantor.** In the case of the Primary Guarantor, notwithstanding anything to the contrary in this Agreement or any other Loan Document, conduct, transact or otherwise engage in, or commit to conduct, transact or otherwise engage in, any material business or operations or own any assets other than:

(a) its ownership of the Equity Interests of its Subsidiaries and activities incidental thereto,

(b) activities incidental to the maintenance of its existence (including the ability to incur fees, costs and expenses relating to such maintenance) and compliance with applicable laws and legal, tax and accounting matters related thereto and activities relating to its employees,

(c) activities relating to the performance of obligations and payments under the Loan Documents and the documentation governing other Indebtedness to which it is a party that is permitted to be incurred under **Section 6.01**,

(d) making contributions to the capital of its Subsidiaries,

(e) the incurrence of Indebtedness permitted under **Section 6.01** and activities required thereunder,

(f) the making of Restricted Payments permitted to be made by the Primary Guarantor pursuant to **Section 6.05**,

(g) guaranteeing the obligations of the its Subsidiaries in each case solely to the extent such obligations of its Subsidiaries are not prohibited hereunder,

(h) participating in tax, accounting and other administrative matters as a member of a consolidated, combined or unitary group that includes Ultimate Parent and the Borrower,

(i) the entry into and performance of its obligations with respect to contracts and other arrangements directly related to any other activity permitted under this **Section 6.14** and providing indemnification to officers, managers, directors and employees,

(j) making Investments in assets that are Cash Equivalents,

(k) the receipt of Restricted Payments, and

(l) the consummation of the Transactions.

**Section 6.15 Limitation on Activities of Ultimate Parent**. In the case of Ultimate Parent, notwithstanding anything to the contrary in this Agreement or any other Loan Document, conduct, transact or otherwise engage in, or commit to conduct, transact or otherwise engage in, any business or operations or own any assets other than:

(a) subject to **Section 5.16**, its ownership of the Equity Interests of the Primary Guarantor and activities incidental thereto (it being understood that Ultimate Parent shall own no Equity Interests of any Person other than the Primary Guarantor),

(b) activities incidental to the maintenance of its existence and compliance with applicable laws and legal, tax and accounting matters related thereto and activities relating to its employees,

(c) the performance of obligations under the Loan Documents and the documentation governing other Indebtedness to which it is a party that is expressly permitted hereunder,

(d) the making of Restricted Payments permitted to be made by Ultimate Parent pursuant to **Section 6.05**,

(e) the receipt of Restricted Payments from the Primary Guarantor, and

(f) the incurrence of Indebtedness permitted pursuant to **Section 6.01** and the performance of its obligations thereunder.

**Section 6.16 Limitation on Activities of BR Advisory Loan Parties**. In the case of each BR Advisory Loan Party, notwithstanding anything to the contrary in this Agreement or any other Loan Document,

(a) conduct, transact or otherwise engage in, or commit to conduct, transact or otherwise engage in, any business or operations or own any assets other than

(i) (A) in the case of the Borrower, the ownership of the Equity Interests of the BR Advisory OpCos and the Borrowing Base Loan Parties and activities incidental thereto;

(B) in the case of each BR Advisory OpCo, those lines of business in which the BR Advisory OpCos are engaged on the Closing Date or that are reasonably related thereto or are reasonable extensions thereof; and

(C) in the case of each Borrowing Base Loan Party, the ownership of and investment in Credit Assets, Public Equities, Private Assets and Cash and Cash Equivalents and activities incidental thereto;

(ii) activities incidental to the maintenance of its existence and compliance with applicable laws and legal, tax and accounting matters related thereto and, in the case of BR Advisory OpCos, activities relating to its employees,

(iii) activities relating to the performance of obligations under the Loan Documents,

(iv) the making of Restricted Payments permitted to be made by the BR Advisory OpCos and the Borrowing Base Loan Parties pursuant to **Section 6.05**, and

(v) in the case of BR Holdings Advisory the receipt of Restricted Payments; or

(b) incur, create, assume or suffer to exist any commitment to provide a Credit Asset or extend credit, advances or other financial accommodation (whether in the form of a revolving facility or delayed draw term loan commitments) or otherwise results in the imposition of an obligation to fund future advances or payments other than commitments for periods not to exceed 60 days to fund term loans that would be Eligible Credit Assets following origination.

**Section 6.17 No Impairment of Public Equities; Restricted Transactions.** Without the written consent of the Administrative Agent, Borrower shall not take any action that would impair any Lender's security interest in any Public Equities that are pledged as Collateral or such Lender's ability to exercise remedies against such Public Equities (including without limitation by imposing any Transfer Restrictions (other than Approved Transfer Restrictions) on any such pledged Public Equities, or entering into any shareholders' agreement, a lock-up agreement). No Borrowing Base Loan Party shall, directly or indirectly enter into or allow to exist any Restricted Transaction without the written consent Administrative Agent other than those set forth on **Schedule 6.17**.

## **ARTICLE VII.**

### **EVENTS OF DEFAULT AND REMEDIES**

**Section 7.01 Events of Default.** Each of the following events shall constitute an Event of Default:

(a) the Borrower or any Loan Party shall fail to pay (i) any principal of any Loan when due in accordance with the terms hereof, whether at the due date thereof or at a fixed date for payment thereof or by acceleration thereof or otherwise or (ii) any interest on any Loan or any fee or other amount (other than an amount referred to in **clause (i)**) payable hereunder or under any other Loan Document within three (3) Business Days after any such interest or other amount becomes due in accordance with the terms hereof or thereof; or

(b) any representation, warranty, certification or statement of fact made or deemed made by or on behalf of Ultimate Parent, the Primary Guarantor or the Borrower herein, in any other Loan Document or in any document or certificate delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(c) (i) any of Ultimate Parent, the Primary Guarantor or the Borrower shall fail to observe or perform any covenant, condition or agreement contained in Section 5.03(a) or Section 5.05(a) (with respect to Ultimate Parent and the Loan Parties only), Section 5.01(a) or Section 5.01(b), Section 5.11, the last sentence of Section 5.15(d), Section 5.16 or Article VI or in Section 5 of the Guarantee and Collateral Agreement with respect to any material portion of the Collateral; or

(d) any of Ultimate Parent, the Primary Guarantor or the Borrower shall fail to observe or perform any other covenant, condition or agreement contained in this Agreement or any other Loan Document (other than as provided in Section 7.01(a), Section 7.01(b) or Section 7.01(c)), and such failure continues unremedied or unwaived for a period of 30 days (or in the case of Section 5.14 and Section 5.15 (other than the last sentence of Section 5.15(d)), five Business Days) after the earlier of (i) the date an officer of any of Ultimate Parent, the Primary Guarantor or the Borrower becomes aware of such default and (ii) receipt by the Borrower of notice from the Administrative Agent or any Lender of such default; or

(e) (i) any Group Member shall (A) fail to pay any principal or interest, regardless of amount, due in respect of any Material Indebtedness, when and as the same shall become due and payable beyond any applicable grace period in respect thereof; or (B) fail to observe or perform any other term, covenant, agreement or condition relating to any Material Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holders or beneficiaries of such Material Indebtedness (or a trustee or agent on behalf of such holders or beneficiaries) to cause, with or without the giving of notice, the lapse of time or both, such Material Indebtedness to become due prior to its stated maturity or become subject to a mandatory offer to purchase by the obligor, or

(ii) there occurs under any Swap Contract an Early Termination Date (as defined, or as such comparable term may be used and defined, in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which any Group Member is the "Defaulting Party" (as defined, or as such comparable term may be used and defined, in such Swap Contract) or (B) any "Termination Event" (as defined, or as such comparable term may be used and defined, in such Swap Contract) under such Swap Contract as to which any Group Member is an Affected Party (as defined, or as such comparable term may be used and defined, in such Swap Contract) and, in either event, the Swap Termination Value owed by any Group Member as a result thereof is greater than the Threshold Amount, in each case pursuant to its terms;

**provided** that clause (e)(ii) shall not apply

(1) to any secured Indebtedness that becomes due as a result of the sale, transfer or other disposition (including as a result of a casualty or condemnation event) of the property or assets securing such Indebtedness;

(2) to the conversion of, or the satisfaction of any condition to the conversion of, any Indebtedness that is convertible or exchangeable for Qualified Equity Interests; or

(3) to a customary "change of control" put right in any indenture governing any such Indebtedness in the form of notes; or

(f) (i) a court of competent jurisdiction shall enter a decree or order for relief in respect of any Group Member in an involuntary case under any Debtor Relief Law now or hereafter in effect, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against any Group Member under any Debtor Relief Laws now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over any Group Member, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of any Group Member for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of any Group Member, and any such event described in this clause (ii) shall continue for 60 days without having been dismissed, bonded or discharged; or

(g) (i) any Group Member shall have an order for relief entered with respect to it or shall commence a voluntary case under any Debtor Relief Law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or any Group Member shall make any assignment for the benefit of creditors; or (ii) any Group Member shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the board of directors (or similar governing body) of any Group Member (or any committee thereof) shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein or in **Section 7.01(f)**; or

(h) (i) there exists any fact or circumstance that reasonably would be expected to result in the imposition of a Lien or security interest on any property or any Group Member pursuant to Section 430(k) of the Code or Section 303(k) of ERISA or a violation of Section 436 of the Code; or (ii) there occurs one or more other ERISA Events which has resulted or would reasonably be expected, individually or in the aggregate, to result in liability in excess of the Threshold Amount; or

(i) one or more judgments shall be rendered against any Group Member and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to levy upon assets or properties of any Group Member to enforce any such judgment and such judgment either (i) is for the payment of money in an aggregate amount in excess of the Threshold Amount or (ii) is for injunctive relief and would reasonably be expected to result in a Material Adverse Effect; or

(j) at any time after the execution and delivery thereof, (i) the guarantee contained in Section 2 of the Guarantee and Collateral Agreement for any reason other than Payment in Full shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void or any Guarantor shall repudiate its obligations thereunder, (ii) this Agreement or any Security Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or Payment in Full) or shall be declared null and void, or the Collateral Agent shall not have or shall cease to have a valid and perfected Lien in any Collateral purported to be covered by the Security Documents with the priority required by the relevant Security Document, in each case, for any reason other than (x) as a result of the sale or other disposition of the applicable Collateral in a transaction permitted under the Loan Documents or (y) as a result of the Collateral Agent's failure to maintain possession of any stock certificates or other instruments delivered to it under the Security Documents, or (iii) any Loan Party shall contest the validity or enforceability of any Loan Document in writing or deny in writing that it has any further liability, including with respect to future advances by Lenders, under any Loan Document to which it is a party or shall contest the validity or perfection of any Lien on any Collateral (other than, solely with respect to perfection, any Excluded Perfection Assets) purported to be covered by the Security Documents; or

(k) any Change of Control shall occur.

