

ICAHN ENTERPRISES L.P.  
Form S-4/A  
December 26, 2007

As filed with the Securities and Exchange Commission on December 26, 2007

**Registration No. 333-143929**

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

**AMENDMENT NO. 2  
TO  
FORM S-4**

**REGISTRATION STATEMENT UNDER THE  
SECURITIES ACT OF 1933**

**ICAHN ENTERPRISES L.P. f/k/a  
AMERICAN REAL ESTATE PARTNERS, L.P.**

(Exact Name of Co-registrant as Specified in its Charter)

Delaware  
(State or Other Jurisdiction of  
Incorporation or Organization)

6512  
(Primary Standard Industrial  
Classification Code Number)

13-3398766  
(I.R.S. Employer  
Identification Number)

**ICAHN ENTERPRISES FINANCE CORP. f/k/a  
AMERICAN REAL ESTATE FINANCE CORP.**

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(Exact Name of Co-registrant as Specified in its Charter)

Delaware  
(State or Other Jurisdiction of  
Incorporation or Organization)

6512  
(Primary Standard Industrial  
Classification Code Number)

20-1059842  
(I.R.S. Employer  
Identification Number)

**ICAHN ENTERPRISES HOLDINGS L.P. f/k/a  
AMERICAN REAL ESTATE HOLDINGS  
LIMITED PARTNERSHIP**

(Exact Name of Registrant of Guarantee as Specified in its Charter)

Delaware  
(State or Other Jurisdiction of  
Incorporation or Organization)

6512  
(Primary Standard Industrial  
Classification Code Number)

13-3398767  
(I.R.S. Employer  
Identification Number)

**767 Fifth Avenue, Suite 4700  
New York, New York 10153  
(212) 702-4300**

(Address, Including Zip Code, and Telephone Number,  
Including Area Code, of Registrants Principal Executive Offices)

**Keith A. Meister  
Principal Executive Officer and Vice Chairman of the  
Board**

**767 Fifth Avenue, Suite 4700  
New York, New York 10153**

(Name, Address, Including Zip Code, and Telephone Number,  
Including Area Code, of Agent For Service)

Copies to:

**Julie M. Allen, Esq.  
Proskauer Rose LLP**

**1585 Broadway  
New York, New York 10036  
Telephone: (212) 969-3000  
Facsimile: (212) 969-2900**

**Approximate date of commencement of the proposed sale to the public:** As soon as practicable after the effective date of this Registration Statement.

If the securities being registered on this form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box.

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act of 1933, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act of 1933, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

**The Registrants hereby amend this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrants shall file a further amendment that specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until this Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), determines.**

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**SUBJECT TO COMPLETION, DATED DECEMBER 26, 2007**

**PROSPECTUS**

**\$500,000,000**

**ICAHN ENTERPRISES L.P. f/k/a  
AMERICAN REAL ESTATE PARTNERS, L.P.**

**ICAHN ENTERPRISES FINANCE CORP. f/k/a  
AMERICAN REAL ESTATE FINANCE CORP.**

# OFFER TO EXCHANGE OUR 7 1/8% SENIOR NOTES DUE 2013, WHICH HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, FOR ANY AND ALL OF OUR OUTSTANDING 7 1/8% SENIOR NOTES DUE 2013

## MATERIAL TERMS OF THE EXCHANGE OFFER

We are jointly and severally offering to exchange, upon the terms and subject to the conditions set forth in this prospectus and the accompanying letter of transmittal (which together constitute the exchange offer), \$500,000,000 in aggregate principal amount of our 7 1/8% senior exchange notes due 2013, or the new notes, for \$500,000,000 in aggregate principal amount of our issued and outstanding 7 1/8% senior notes due 2013, or the private notes, and, collectively with the new notes, the notes.

The terms of the new notes are substantially identical to the private notes, except that the transfer restrictions and registration rights relating to the private notes will not apply to the new notes and the new notes will not provide for the payment of liquidated damages under circumstances related to the timing and completion of the exchange offer.

Expires 5:00 p.m., New York City time, on \_\_\_\_\_, 200\_, unless extended.

Subject to the satisfaction or waiver of specified conditions, we will exchange your validly tendered unregistered private notes that have not been withdrawn prior to the expiration of the exchange offer for an equal principal amount of new notes which have been registered under the Securities Act of 1933, as amended, or the Securities Act. The exchange offer is not subject to any condition other than that the exchange offer not violate applicable law or any applicable interpretation of the staff of the Securities and Exchange Commission, or the SEC, and other customary conditions.

You may withdraw your tender of notes at any time before the exchange offer expires.

The exchange of notes should not be a taxable exchange for U.S. federal income tax purposes.

We will not receive any proceeds from the exchange offer.

The new notes will not be traded on any national securities exchange and, therefore, we do not anticipate that an active public market in the new notes will develop.

**Please refer to Risk Factors beginning on page 8 of this document for certain important information.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the notes to be issued in the exchange offer or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.**

The date