**Section 7.02 Remedies Upon Event of Default.** If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable (including any Make Whole Premium which shall be due and payable as a result of the acceleration of such principal amounts within the time periods specified in **Section 2.09(c)**), without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower; and

(c) exercise on behalf of itself and the Lenders all rights and remedies available to it, the Lenders under the Loan Documents or at law or in equity;

*provided, however,* that upon the occurrence of any Event of Default described in **Section 7.01(f)** or **Section 7.01(g)**, the obligation of each Lender to make Loans shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid (including any Make Whole Premium which shall be due and payable as a result of the acceleration of such principal amounts within the time periods specified in **Section 2.09(c)**) shall automatically become due and payable, in each case without further act of the Administrative Agent or any Lender.

**Section 7.03 Application of Funds.** After the exercise of remedies provided for in **Section 7.02** (or after the Loans have automatically become immediately due and payable), any amounts received on account of the Obligations shall, subject to the provisions of **Section 2.22**, be applied by the Administrative Agent in the following order:

*first,* to payment of that portion of the Obligations constituting fees, indemnities, expenses, costs, losses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and Collateral Agent) payable under the Loan Documents to the Administrative Agent and the Collateral Agent in their capacities as such;

*second,* to payment of that portion of the Obligations constituting fees, indemnities and other amounts payable to the Lenders (including fees, charges and disbursements of counsel to the respective Lenders arising under the Loan Documents, ratably among them in proportion to the respective amounts described in this clause **Second** payable to them;

*third,* to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and other Obligations arising under the Loan Documents, ratably among the Lenders in proportion to the respective amounts described in this clause **Third** payable to them;

*fourth,* to payment of that portion of the Obligations constituting unpaid principal of the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause **Fourth** payable by them; and

*last,* the balance, if any, after Payment in Full, to the Borrower or as otherwise required by Law.

**ARTICLE VIII.**  
**THE AGENTS**

**Section 8.01 Appointment and Authority.** Each of the Lenders hereby irrevocably appoints Nomura Corporate Funding Americas, LLC to act on its behalf as the Administrative Agent and Wells Fargo Bank, N.A. to act on its behalf as the Collateral Agent hereunder and under the other Loan Documents to which each such Agent is a party, respectively, and authorizes the Administrative Agent and the Collateral Agent to take such actions on its behalf and to exercise such powers as are expressly delegated to the Administrative Agent and the Collateral Agent, respectively, by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this **Article VIII** (other than as expressly provided herein) are solely for the benefit of the Agents and the Lenders and neither the Borrower nor any Loan Party shall have any rights as a third-party beneficiary of any such provisions (other than as expressly provided herein). It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent or any other Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Requirements of Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

**Section 8.02 Rights as a Lender.** Any Person serving as the Administrative Agent or the Collateral Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent or the Collateral Agent, and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include any Person serving as the Administrative Agent or the Collateral Agent hereunder in its capacity as a Lender. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for, and generally engage in any kind of business with, the Primary Guarantor or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent or the Collateral Agent hereunder and without any duty to account therefor to the Lenders.

**Section 8.03 Exculpatory Provisions.**

(a) The Administrative Agent and the Collateral Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents to which such Agent is a party, as applicable, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent and the Collateral Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent or the Collateral Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); *provided* that neither the Administrative Agent nor the Collateral Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent or the Collateral Agent to liability or that is contrary to any Loan Document or applicable Requirements of Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(iii) shall not, except as expressly set forth herein and in the other Loan Documents to which such Agent is a party, as applicable, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by any Person serving as the Administrative Agent or the Collateral Agent or any of its Affiliates in any capacity.

(b) Notwithstanding any other provision of the Loan Documents, the Administrative Agent and the Collateral Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request or direction of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided herein or under the other Loan Documents) or (in the case of the Collateral Agent) with the consent or at the request or direction of the Administrative Agent, or (ii) in the absence of its own gross negligence or willful misconduct, as determined by a final and nonappealable judgment of a court of competent jurisdiction. The Administrative Agent and the Collateral Agent shall not be deemed to have knowledge of, or be required to act upon, any Default or Event of Default unless and until notice describing such Default or Event of Default is given to a responsible officer of the Administrative Agent or the Collateral Agent (in the case of the Collateral Agent, within Corporate Trust Services) in writing by the Borrower or a Lender, referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default", and the Administrative Agent and the Collateral Agent shall have no duty to take any action to determine whether any such event has occurred.

(c) The Administrative Agent and the Collateral Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the actions or omissions of any other party hereto or thereto, the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in **Article IV** or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent or the Collateral Agent, as applicable.

(d) Each Lender authorizes and directs the Administrative Agent and the Collateral Agent to enter into the Loan Documents to which each such Agent is a party, respectively, on the date hereof on behalf of and for the benefit of the Lenders.

(e) Collateral Agent Provisions.

(i) The Collateral Agent shall never be required to use, risk or advance its own funds or otherwise incur any liability, financial or otherwise, in the performance of any of its duties or the exercise of any of its rights and powers under the Loan Documents.

(ii) In no event shall the Collateral Agent be liable for any consequential, indirect, punitive or special loss or damage of any kind whatsoever (including loss of profit) relating to its performance of its duties under this Agreement or any other Loan Document irrespective of whether the Collateral Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

(iii) The Collateral Agent shall not be responsible for delays or failures to perform any act or fulfill any duty, obligation or responsibility as a result of any occurrence beyond its control. Such acts shall include, but not be limited to, any act of God, riots, wars, fires, earthquakes or other natural disasters, terrorism, provision of any present or future law or regulation or act of any governmental authority, civil unrest, labor dispute, disease, epidemic or pandemic, quarantine, national emergency, utility failure, computer hardware or software failure, malware or ransomware attack, communications system failure, unavailability of the Federal Reserve Bank wire or telex system or other applicable wire or funds transfer system, or unavailability of any securities clearing system.

(iv) Delivery of reports, documents and other information to the Collateral Agent is for informational purposes only and the Collateral Agent's receipt of the foregoing shall not constitute constructive knowledge of any event or circumstance or any information contained therein or determinable from information contained therein. Information contained in notices, reports or other documents delivered to the Collateral Agent and other publicly available information shall not constitute actual or constructive knowledge.

(v) Knowledge of or notices or other documents delivered to Wells Fargo Bank, N.A. in any capacity shall not constitute knowledge of or delivery to Wells Fargo Bank, N.A. in any other capacity under the Loan Documents or to any affiliate or other division of Wells Fargo Bank, N.A.

(vi) Notwithstanding any provision of this Agreement or the other Loan Documents to the contrary, before taking or omitting any action to be taken or omitted by the Collateral Agent under the terms of this Agreement and the other Loan Documents, the Collateral Agent may seek the written direction of the Administrative Agent (which written direction may be in the form of an email), and the Collateral Agent is entitled to rely (and is fully protected in so relying) upon such direction. The Collateral Agent is not liable with respect to any action taken or omitted to be taken by it in accordance with such direction. If the Collateral Agent requests such direction with respect to any action, the Collateral Agent is entitled to refrain from such action unless and until the Collateral Agent has received such direction, and the Collateral Agent does not incur liability to any Person by reason of so refraining. If the Collateral Agent so requests, it must first be indemnified to its reasonable satisfaction by the Lenders against any and all fees, losses, liabilities and expenses which may be incurred by the Collateral Agent by reason of taking or continuing to take, or omitting, any action directed by the Administrative Agent or any Lender. Any provision of this Agreement or the other Loan Documents authorizing the Collateral Agent to take any action does not obligate the Collateral Agent to take such action.

(vii) If at any time the Collateral Agent is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process (including, but not limited to, orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of any Collateral), the Collateral Agent is authorized to comply therewith in any manner as it or its legal counsel of its own choosing deems appropriate; and if the Collateral Agent complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, the Collateral Agent shall not be liable to any of the parties hereto or to any other Person even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.

(viii) Whether or not so expressly stated therein, in entering into, or taking (or forbearing from) any action under pursuant to, the Loan Documents, the Collateral Agent shall have all of the rights, immunities, indemnities and other protections granted to it under this Agreement (in addition to those that may be granted to it under the terms of such other agreement or agreements).

(ix) Not less than four (4) Business Days (or such shorter period as may be agreed to by the Collateral Agent) prior to any payment, distribution or transfer of funds by the Collateral Agent to any Person under the Loan Documents, the payee shall provide to the Collateral Agent such documentation and information as may be reasonably requested by the Collateral Agent (unless such Person has previously provided the documentation or information, and so long as such documentation or information remain accurate and true in all material respects). The Collateral Agent shall have no duty, obligation or liability to make any payment to any Person unless it has timely received such documentation and information with respect to such Person, which documentation and information shall be reasonably satisfactory to the Collateral Agent.

(x) The Collateral Agent shall have no responsibility for interest or income on any funds held by it under the Loan Documents and any funds so held shall be held uninvested pending distribution thereof.

(xi) Wells Fargo Bank, N.A. and its Affiliates may make loans to, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with the parent entities of the Borrower and its Affiliates as though Wells Fargo Bank, N.A. were not the Collateral Agent hereunder and without notice to or consent of the Lenders. The Lenders acknowledge that, pursuant to such activities, Wells Fargo Bank, N.A. or its Affiliates may receive information regarding the Borrower or its Affiliates (including information that may be subject to confidentiality obligations in favor of the Borrower or such Affiliate) and acknowledge that the Collateral Agent shall be under no obligation to provide such information to them.

(xii) Notwithstanding anything else to the contrary herein or in the other Loan Documents, whenever reference is made in this Agreement or any other Loan Document to any discretionary action by, consent, designation, specification, requirement or approval of, notice, request or other communication from, or other direction given or action to be undertaken or to be (or not to be) suffered or omitted by the Collateral Agent or to any election, decision, opinion, acceptance, use of judgment, expression of satisfaction or other exercise of discretion, rights or remedies to be made (or not to be made) by the Collateral Agent, it is understood that the Collateral Agent shall be acting at the direction of the Administrative Agent and shall be fully protected in acting pursuant to such directions. In all cases the Collateral Agent shall be fully justified in failing or refusing to take any such action under the Loan Documents if it shall not have received such direction, instruction, advice or concurrence. Additionally, under no circumstances shall the Collateral Agent be liable for any delay in acting, or liability caused by such delay, while it is awaiting such direction, or if necessary, a satisfactory indemnity.

(xiii) Each party agrees and acknowledges that Wells Fargo Bank, N.A. is acting in separate and distinct roles and capacities under the Loan Documents. In no event shall Wells Fargo Bank, N.A. in any role or capacity have any duty or liability for any other role or capacity.

**Section 8.04 Reliance by Agents.** The Administrative Agent and the Collateral Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent and the Collateral Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender. The Administrative Agent and the Collateral Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**Section 8.05 Delegation of Duties.** The Administrative Agent and the Collateral Agent may perform any and all of its respective duties and exercise its respective rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents (including, without limitation, Affiliates) appointed by the Administrative Agent or the Collateral Agent, as applicable. The Administrative Agent and the Collateral Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this **Article VIII** shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and the Collateral Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Credit Facilities as well as activities as Administrative Agent and the Collateral Agent. The Administrative Agent and the Collateral Agent shall not be responsible for the action or inaction or the supervision, negligence or misconduct of any sub-agents except to the extent that the Administrative Agent or the Collateral Agent, as applicable, acted with gross negligence or willful misconduct in the selection of such sub-agents as determined by a court of competent jurisdiction in a final and non-appealable judgment.

**Section 8.06 Resignation of Administrative Agent or the Collateral Agent.**

(a) The Administrative Agent or the Collateral Agent may resign as Administrative Agent or Collateral Agent upon five days' notice to the Lenders (in the case of the Administrative Agent), the Administrative Agent (in the case of the Collateral Agent) and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower (and in the case of a resignation of the Collateral Agent, the Administrative Agent), to appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent or Collateral Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (such 30<sup>th</sup> day or earlier day, as applicable, the "**Resignation Effective Date**"), then the retiring Administrative Agent or Collateral Agent may (but shall not be obligated to), on behalf of the Lenders, appoint a successor Administrative Agent or Collateral Agent; *provided* that in no event shall any such successor Administrative Agent or Collateral Agent be a Defaulting Lender or an Affiliate of the Borrower. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) With effect from the Resignation Effective Date (i) the retiring Administrative Agent or Collateral Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (ii) except for any indemnity payments owed to the retiring Administrative Agent or Collateral Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent or Collateral Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent or Collateral Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Administrative Agent or Collateral Agent (other than any rights to indemnity payments owed to the retiring Administrative Agent or Collateral Agent), and the retiring Administrative Agent or Collateral Agent shall be discharged from all of its duties and obligations hereunder and under the other Loan Documents (if not already discharged as set forth in this Section 8.06). The fees payable by the Borrower to a successor Administrative Agent or Collateral Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's or Collateral Agent's resignation hereunder and under the other Loan Documents, the provisions of this **Article VIII** and **Section 9.05** shall continue in effect for the benefit of such retiring Administrative Agent or Collateral Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent or Collateral Agent was acting as Administrative Agent or Collateral Agent, as applicable.

(c) The Collateral Agent may merge or convert into, or consolidate with, another Person and any Person into which the Collateral Agent may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Collateral Agent shall be a party, or any Person succeeding to all or substantially all of the corporate trust business of the Collateral Agent shall be the successor of the Collateral Agent under the Loan Documents without the execution or filing of any paper or any further act on the part of any of the parties hereto (except where an instrument of transfer or assignment is required by law to effect such succession), anything herein to the contrary notwithstanding.

**Section 8.07 Non-Reliance on Administrative Agent and Other Lenders.** Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent, the Collateral Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent, the Collateral Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

**Section 8.08 No Other Duties, Etc.** Anything herein to the contrary notwithstanding, none of the Agents shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, the Collateral Agent or a Lender hereunder or thereunder to the extent expressly provided in the Loan Documents.

**Section 8.09 Administrative Agent May File Proofs of Claim.** In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Agents (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Agents and their respective agents and counsel and all other amounts due the Lenders and the Agents under the Loan Documents) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders to pay to the Agents any amount due for the reasonable compensation, expenses, disbursements and advances of the Agents and their respective agents and counsel, and any other amounts due the Agents under the Loan Documents.

**Section 8.10 Collateral and Guaranty Matters.**

(a) Each of the Lenders irrevocably authorizes the Administrative Agent and the Collateral Agent to:

(i) release any Lien on any property granted to or held by the Collateral Agent under any Loan Document (x) upon Payment in Full, (y) that is sold or otherwise disposed of as part of or in connection with any sale or other Disposition permitted under the Loan Documents or (z) subject to **Section 9.01**, if approved, authorized or ratified in writing by the Required Lenders or such other number or percentage of Lenders required hereby; and

(ii) release any Guarantor from its obligations under the Guarantee and Collateral Agreement upon Payment in Full.

In connection with any release under this **Section 8.10**, to the extent that any instrument, notice, document or other writing or any other action by the Administrative Agent or Collateral Agent is necessary to effect or evidence such release, the Borrower shall deliver to the Administrative Agent and the Collateral Agent:

(i) an officer's certificate of the Borrower (A) stating that such release of the Lien or the release of the Guarantor, as applicable, complies with and is permitted by this Agreement and the other Loan Documents and (B) requesting the Collateral Agent to release the Lien on such property or release such Guarantor and to execute and deliver instruments or authorize filings in connection therewith; and

(ii) the proposed instrument or instruments releasing such Lien or releasing such Guarantor, in each case in form reasonably satisfactory to the Administrative Agent and the Collateral Agent with respect to its rights, immunities and obligations.

In connection with any release under **Section 8.10(a)(i)(x)**, at the request and sole expense of any Guarantor, the Administrative Agent shall instruct the Collateral Agent, in writing, (i) to promptly deliver to such Guarantor any Collateral held by the Collateral Agent pursuant to the Guarantee and Collateral Agreement and (ii) to promptly execute and deliver to such Guarantor such documents as such Guarantor shall reasonably request to evidence such release, in each case, as set forth in Section 9.15 of the Guarantee and Collateral Agreement.

Any such release of guarantee obligations or security interests shall be deemed subject to the provision that such guarantee obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made.

Upon request by the Administrative Agent or the Collateral Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's or the Collateral Agent's authority to release its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 8.10.

(b) The Administrative Agent and the Collateral Agent shall not be responsible for and shall not have any obligation whatsoever to assure (i) that the Collateral exists or is owned (whether in fee or by leasehold) by the Person purporting to own it, or is cared for, protected, or insured or has been encumbered, (ii) the genuineness or value of any Collateral or the validity or sufficiency of any agreement contained therein or the validity of the title of any Loan Party to the Collateral, or (iii) that the Liens granted to the Collateral Agent herein or pursuant to the Loan Documents have been properly or sufficiently or lawfully created, perfected, protected, or enforced, or are entitled to any particular priority. Notwithstanding anything contained in the Loan Documents or otherwise to the contrary, the Collateral Agent shall not have any duty to (i) file or prepare any financing or continuation statements or record any documents or instruments in any public office for purposes of creating, perfecting or maintaining any Lien or security interest created under the Loan Documents or otherwise; (ii) take any steps to preserve rights against any Person with respect to any Collateral; (iii) insure, monitor or maintain the Collateral; (iv) pay any taxes, charges, assessments or liens upon the Collateral; or (v) take any action to protect against any diminution in value of the Collateral. The actions described in items (i) through (v) shall be the sole responsibility of the Borrower.

(c) Anything contained in any of the Loan Documents to the contrary notwithstanding, the Borrower, the Administrative Agent, the Collateral Agent and each Lender hereby agree that (i) no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Guarantee and Collateral Agreement or any other Security Document, it being understood and agreed that all powers, rights and remedies under any of the Security Documents may be exercised solely by the Administrative Agent or the Collateral Agent, as applicable, for the benefit of the Secured Parties in accordance with the terms thereof and all powers, rights and remedies under the Security Documents may be exercised solely by the Collateral Agent for the benefit of the Secured Parties in accordance with the terms thereof, and (ii) in the event of a foreclosure or similar enforcement action by the Collateral Agent on any of the Collateral pursuant to a public or private sale or other Disposition (including, without limitation, pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code), the Collateral Agent (or any Lender, except with respect to a "credit bid" pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code,) may be the purchaser or licensor of any or all of such Collateral at any such sale or other Disposition and the Collateral Agent, as agent for and representative of the Secured Parties (but not any Lender or Lenders in its or their respective individual capacities) shall be entitled, upon written direction from the Administrative Agent (acting upon the written direction of the Required Lenders), for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale or Disposition, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by the Collateral Agent at such sale or other Disposition.

(d) In the event that the Collateral Agent is required to acquire title to an asset for any reason, or take any managerial action of any kind in regard thereto, in order to carry out any obligation for the benefit of another, which in the Collateral Agent's sole discretion may cause the Collateral Agent to be considered an "owner or operator" under any environmental laws or otherwise cause the Collateral Agent to incur, or be exposed to, any environmental liability or any liability under any applicable law, the Collateral Agent reserves the right, instead of taking such action, either to resign as Collateral Agent or to arrange for the transfer of the title or control of the asset to a court appointed receiver (at the expense of the Borrower). The Collateral Agent will not be liable to any Person for any environmental liability or any environmental claims or contribution actions under any Environmental Law by reason of the Collateral Agent's actions and conduct as authorized, empowered and directed hereunder or relating to any kind of discharge or release or threatened discharge or release of any hazardous materials into the environment.

(e) The Collateral Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral and any other property in its possession, under the UCC or otherwise, shall be to deal with it in the same manner as the Collateral Agent deals with similar property for the account of other customers in similar transactions. The Collateral Agent shall be accountable only for amounts that it actually receives as a result of the exercise of its rights and powers. Except for reasonable care and preservation of the Collateral in its possession (as described above) and the accounting for moneys actually received by it hereunder, the Collateral Agent shall have no duty as to the collection or protection of the Collateral or any income thereon, nor as to the preservation of rights against prior parties, nor as to the preservation of any rights pertaining thereto. The Collateral Agent shall have no duty, liability or obligation with respect to any Credit Asset Collections, Credit Asset, Credit Asset Document Checklist, Credit Asset Documents or Credit Asset Files other than as expressly set forth in any Loan Document to which the Collateral Agent is a party.

#### **Section 8.11 Erroneous Payments.**

(a) If the Administrative Agent notifies a Lender, Secured Party or any Person who has received funds on behalf of a Lender or Secured Party (any such Lender, Secured Party or other recipient, a "**Payment Recipient**") that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding **clause (b)**) that any funds received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Secured Party or other Payment Recipient on its behalf) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "**Erroneous Payment**") and demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Administrative Agent, and such Lender or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this **clause (a)** shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding **clause (a)**, each Lender or Secured Party, or any Person who has received funds on behalf of a Lender or Secured Party hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender or Secured Party, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part) in each case:

(i) (A) in the case of immediately preceding **clauses (x)** or **(y)**, an error shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error has been made (in the case of immediately preceding **clause (z)**), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender or Secured Party shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of such error) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this **Section 8.11(b)**.

Each Lender or Secured Party hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender or Secured Party under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender or Secured Party from any source, against any amount due to the Administrative Agent from such Lender or Secured Party under immediately preceding clause (a) or under the indemnification provisions of this Agreement.

(c) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor by the Administrative Agent in accordance with immediately preceding **clause (a)**, from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an “**Erroneous Payment Return Deficiency**”), upon the Administrative Agent’s notice to such Lender at any time, (i) such Lender shall be deemed to have assigned its Loans (but not its Commitments) of the relevant Class with respect to which such Erroneous Payment was made (the “**Erroneous Payment Impacted Class**”) in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the “**Erroneous Payment Deficiency Assignment**”) at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance), and is hereby (together with the Borrower) deemed to execute and deliver an Assignment and Assumption (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an electronic platform as to which the Administrative Agent and such parties are participants) with respect to such Erroneous Payment Deficiency Assignment, and such Lender shall deliver any Notes evidencing such Loans to the Borrower or the Administrative Agent, (ii) the Administrative Agent as the assignee Lender shall be deemed to acquire the Erroneous Payment Deficiency Assignment, (iii) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender and (iv) the Administrative Agent may reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. The Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender and such Commitments shall remain available in accordance with the terms of this Agreement. In addition, each party hereto agrees that, except to the extent that the Administrative Agent has sold a Loan (or portion thereof) acquired pursuant to an Erroneous Payment Deficiency Assignment, and irrespective of whether the Administrative Agent may be equitably subrogated, the Administrative Agent shall be contractually subrogated to all the rights and interests of the applicable Lender or Secured Party under the Loan Documents with respect to each Erroneous Payment Return Deficiency (the “**Erroneous Payment Subrogation Rights**”).

(d) The parties hereto agree that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower or any other Loan Party for the purpose of making such Erroneous Payment.

(e) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including without limitation waiver of any defense based on “discharge for value” or any similar doctrine.

(f) Each party’s obligations, agreements and waivers under this **Section 8.11** shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

**Section 8.12 Certain ERISA Matters.**

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and its Affiliates and not, for the avoidance of doubt, to or for the benefit of any Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and its Affiliates and not, for the avoidance of doubt, to or for the benefit of any Borrower or any other Loan Party, that none of the Administrative Agent or any of its Affiliates is a fiduciary with respect to the assets of such Lender involved in such Lender’s entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

**ARTICLE IX.**  
**MISCELLANEOUS**

**Section 9.01 Amendments and Waivers.**

(a) None of the terms or provisions of this Agreement or any other Loan Document may be waived, supplemented or otherwise modified except in accordance with the provisions of this **Section 9.01**. The Required Lenders and each Loan Party party to the relevant Loan Document may, or (with the written consent of the Required Lenders) the Administrative Agent (or the Collateral Agent as applicable) and each Loan Party party to the relevant Loan Document may, from time to time, (x) enter into written amendments, supplements or modifications hereto and to the other Loan Documents (including amendments and restatements hereof or thereof) for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights of the Lenders or of the Loan Parties hereunder or thereunder or (y) waive, on such terms and conditions as may be specified in the instrument of waiver, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences; provided, however, that, in addition to such Required Lender consent (except as otherwise set forth below), no such waiver, amendment, supplement or modification shall:

(i) forgive the principal amount or extend the final scheduled date of maturity of any Loan, postpone, extend or delay any scheduled date of any amortization payment, or reduce or waive any amortization payment in respect of any Term Loan, postpone, extend or delay any date fixed for, or reduce or waive the stated rate of, any interest, premium, fee or other amounts (other than principal) due to the Lenders and payable hereunder or under any other Loan Document (except that, for the avoidance of doubt, any Default and any mandatory prepayment may, in each case, be postponed, extended, delayed, reduced, waived or modified solely with the consent of the Required Lenders), or increase the amount or extend the expiration date of any Commitment of any Lender, in each case without the written consent of each Lender directly and adversely affected thereby; **provided** that only the consent of the Required Lenders shall be necessary to reduce the rate of interest due in accordance with **Section 2.14(c)** or to waive any obligation of the Borrower to pay interest at such default rate;

- (ii) amend, modify or waive any provision of this Section 9.01 or reduce any percentage specified in the definition of “Required Lenders” or consent to the assignment or transfer by the Borrower of any its rights or obligations under the Loan Documents without the consent of all Lenders,
- (iii) release or subordinate all or substantially all of the Collateral or release or subordinate all or substantially all of the Guarantee Obligations of Ultimate Parent or the Primary Guarantor or the value of the Guarantee Obligations of the other Guarantors under the Guarantee and Collateral Agreement and the other Loan Documents, in each case, without the consent of all lenders;
- (iv) subordinate the Obligations to any other Indebtedness or subordinate the Liens securing the Obligations to Liens securing any other Indebtedness (except to the extent expressly permitted pursuant to the Loan Documents), without the written consent of each Lender directly and adversely affected thereby, except following any Event of Default under Section 7.01(f) or (g) if an opportunity to participate in such other priming Indebtedness is offered to all existing Lenders hereunder on a pro rata basis;
- (v) amend, modify or waive any condition precedent to any Credit Extension under the Revolving Facility set forth in Section 4.02 (including, without limitation, the waiver of an existing Default or Event of Default required to be waived in order for such Credit Extension to be made) without the consent of the Required Revolving Lenders (but without the necessity of obtaining the prior written consent of the Required Lenders);
- (vi) amend, modify or waive the definition of the term “**Borrowing Base**” or any component definition thereof (including “**Eligible Credit Assets**”, “**Eligible Private Assets**” and “**Eligible Public Equities**”, “**Qualified Cash**” and “**Excess Concentration Amount**”) without the consent of Lenders having Total Credit Exposures representing more than 66 2/3% of the Total Credit Exposures of all Lenders (disregarding the Total Credit Exposure of any Defaulting Lender);
- (vii) reduce the percentage specified in the definition of “Required Class Lenders” with respect to any Credit Facility without the written consent of all Lenders under such Credit Facility;
- (viii) amend, modify or waive any provision of Article VIII or any other provision of any Loan Document affecting the rights, protections, immunities, duties and obligations of the Administrative Agent without the consent of the Administrative Agent;
- (ix) amend, modify or waive any provision of Article VIII or any other provision of any Loan Document affecting the rights, protections, immunities, duties and obligations of the Collateral Agent without the consent of the Collateral Agent;
- (x) amend, modify or waive the pro rata sharing provisions of Section 2.17, Section 2.21 or Section 9.07(a), without the consent of each Lender directly and adversely affected thereby; or

(xi) impose modifications or restrictions on assignments and participations that are more restrictive than, or additional to, those set forth in **Section 9.06** without the consent of each Lender.

Any such waiver and any such amendment, supplement or modification shall apply equally to each of the Lenders and shall be binding upon the Loan Parties, the Lenders, the Administrative Agent, the Collateral Agent and all future holders of the Loans. In the case of any waiver, the Loan Parties, the Lenders, the Administrative Agent and the Collateral Agent shall be restored to their former position and rights hereunder and under the other Loan Documents, and any Default or Event of Default waived shall be deemed to be cured and not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon. Any such waiver, amendment, supplement or modification shall be effected by a written instrument signed by the parties required to sign pursuant to the foregoing provisions of this **Section 9.01**. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

(b) Notwithstanding anything to the contrary contained in this **Section 9.01** or any other provision of this Agreement or any other Loan Document, this Agreement and any other Loan Document may be amended solely with the consent of the Administrative Agent and the Borrower without the need to obtain the consent of any other Lender if such amendment is consummated in order (x) to correct or cure any ambiguities, errors, omissions, mistakes, inconsistencies or defects jointly identified by the Borrower and the Administrative Agent, (y) to effect administrative changes of a technical or immaterial nature or (z) to fix incorrect cross-references or similar inaccuracies in this Agreement or the applicable Loan Document. The Security Documents and related documents in connection with this Agreement and the other Loan Documents may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended, supplemented and waived with the consent of the Administrative Agent and the Collateral Agent (acting at the written direction of the Administrative Agent) at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment, supplement or waiver is delivered in order (i) to comply with local Law or advice of local counsel, or (ii) to cause such Security Documents or other documents to be consistent with this Agreement and the other Loan Documents.

#### **Section 9.02 Notices.**

(a) **Notices Generally.** Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in **Section 9.02(b)**), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by email as follows:

(i) if to Ultimate Parent, the Primary Guarantor or the Borrower, to B. Riley Financial, Inc. at 30870 Russell Ranch Road, Suite 250, Westlake Village, CA 91362, Attention of Phil Ahn and Gina Downs (email: pahn@brileyfin.com and gdowns@brileyfin.com; Telephone No. 818-746-9310);

(ii) if to the Administrative Agent, to Nomura Corporate Funding Americas, LLC at Worldwide Plaza, 309 West 49<sup>th</sup> Street, New York, New York, Attention of US Loan Support (email: USLoansServicing@US.Nomura.com);

(iii) if to the Collateral Agent, to Wells Fargo Bank, N.A. Corporate Trust Services, 9062 Old Annapolis Road, Columbia, Maryland 21045, Attention of Jason Prisco or Lance Yeagle – BR Advisory & Investments (email: ctsbankdebtadministrationteam@wellsfargo.com);

(iv) if to a Lender, to it at its address (or facsimile number) set forth in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received. Notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications, to the extent provided in **Section 9.02(b)**, shall be effective as provided in **Section 9.02(b)**.

**(b) Electronic Communications.**

(i) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including email and internet or intranet websites) pursuant to procedures approved by the Administrative Agent. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided* that approval of such procedures may be limited to particular notices or communications.

(ii) Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an email address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgement) and (ii) notices or communications posted to an internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its email address as described in the foregoing **clause (i)**, of notification that such notice or communication is available and identifying the website address therefor; *provided* that, in the case of each of the foregoing **clauses (i)** and **(ii)**, if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(c) **Change of Address, etc.** Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties.

**(d) Platform.**

(i) The Borrower agrees that the Administrative Agent may, but shall not be obligated to, make any Approved Electronic Communications available to the Lenders by posting such Approved Electronic Communications on the Platform.

(ii) The Platform and any Approved Electronic Communications are provided “as is” and “as available.” None of the Agents nor any of their respective Related Parties warrant the accuracy, adequacy or completeness of the Platform or any Approved Electronic Communications and each expressly disclaims liability for errors or omissions in the Approved Electronic Communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent or any of their respective Related Parties in connection with the Platform or the Approved Electronic Communications. Each party hereto agrees that no Agent has any responsibility for maintaining or providing any equipment, software, services or any testing required in connection with any Approved Electronic Communication or otherwise required for the Platform. In no event shall any Agent or any of its Related Parties have any liability to any Loan Party, any Lender or any other Person or entity for damages of any kind, whether or not based on strict liability and including, without limitation, (A) direct damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Loan Party’s or any Agent’s transmission of communications through the Platform or (B) indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Loan Party’s or any Agent’s transmission of communications through the Platform. In no event shall any Agent or any of its Related Parties have any liability for any damages arising from the use by others of any information or other materials obtained through internet, electronic, telecommunications or other information transmission systems, except to the extent the same resulted primarily from the gross negligence or willful misconduct of such Agent or its Related Parties, in each case as determined by a court of competent jurisdiction in a final and non-appealable judgment.

(iii) Each Loan Party, each Lender and each Agent agrees that the Administrative Agent may, but shall not be obligated to, store any Approved Electronic Communications on the Platform in accordance with the Administrative Agent’s customary document retention procedures and policies.

(iv) All uses of the Platform shall be governed by and subject to, in addition to this **Section 9.02**, separate terms and conditions posted or referenced in such Platform and related agreements executed by the Lenders and their Affiliates in connection with the use of such Platform.

(v) Each Loan Party understands that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution and agrees and assumes the risks associated with such electronic distribution, except to the extent caused by the willful misconduct or gross negligence of the Administrative Agent, in each case as determined by a court of competent jurisdiction in a final and non-appealable judgment.

(vi) The Borrower and each Lender acknowledge that certain of the Lenders may be Public Lenders and, if documents or notices required to be delivered pursuant to **Section 5.02** or otherwise are being distributed through the Platform, any document or notice that the Borrower has indicated contains Non-Public Information shall not be posted on that portion of the Platform designated for Public Lenders. The Borrower agrees to clearly designate all information provided to the Administrative Agent by or on behalf of the Loan Parties which is suitable to make available to Public Lenders. If the Borrower has not indicated whether a document or notice delivered pursuant to **Section 5.02** or otherwise contains Non-Public Information, the Administrative Agent reserves the right to post such document or notice solely on that portion of the Platform designated for Lenders who wish to receive Material Nonpublic Information with respect to Ultimate Parent, the Primary Guarantor, its Subsidiaries and their respective securities.

(e) **Public Side Information Contacts.** Each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable Requirements of Law, including the U.S. Federal and state securities Laws, to make reference to Approved Electronic Communications that are not made available through the “Public Side Information” portion of the Platform and that may contain Material Nonpublic Information with respect to the Borrower or its securities for purposes of the U.S. Federal or state securities Laws. In the event that any Public Lender has elected for itself to not access any information disclosed through the Platform or otherwise, such Public Lender acknowledges that (i) the Agents and other Lenders may have access to such information and (ii) neither the Borrower nor any Agent or other Lender with access to such information shall have (x) any responsibility for such Public Lender’s decision to limit the scope of information it has obtained in connection with this Agreement and the other Loan Documents or (y) any duty to disclose such information to such electing Lender or to use such information on behalf of such electing Lender, and shall not be liable for the failure to so disclose or use such information.

**Section 9.03 No Waiver by Course of Conduct; Cumulative Remedies.** None of the Agents or the Lenders shall by any act (except by a written instrument pursuant to **Section 9.01**), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No failure to exercise, nor any delay in exercising, on the part of any Agent or Lender, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by any Agent or Lender of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which such Agent or Lender would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

**Section 9.04 Survival of Representations, Warranties, Covenants and Agreements.** All representations, warranties, covenants and agreements made herein, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery hereof and thereof and the making of the Loans and other extensions of credit hereunder, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension hereunder, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied. The provisions of **Section 2.18**, **Section 2.19**, **Section 2.20**, **Section 9.05**, **Section 9.19**, **Section 9.21** and **Article VIII** shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the Payment in Full, the expiration or termination of the Commitments, the termination of this Agreement or any provision hereof or the resignation or removal of any Agent.

**Section 9.05 Payment of Expenses; Indemnity.**

(a) **Costs and Expenses.** The Borrower shall pay (i) all reasonable out-of-pocket costs and expenses incurred by the Administrative Agent, the Collateral Agent and their respective Affiliates in connection with the syndication of the Credit Facilities, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents, or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), including the reasonable fees, charges and disbursements of counsel and (ii) all out-of-pocket costs and expenses incurred by the Administrative Agent, the Collateral Agent and each Lender (including the fees, charges and disbursements of any counsel for any Agent or any Lender) in connection with the enforcement or protection of any rights and remedies under this Agreement and the other Loan Documents, including all such costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law, and including in connection with any workout, restructuring or negotiations in respect of the Credit Facilities and the Loan Documents, including the reasonable fees, charges and disbursements of counsel.

(b) **Indemnification by the Borrower.** The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), the Collateral Agent and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs (including settlement costs), disbursements and out-of-pocket fees and expenses (including the fees, charges and disbursements of any counsel for any Indemnitee, court costs, and all fees, expenses and costs incurred by any Indemnitee in connection with any dispute, action, claim or suit brought to enforce an Indemnitee’s right to indemnification), joint or several, of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted or awarded against any Indemnitee in any way relating to or arising out of or in connection with or by reason of (i) any actual or prospective claim, litigation, investigation or proceeding in any way relating to, arising out of, in connection with or by reason of any of the following, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, litigation or proceeding): (x) the execution, delivery, enforcement, performance or administration of any Loan Document or any other document delivered in connection with the transactions contemplated thereby or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) or the consummation of the transactions contemplated thereby (including, without limitation, the performance of the Collateral Agent’s obligations under the Account Control Agreements and any other control agreement, including any amounts payable by the Collateral Agent to a bank under an Account Control Agreement or any other control agreement for fees, expenses or indemnification of the bank) or (y) any Commitment, any Credit Extension or the use or proposed use of the proceeds thereof; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, fees and expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee, (y) in the case of any Lender, result from a claim brought by the Borrower or any other Loan Party against such Lender for a material breach in bad faith of such Lender’s funding obligations hereunder, if the Borrower or such Loan Party has obtained a final and non-appealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (z) any dispute solely among Indemnities (other than any claims by or against the Administrative Agent or the Collateral Agent in its capacity or in fulfilling its role as Administrative Agent, Collateral Agent, arranger or any similar role, respectively, hereunder or under any other Loan Document and other than any claims arising out of any act or omission of the Primary Guarantor or any of its Affiliates); or (ii) any actual or alleged presence or Release of Materials of Environmental Concern at, on, under or from any property currently or formerly owned or operated by the Primary Guarantor or any of its Subsidiaries, or any Environmental Liability related in any way to the Primary Guarantor or any of its Subsidiaries (**clauses (i) and (ii)**, collectively, the “**Indemnified Liabilities**”), in all cases, whether or not caused by or arising, in whole or in part, out of the negligence of such Indemnitee and regardless of whether such Indemnitee is a party thereto, and whether or not any such claim, litigation, investigation or proceeding is brought by the Borrower, its equity holders, its affiliates, its creditors or any other Person. This **Section 9.05(b)** shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) **Reimbursement by the Lenders.** To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under **Section 9.05(a)** or **Section 9.05(b)** to be paid by it to the Administrative Agent or Collateral Agent (or any sub-agent thereof) or any Related Party of any of the foregoing (including, without limitation the performance of the Collateral Agent's obligations under the Account Control Agreements and any other control agreement, including any amounts payable by the Collateral Agent to a bank under an Account Control Agreement or any other control agreements for fees, expenses or indemnification of the bank), each Lender severally agrees to pay to the Administrative Agent or Collateral Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent or Collateral Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent or Collateral Agent (or any such sub-agent). The obligations of the Lenders under this **Section 9.05(c)** are several and not joint.

(d) **Waiver of Consequential Damages, Etc.** To the fullest extent permitted by applicable Requirements of Law, Ultimate Parent, the Primary Guarantor and the other Loan Parties shall not assert (and each shall cause its Subsidiaries not to assert), and hereby waives (and agrees to cause its Subsidiaries to waive), any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any other document contemplated hereby, the transactions contemplated hereby or thereby, any Commitment or any Credit Extension, or the use of the proceeds thereof or such Indemnitee's activities in connection therewith (whether before or after the Closing Date); *provided* that such waiver of special, indirect, consequential or punitive damages shall not limit the indemnification obligations of the Borrower under this **Section 9.05**. No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials distributed by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement, the other Loan Documents or the transactions contemplated hereby or thereby.

(e) **Payments.** All amounts due under this **Section 9.05** shall be payable not later than 10 days after demand therefor. Without limiting the generality of the foregoing, if any amount shall be payable by the Collateral Agent to a bank under an Account Control Agreement or any other control agreement, including without limitation any amounts for the fees, expenses or indemnities of a bank, or if a bank shall otherwise make any claim upon the Collateral Agent under such agreement, the Borrower and the Lenders, as applicable, shall be liable to pay such amount to the Collateral Agent promptly and in any event within five (5) days of demand therefor from the Collateral Agent.

#### **Section 9.06 Successors and Assigns; Participations and Assignments.**

(a) **Successors and Assigns Generally.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender (and any such assignment without such consent shall be null and void), and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of **Section 9.06(b)**, (ii) by way of participation in accordance with the provisions of **Section 9.06(d)**, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of **Section 9.06(e)**. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in **Section 9.06(d)**) and, to the extent expressly contemplated hereby, Indemnitees and the Related Parties of each of the Administrative Agent, the Collateral Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) **Assignments by Lenders.** (1) Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); *provided* that (in each case with respect to any Credit Facility) any such assignment shall be subject to the following conditions:

(i) **Minimum Amounts.**

(A) In the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Loans at the time owing to it (in each case with respect to any Credit Facility) or contemporaneous assignments to related Approved Funds (determined after giving effect to such assignments) that equal at least the amount specified in **Section 9.06(b)(i)(B)** in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned.

(B) In any case not described in **Section 9.06(b)(i)(A)**, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "trade date" is specified in the Assignment and Assumption, as of such date) shall not be less than \$5,000,000, in the case of any assignment in respect of any Class of Revolving Loans or Revolving Commitments, or \$1,000,000, in the case of any assignment in respect of any Term Loan Facility, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) **Proportionate Amounts.** Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned, except that this **Section 9.06(b)(ii)** shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Credit Facilities on a non-pro rata basis.

(iii) **Required Consents.** No consent shall be required for any assignment except to the extent required by **Section 9.06(b)(i)(B)** and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) an Event of Default has occurred and is continuing at the time of such assignment, or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; *provided* that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten Business Days after having received notice thereof; *provided, further*, that the Borrower's consent shall not be required during the pre- and post-closing primary syndication of the Credit Facilities by the Administrative Agent within the first 180 days following the Closing Date; and

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (i) any Class of Revolving Loans or Revolving Commitments or any unfunded Commitments with respect to any Term Loan Facility if such assignment is to a Person that is not a Lender with a Commitment in respect of such Credit Facility, an Affiliate of any such Lender or an Approved Fund with respect to such Lender, or (ii) any Term Loans to a Person who is not a Lender, an Affiliate of a Lender or an Approved Fund.

(iv) **Processing Fee; Administrative Questionnaire.** The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; *provided* that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) **No Assignment to Certain Persons.** No such assignment shall be made to (A) the Borrower or any of the Primary Guarantor's Affiliates or Subsidiaries or (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute a Defaulting Lender or a Subsidiary thereof.

(vi) **No Assignment to Natural Persons.** No such assignment shall be made to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person).

(vii) **Certain Additional Payments.** In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full pro rata share of all Loans in accordance with its Revolving Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Requirements of Law without compliance with the provisions of this **clause (vii)**, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(2) Subject to acceptance and recording thereof by the Administrative Agent pursuant to **Section 9.06(c)**, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of **Section 2.18**, **Section 2.19** and **Section 9.05** with respect to facts and circumstances occurring prior to the effective date of such assignment; *provided* that, except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this **Section 9.06(b)** shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with **Section 9.06(d)**.

(c) **Register.** The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the “**Register**”). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by (x) the Borrower and (y) any Lender solely with respect to any entry relating to such Lender’s Loans, in each case, at any reasonable time and from time to time upon reasonable prior notice.

(d) **Participations.** Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person, a Defaulting Lender or the Borrower or any of the Primary Guarantor’s Affiliates) (each, a “**Participant**”) in all or a portion of such Lender’s rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); *provided* that (i) such Lender’s obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under **Section 9.05(c)** with respect to any payments made by such Lender to its Participants.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in **clauses (i), (ii), (iii), (iv), (ix), (x) and (xi)** of the proviso to **Section 9.01(a)** that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of **Section 2.18, Section 2.19** and **Section 2.20** (subject to the requirements and limitations therein, including the requirements in **Section 2.19(g)** (it being understood that the documentation required under **Section 2.19(g)** shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **Section 9.06(b)**; *provided* that such Participant (A) agrees to be subject to the provisions of **Section 2.23** as if it were an assignee under **Section 9.06(b)**; and (B) shall not be entitled to receive any greater payment under **Section 2.18** or **Section 2.19** with respect to any participation than its participating Lender would have been entitled to receive. Each Lender that sells a participation agrees, at the Borrower’s request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of **Section 2.23(a)** with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of **Section 9.07(b)** as though it were a Lender; *provided* that such Participant agrees to be subject to **Section 9.07(a)** as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the Loans or other obligations under the Loan Documents (the “**Participant Register**”); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant’s interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) or Proposed Section 1.163-5(b) of the United States Treasury Regulations (or, in each case, any amended or successor version). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) **Certain Pledges.** Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank having jurisdiction over such Lender; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) **Special Purpose Funding Vehicles.** Notwithstanding anything to the contrary contained herein, any Lender (a “*Granting Lender*”) may grant to a special purpose funding vehicle (an “*SPC*”), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Lender would otherwise be obligated to make to the Borrower pursuant to this Agreement; *provided* that (i) nothing herein shall constitute a commitment by any SPC to make any Loan and (ii) if an SPC elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPC shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other indebtedness of any SPC, it will not institute against, or join any other Person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States of America or any state thereof. In addition, notwithstanding anything to the contrary in this **Section 9.06(f)**, any SPC may (A) with notice to, but without the prior written consent of, the Borrower and the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Lender, or with the prior written consent of the Borrower and the Administrative Agent (which consent shall not be unreasonably withheld) to any financial institutions providing liquidity and/or credit support to or for the account of such SPC to support the funding or maintenance of Loans, and (B) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPC; *provided* that non-public information with respect to the Borrower may be disclosed only with the Borrower’s consent which will not be unreasonably withheld. This **Section 9.06(f)** may not be amended without the written consent of any SPC with Loans outstanding at the time of such proposed amendment.

#### **Section 9.07 Sharing of Payments by Lenders; Set-off.**

(a) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other obligations hereunder resulting in such Lender receiving payment of a proportion of the aggregate amount of its Loans and accrued interest thereon or other such obligations greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; *provided* that:

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this **Section 9.07(a)** shall not be construed to apply to (x) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant.

The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable Requirements of Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(b) Each of Ultimate Parent, the Primary Guarantor and the Borrower hereby irrevocably authorizes each Lender at any time and from time to time while an Event of Default shall have occurred and be continuing, without notice to Ultimate Parent, the Primary Guarantor or the Borrower, any such notice being expressly waived by each of Ultimate Parent, the Primary Guarantor and the Borrower, to set-off and appropriate and apply any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such party to or for the credit or the account of Ultimate Parent, the Primary Guarantor and the Borrower, or any part thereof in such amounts as such Lender may elect, against and on account of the obligations and liabilities of Ultimate Parent, the Primary Guarantor and the Borrower to such Lender hereunder and claims of every nature and description of such Lender against Ultimate Parent, the Primary Guarantor and the Borrower, in any currency, whether arising hereunder, under any other Loan Document or otherwise, as such Lender may elect, whether or not any Lender has made any demand for payment and although such obligations, liabilities and claims may be contingent or unmatured; *provided* that such Lender complies with **Section 9.07(a)**. Each Lender exercising any right of set-off shall notify Ultimate Parent, the Primary Guarantor and the Borrower promptly of any such set-off and the application made by such Lender of the proceeds thereof; *provided* that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Lender under this **Section 9.07** are in addition to other rights and remedies (including, without limitation, other rights of set-off) which such Lender may have.

**Section 9.08 Counterparts.** This Agreement shall be valid, binding, and enforceable against a party only when executed and delivered by an authorized individual on behalf of the party by means of (i) any electronic signature permitted by the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, and/or any other relevant electronic signatures law, including relevant provisions of the UCC (collectively, "Signature Law"); (ii) an original manual signature; or (iii) a faxed, scanned, or photocopied manual signature. Each electronic signature or faxed, scanned, or photocopied manual signature shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Each party hereto shall be entitled to conclusively rely upon, and shall have no liability with respect to, any faxed, scanned, or photocopied manual signature, or other electronic signature, of any party and shall have no duty to investigate, confirm or otherwise verify the validity or authenticity thereof. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but such counterparts shall, together, constitute one and the same instrument. For avoidance of doubt, original manual signatures shall be used for execution or indorsement of writings when required under the UCC or other Signature Law due to the character or intended character of the writings.

**Section 9.09 Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. The parties hereto shall endeavor in good-faith negotiations to replace any invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

**Section 9.10 Section Headings.** The Section headings and Table of Contents used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

**Section 9.11 Integration.** This Agreement and the other Loan Documents represent the entire agreement of the parties hereto with respect to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof and thereof. There are no promises, undertakings, representations or warranties by any Agent or any Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents.

**Section 9.12 Governing Law.** THIS AGREEMENT AND ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE) SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

**Section 9.13 Submission to Jurisdiction; Waivers.**

(a) Each of Ultimate Parent, the Primary Guarantor and the Borrower hereby irrevocably and unconditionally:

(i) submits for itself and its property in any legal action or proceeding relating to this Agreement and the other Loan Documents (whether arising in contract, tort or otherwise) to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the exclusive (subject to **Section 9.13(a)(iii)**) general jurisdiction of the courts of the State of New York sitting in the Borough of Manhattan, the courts of the United States for the Southern District of New York sitting in the Borough of Manhattan, and appellate courts from any thereof;

(ii) agrees that all claims in respect of any such action or proceeding shall be heard and determined in such New York state court or, to the fullest extent permitted by applicable Requirements of Law, in such federal court;

(iii) agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law and that nothing in this Agreement or any other Loan Document shall affect any right that the Agents or the Lenders may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against it or any of its assets in the courts of any jurisdiction;

(iv) waives, to the fullest extent permitted by applicable Requirements of Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in **Section 9.13(a)** (and irrevocably waives to the fullest extent permitted by applicable Requirements of Law the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court);

(v) consents to service of process in the manner provided in **Section 9.02** (and agrees that nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by applicable Requirements of Law);

(vi) agrees that service of process as provided in **Section 9.02** is sufficient to confer personal jurisdiction over the applicable party in any such proceeding in any such court, and otherwise constitutes effective and binding service in every respect; and

(vii) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover any special, exemplary, punitive or consequential damages.

(b) Each Loan Party that is organized under the laws of a jurisdiction outside the United States of America hereby appoints the Ultimate Parent, as its agent for service of process in any matter related to this Agreement or the other Loan Documents and shall provide written evidence of acceptance of such appointment by such agent on or before the Closing Date.

**Section 9.14 Acknowledgments.** Each of Ultimate Parent, the Primary Guarantor and the Borrower hereby acknowledges and agrees that:

(a) it was represented by counsel in connection with the negotiation, execution and delivery of this Agreement and the other Loan Documents to which it is a party, that it and its counsel reviewed and participated in the preparation and negotiation hereof and thereof and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation hereof or thereof; and

(b) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Agents and the Lenders or among the Group Members, the Agents and the Lenders.

**Section 9.15 Confidentiality.** Each of the Agents and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed:

(a) to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential in accordance with customary practices);

(b) to the extent required or requested by any regulatory or similar authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners or any other similar organization) purporting to have jurisdiction over such Person or its Related Parties (in which case such Person shall, except with respect to any audit or examination conducted by bank accountants or any Governmental Authority or regulatory or self-regulatory authority exercising examination or regulatory authority, notify the Borrower as soon as practicable in the event of any such disclosure by such Person unless such notification is prohibited by law, rule or regulation);

(c) to the extent required by applicable Requirements of Law or regulations or by any subpoena or similar legal process (in which case such Person shall, except with respect to any audit or examination conducted by bank accountants or any Governmental Authority or regulatory or self-regulatory authority exercising examination or regulatory authority, notify the Borrower as soon as practicable in the event of any such disclosure by such Person unless such notification is prohibited by law, rule or regulation);

(d) to any other party hereto;

(e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder;

(f) subject to an agreement containing provisions substantially the same (or at least as restrictive) as those of this **Section 9.15** (or as may otherwise be reasonably acceptable to the Borrower), to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement, or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder;

(g) on a confidential basis to (i) any rating agency in connection with rating Ultimate Parent, the Primary Guarantor or its Subsidiaries or the Credit Facilities or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Credit Facilities; and

(h) with the consent of the Borrower; or (i) to the extent that such Information (x) becomes publicly available other than as a result of a breach of this **Section 9.15**, or (y) becomes available to any Agent, any Lender or any of their respective Affiliates on a non-confidential basis from a source other than the Borrower.

In addition, each of the Agents and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Agents and the Lenders in connection with the administration of this Agreement, the other Loan Documents and the Credit Extensions. Notwithstanding anything herein to the contrary, the information subject to this **Section 9.15** shall not include, and each of the Agents and the Lenders may disclose without limitation of any kind, any information with respect to the “tax treatment” and “tax structure” (in each case, within the meaning of Treasury Regulation Section 1.6011-4) of the Loans, the Transactions and the other transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to the Agents or the Lenders relating to such tax treatment and tax structure; *provided* that, with respect to any document or similar item that in either case contains information concerning such “tax treatment” or “tax structure” as well as other information, this sentence shall only apply to such portions of the document or similar item that relate to such “tax treatment” or “tax structure.”

For purposes of this **Section 9.15**, “*Information*” shall mean all information received from Ultimate Parent, the Primary Guarantor or any of its Subsidiaries relating to Ultimate Parent, the Primary Guarantor or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to any Agent or any Lender on a non-confidential basis prior to disclosure by Ultimate Parent, the Primary Guarantor or any of its Subsidiaries; *provided* that, in the case of information received from Ultimate Parent, the Borrower or any of its Subsidiaries after the Closing Date, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this **Section 9.15** shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord confidential information of other customers in similar transactions.

Notwithstanding anything to the contrary in the Loan Documents, the Loan Parties shall not and shall cause the other Group Members to not, and Loan Parties shall not be obligated to, provide the Agents or any Lender with any Material Nonpublic Information with respect to any Issuer, its Subsidiaries or its securities in any document or notice required to be delivered pursuant to this Agreement, any other Loan Document or any communication pursuant to, or directly related to, this Agreement or any other Loan Document (each a “**Communication**”) and in delivering, or permitting any other Group Member to deliver, any Communication, the Loan Parties shall be deemed to have represented that any such Communication contains no such Material Nonpublic Information. Notwithstanding anything to the contrary in the Loan Documents, the Loan Parties acknowledge and agree that if any Lender or any of such Lender’s Affiliates receives from any Loan Party or any other Group Member any Material Nonpublic Information at any time in connection with this Agreement or any other Loan Document, such Lender or such Affiliate may disclose such Material Nonpublic Information publicly, to any potential purchaser of the Public Equities or to any other Person.

For the avoidance of doubt, the Loan Parties agree that the obligations of Agents and Lenders set forth in this **Section 9.15** shall not be interpreted to restrict any such Agent or Lender or any of their Affiliates from transacting in Public Equities or related securities.

**Section 9.16 Waiver of Jury Trial.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE REQUIREMENTS OF LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT, BREACH OF DUTY, COMMON LAW, STATUTE OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS **SECTION 9.16**. EACH PARTY HERETO FURTHER REPRESENTS AND WARRANTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

**Section 9.17 PATRIOT Act Notice; AML Laws.** Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies each Loan Party that (a) pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies the Loan Parties, which information includes the name, address and taxpayer information number of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify such Loan Party in accordance with the PATRIOT Act and (b) pursuant to the Beneficial Ownership Regulation, it is required to obtain a Beneficial Ownership Certification. The Borrower shall, promptly following a reasonable request by any Lender (through the Administrative Agent) or the Administrative Agent, provide all documentation and other information that such Lender or the Administrative Agent, as applicable, requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money-laundering rules and regulations, including the PATRIOT Act and the Beneficial Ownership Regulation.

The parties hereto acknowledge that in accordance with laws, regulations and executive orders of the United States or any state or political subdivision thereof as are in effect from time to time applicable to financial institutions relating to the funding of terrorist activities and money laundering, including without limitation the USA Patriot Act (Pub. L. 107-56) and regulations promulgated by the Office of Foreign Asset Control (collectively, “AML Law”), the Collateral Agent is required to obtain, verify, and record information relating to individuals and entities that establish a business relationship or open an account with the Collateral Agent. Each party hereby agrees that it shall provide the Collateral Agent with such identifying information and documentation as the Collateral Agent may request from time to time in order to enable the Collateral Agent to comply with all applicable requirements of AML Law.

**Section 9.18 Usury Savings Clause.** Notwithstanding any other provision herein, the aggregate interest rate charged with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable Requirements of Law, shall not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Agreement at any time exceeds the Highest Lawful Rate, the outstanding amount of the Loans made hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Loans made hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, the Borrower shall pay to Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of the Lenders and the Borrower to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at such Lender's option be applied to the outstanding amount of the Loans made hereunder or be refunded to the Borrower.

**Section 9.19 Payments Set Aside.** To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent, the Collateral Agent or any Lender, or the Administrative Agent, the Collateral Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, the Collateral Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent or the Collateral Agent, as applicable, upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent or the Collateral Agent (as applicable), plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Effective Rate from time to time in effect.

**Section 9.20 No Advisory or Fiduciary Responsibility.** In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of Ultimate Parent's, the Primary Guarantor and the Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a) (i) no fiduciary, advisory or agency relationship between the Group Members and any Agent or any other Lender is intended to be or has been created in respect of the transactions contemplated hereby or by the other Loan Documents, irrespective of whether any Agent or any other Lender has advised or is advising the Primary Guarantor or any Subsidiary on other matters, (ii) the arranging and other services regarding this Agreement provided by the Agents and the other Lenders are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Agents and the other Lenders, on the other hand, (iii) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent that it has deemed appropriate and (iv) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; and (b) (i) the Agents and the other Lenders each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates or any other Person; (ii) none of the Agents and the other Lenders has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Agents and the other Lenders and their respective Affiliates may be engaged, for their own accounts or the accounts of customers, in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and none of the Agents and the other Lenders has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Agents and the other Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

**Section 9.21 Judgment Currency.** In respect of any judgment or order given or made for any amount due under this Agreement or any other Loan Document that is expressed and paid in a currency (the "**judgment currency**") other than Dollars, the Loan Parties will indemnify Administrative Agent and any Lender against any loss incurred by them as a result of any variation as between (i) the rate of exchange at which the Dollar amount is converted into the judgment currency for the purpose of such judgment or order and (ii) the rate of exchange, as quoted by the Administrative Agent or by a known dealer in the judgment currency that is designated by the Administrative Agent, at which the Administrative Agent or such Lender is able to purchase Dollars with the amount of the judgment currency actually received by the Administrative Agent or such Lender. The foregoing indemnity shall constitute a separate and independent obligation of the Loan Parties and shall survive any termination of this Agreement and the other Loan Documents, and shall continue in full force and effect notwithstanding any such judgment or order as aforesaid. The term "rate of exchange" shall include any premiums and costs of exchange payable in connection with the purchase of or conversion into Dollars.

*[Remainder of page left intentionally blank.]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

B. RILEY FINANCIAL, INC., as Ultimate Parent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

BR FINANCIAL HOLDINGS, LLC, as Primary Guarantor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

BR ADVISORY & INVESTMENTS, LLC, as Borrower

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

NOMURA CORPORATE FUNDING AMERICAS, LLC, as  
Administrative Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

NOMURA SECURITIES (BERMUDA) LTD., as a Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WELLS FARGO BANK, N.A., as Collateral Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Signature Page to Credit Agreement]

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ANNEX A-1

REVOLVING COMMITMENTS

<b>Lender</b>	<b>Revolving Commitment</b>	<b>Pro Rata Share</b>
NOMURA SECURITIES (BERMUDA) LTD.	\$ 80,000,000	100%
<b>Total</b>	<b>\$ 80,000,000</b>	<b>100%</b>

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ANNEX A-2

TERM LOAN COMMITMENTS

<b>Lender</b>	<b>Term Loan Commitment</b>	<b>Pro Rata Share</b>
NOMURA SECURITIES (BERMUDA) LTD.	\$ 200,000,000	100%
<b>Total</b>	<b>\$ 200,000,000</b>	<b>100%</b>

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**B. RILEY FINANCIAL, INC.  
2021 STOCK INCENTIVE PLAN**

**PERFORMANCE-BASED RESTRICTED STOCK UNIT AWARD AGREEMENT**

This Performance-Based Restricted Stock Unit Award Agreement (this "**Award Agreement**") evidences an award of performance-based restricted stock units ("**PSUs**") by B. Riley Financial, Inc., a Delaware corporation (together with any Subsidiary, and any successor entity thereto, the "**Company**"), under the B. Riley Financial, Inc. 2021 Stock Incentive Plan (as amended, supplemented or modified from time to time, the "**Plan**"). Capitalized terms not defined in this Award Agreement have the meanings given to them in the Plan.

<b>Name of Grantee:</b>	[●] (the " <b>Grantee</b> ").
<b>Grant Date:</b>	[●] (the " <b>Grant Date</b> ").
<b>Target PSUs:</b>	[●] (the " <b>PSUs</b> "). The number of PSUs that will actually vest will be determined based on achievement of the Performance Metrics below.
<b>Vesting:</b>	<p>Subject to the Grantee's continued Employment with the Company and other limitations set forth in this Award Agreement and the Plan, the PSUs will vest upon the earlier to occur of: (a) the determination and approval by the Committee that the Adjusted Stock Price Hurdle (as set forth below) has been achieved during the Performance Period; <u>provided</u> that if such Adjusted Stock Price Hurdle is achieved prior to the second anniversary of the Grant Date, the PSUs will not vest until the second anniversary of the Grant Date or (b) immediately prior to the effective time of a Change in Control during the Performance Period (such date, the "<b>Vesting Date</b>").</p> <p>Any unvested PSUs will be forfeited upon the Grantee's termination of Employment provided however, in no event shall the Participant's death or being Disabled be deemed a termination of Continued Service for purposes of this agreement.</p>
<b>Performance Period:</b>	January 1, 20[●] through December 31, 20[●] (the " <b>Performance Period</b> ")
<b>Performance Metrics:</b>	The " <b>Adjusted Stock Price Hurdle</b> " will be considered achieved if the Adjusted Closing Price (as defined below) equals or exceeds \$[●]. " <b>Adjusted Closing Price</b> " means the consecutive five trading day average closing price of one share of B. Riley Financial, Inc. common stock (" <b>Common Stock</b> "), plus the aggregate amount of dividends paid with respect to such share of Common Stock prior to the Vesting Date assuming the dividends had been reinvested in Common Stock as of the ex-dividend date (in each case appropriately adjusted for any stock splits or other corporate transaction affecting shares of Common Stock). The Committee shall have sole authority to determine whether or not the Adjusted Stock Price Hurdle is achieved. All unvested PSUs shall automatically expire and shall not be eligible for vesting after the last day of the Performance Period.
<b>Payment:</b>	The Company will deliver to the Grantee one Share (or, at the election of the Company, cash equal to the Fair Market Value thereof) for each vested PSU no later than 60 days after the PSU vests, subject to applicable tax withholding (such date the Shares are so delivered, a " <b>Payment Date</b> "). The Grantee may satisfy the minimum statutory tax withholding and employment tax obligations associated with the vesting of the PSUs, by surrendering Shares to the Company (including Shares that would otherwise be issued upon vesting of the PSUs) that have a Fair Market Value equal to such tax withholding and/or employment tax obligations.
<b>Dividend Equivalent Rights:</b>	On a Payment Date, the Company will pay to the Grantee a cash amount equal to the product of (1) all cash dividends or other distributions (other than cash dividends or other distributions pursuant to which the PSUs were adjusted pursuant to <u>Section 1.6.3</u> of the Plan), if any, paid on a Share from the Grant Date to such Payment Date and (2) the number of Shares delivered to the Grantee on such Payment Date (including for this purpose any Shares which would have been delivered on such Payment Date but for being withheld to satisfy tax withholding obligations).
<b>Restrictive Covenants:</b>	Grantee will be subject to the restrictive covenants set forth in Exhibit A, <i>provided that</i> if Grantee is subject to restrictive covenants pursuant to an Employment Agreement (as defined below), the restrictive covenants set forth in the Employment Agreement shall apply.
<b>All Other Terms:</b>	As set forth in the Plan.

The Plan is incorporated herein by reference. Except as otherwise set forth in this Award Agreement, this Award Agreement and the Plan constitute the entire agreement and understanding of the parties with respect to the PSUs. In the event that any provision of this Award Agreement is inconsistent with the Plan, the terms of the Plan will control. Except as specifically provided herein, in the event that any provision of this Award Agreement is inconsistent with any employment agreement or similar agreement between the Grantee and the Company ("**Employment Agreement**"), the terms of the Employment Agreement will control.

By accepting this award, the Grantee agrees to be subject to the terms and conditions of the Plan and this Award Agreement.

This Award Agreement may be executed in counterparts, which together will constitute one and the same original.

**IN WITNESS WHEREOF**, the parties have caused this Award Agreement to be duly executed and effective as of the Grant Date.

B. Riley Financial, Inc.

By: \_\_\_\_\_  
Name:  
Title:

[NAME OF GRANTEE]  
\_\_\_\_\_

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## Subsidiaries of B. Riley Financial, Inc. – December 31, 2021

Subsidiary	Jurisdiction of Organization/ Incorporation
272 Advisors, LLC*	Delaware
Annetnaus (Assignment for the benefit of creditors), LLC	California
B. Riley Acquisition Corp. I	Delaware
B. Riley Acquisition Corp. II	Delaware
B. Riley Acquisition Corp. III	Delaware
B. Riley Acquisition Corp. IV	Delaware
B. Riley Acquisition Corp. V	Delaware
B. Riley Acquisition Sponsor Co. I, LLC	Delaware
B. Riley Acquisition Sponsor Co. II, LLC	Delaware
B. Riley Acquisition Sponsor Co. III, LLC	Delaware
B. Riley Acquisition Sponsor Co. IV, LLC	Delaware
B. Riley Acquisition Sponsor Co. V, LLC	Delaware
B. Riley Advisory and Valuation Services, LLC*(dba B. Riley Advisory Services)	California
B. Riley Advisory Holdings, LLC	Delaware
B. Riley Advisory Services de Mexico, S de RL	Mexico City, Mexico
B. Riley Asset Management, LLC*	Delaware
B. Riley Brand Management, LLC	Delaware
B. Riley Capital Management, LLC	New York
B. Riley Commercial Capital, LLC	Delaware
B. Riley Corporate Services, Inc.	Delaware
B. Riley Government Services, LLC	Delaware
B. Riley Innovation Management, LLC*	Delaware
B. Riley Operations Management Services, LLC	Delaware
B. Riley Principal 150 Merger Corp.	Delaware
B. Riley Principal 150 Sponsor Co., LLC	Delaware
B. Riley Principal 175 Merger Corp.	Delaware
B. Riley Principal 175 Sponsor Co., LLC	Delaware
B. Riley Principal 200 Merger Corp.	Delaware
B. Riley Principal 200 Sponsor Co., LLC	Delaware
B. Riley Principal 250 Merger Corp.	Delaware
B. Riley Principal 250 Sponsor Co., LLC	Delaware
B. Riley Principal Capital, LLC	Delaware
B. Riley Principal Investments, LLC	Delaware
B. Riley Principal Investments RE, LLC	Delaware
B. Riley Principal Sponsor Co. II, LLC	Delaware
B. Riley Principal Sponsor Co., III, LLC	Delaware
B. Riley Principal Sponsor Co., LLC	Delaware
B. Riley Real Estate Ventures Holdings, LLC	Delaware
B. Riley Real Estate, LLC	Delaware
B. Riley Receivables, LLC	Delaware
B. Riley Retail Advisors, Inc.	California
B. Riley Retail Canada ULC	Canada
B. Riley Retail Int'l, Inc.	California
B. Riley Retail RE Holdings, LLC	Delaware
B. Riley Retail Solutions WF, LLC	California
B. Riley Retail Solutions, LLC	California
B. Riley Retail, Inc.	California
B. Riley Securities Holdings, LLC	Delaware
B. Riley Securities, Inc.	Delaware
B. Riley Venture Capital, LLC	Delaware
B. Riley Wealth Insurance, Inc.	Washington
B. Riley Wealth Management Holdings, Inc.	Delaware
B. Riley Wealth Management, Inc.	Tennessee
B. Riley Wealth Private Shares, LLC	Delaware
B. Riley Wealth Sub-Advisers, LLC	Delaware
B. Riley Wealth Tax Services, Inc.	Delaware

**Subsidiaries of B. Riley Financial, Inc. – December 31, 2021**

Benchmark Landscaping, LLC	Delaware
BR Advisory & Investments, LLC	Delaware
BR Brand Holdings, LLC*	Delaware
BR Dialectic Capital Management, LLC (dba B. Riley Alternatives)	Delaware
BR Events, LLC	California
BR Financial Holdings, LLC	Delaware
BR Great Northern Mall, LLC	Delaware
BRC Emerging Managers GP, LLC	Delaware
BRC Partners Management GP, LLC	Delaware
BRF Finance Co., LLC	Delaware
BRF Investments, LLC	Delaware
BR-NRG, LLC	Delaware
BroadSmart Holding Co Inc.	Delaware
BRPI Acquisition Co LLC	Delaware
BRPI Executive Consulting, LLC	Delaware
BRPI FL ES Holdings, LLC	Delaware
BRPM Merger Sub, Inc.	Delaware
BRVC bolttech, LLC	Delaware
BRVC Callisto, LLC	Delaware
BRVC Continuous Composites, LLC	Delaware
BRVC Promenade Group, LLC	Delaware
BRVC Pura, LLC	Delaware
BRVC SparkCognition, LLC	Delaware
BRVC Swiftly, LLC	Delaware
BRVC Uniphore, LLC	Delaware
BRVC Urgent.ly, LLC	Delaware
BRVC Urgently II, LLC	Delaware
Classmates Media Corporation	Delaware
CrosIT Solutions Ltd.	Israel
Fandor ABC, LLC	California
FBR Capital Markets PT, Inc.	Virginia
Fiduciary Financial Services of the Southwest	Texas
Financial Services International Corporation	Washington
Firebrandlive (assignment for the benefit of creditors), LLC	California
GA Asset Advisors, Ltd	England and Wales
GA Australia II Pty., LTD	Victoria, Australia
GA Australia Pty., LTD	Victoria, Australia
GA Europe Cooperatief U.A.	Netherlands
GA Europe GmbH	Germany
GACP Finance Co, LLC	Delaware
GAEBB Group B.V.	Netherlands
GC Capital Corp.	Delaware
GD ABC, LLC	California
GlassRatner Advisory & Capital Group, LLC (dba B. Riley Advisory Services)	Delaware
GlassRatner Brokerage Services, Inc.	Georgia
GlassRatner International, Inc.	Delaware
Great American Capital Partners, LLC	Delaware
Great American Global Partners, LLC*	California
Great American Group Intellectual Property, LLC (dba B. Riley Advisory Services)	California
Great American Group Machinery & Equipment, LLC* (dba B. Riley Advisory Services)	California

**Subsidiaries of B. Riley Financial, Inc. – December 31, 2021**

HRLY Brand Management, LLC*	Delaware
IEG of OC (assignment for the benefit of creditors), LLC	California
Juno Internet Services, Inc.	Delaware
Juno Online Services, Inc.	Delaware
Justice Brand Management, LLC*	Delaware
magicJack Holdings Corporation	Delaware
magicJack L.P.	Delaware
magicJack SMB, Inc.	Florida
magicJack VocalTec Ltd.	Israel
magicJack VoIP Services, LLC	Delaware
Marconi Wireless Holdings, LLC (dba Credo Mobile)	Delaware
MLV & Co. LLC	Delaware
National Asset Management, Inc.	Washington
National Holdings Corporation	Delaware
National Securities Corporation	Washington
NetZero, Inc.	Delaware
NetZero Modecom, Inc.	Delaware
NetZero Wireless, Inc. (dba magicJack Wireless)	Delaware
NHC Holdings, LLC	Delaware
Prime Capital Services, Inc.	New York
Prime Financial Services, Inc.	Delaware
Ridgmont Outfitters (assignment for the benefit of creditors), LLC	California
Stratton Partners, LTD	England and Wales
Tdsoft Ltd.	Israel
TreePeach Management, LLC	Delaware
UGC Operations ABC, LLC	California
United Advisor Services, LLC	New Jersey
United Advisors, LLC	New Jersey
United Online Advertising Network, Inc.	Delaware
United Online Software Development (India) Private Limited*	Republic of India
United Online Web Services, Inc.	Delaware
United Online, Inc.	Delaware
Winslow Fiduciary Services, LLC	Massachusetts
Winslow Financial, Inc.	Massachusetts
Winslow Wealth Management, LLC	Massachusetts
Winslow, Evans & Crocker Insurance Agency, Inc.	Massachusetts
Winslow, Evans & Crocker, Inc.	Massachusetts
Workshop Café ABC, LLC	California
Wunderlich Capital Management, LLC	Tennessee
YMax Communications Corp.	Delaware
YMax Communications Corp. of Virginia	Virginia
YMax Corporation	Delaware

\* B. Riley Financial, Inc. owns less than 100% of these subsidiaries.

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the incorporation by reference in the Registration Statement of B. Riley Financial, Inc. on Form S-3 (File Nos. 333-203534, 333-214234, 333-221715 and 333-252513) and Form S-8 (File Nos. 333-202876, 333-218457, 333-226589 and 333-234453) of our report dated February 25, 2022, with respect to our audits of the consolidated financial statements of B. Riley Financial, Inc. and Subsidiaries as of December 31, 2021 and 2020 and for each of the three years ended December 31, 2021 and our report dated February 25, 2022 with respect to our audit of internal control over financial reporting of B. Riley Financial, Inc. as of December 31, 2021, which reports are included in this Annual Report on Form 10-K of B. Riley Financial, Inc. for the year ended December 31, 2021.

/s/ Marcum LLP

Marcum LLP  
New York, NY  
February 25, 2022

**CERTIFICATION OF CO-CHIEF EXECUTIVE OFFICER  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Bryant R. Riley, certify that:

1. I have reviewed this Annual Report on Form 10-K of B. Riley Financial, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 25, 2022

/s/ BRYANT R. RILEY

Bryant R. Riley  
Co-Chief Executive Officer  
Chairman of the Board  
*(Principal Executive Officer)*

**CERTIFICATION OF CO-CHIEF EXECUTIVE OFFICER  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Thomas J. Kelleher, certify that:

1. I have reviewed this Annual Report on Form 10-K of B. Riley Financial, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 25, 2022

/s/ THOMAS J. KELLEHER

Thomas J. Kelleher  
Co-Chief Executive Officer  
(Director)

**CERTIFICATION OF CHIEF FINANCIAL OFFICER  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Phillip J. Ahn, certify that:

1. I have reviewed this Annual Report on Form 10-K of B. Riley Financial, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 25, 2022

/s/ PHILLIP J. AHN

Phillip J. Ahn

Chief Financial Officer and Chief Operating Officer  
(Principal Financial Officer)

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of B. Riley Financial, Inc. (the "Company") during the year ended December 31, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Bryant R. Riley, Co-Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ BRYANT R. RILEY

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Bryant R. Riley  
*Co-Chief Executive Officer*  
*Chairman of the Board*

February 25, 2022

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of B. Riley Financial, Inc. (the "Company") during the year ended December 31, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Thomas J. Kelleher, Co-Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ THOMAS J. KELLEHER

Thomas J. Kelleher  
*Co-Chief Executive Officer*  
*Director*

February 25, 2022

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of B. Riley Financial, Inc. (the "Company") during the year ended December 31, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Phillip J. Ahn, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ PHILLIP J. AHN

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Phillip J. Ahn

*Chief Financial Officer and Chief Operating Officer*

February 25, 2022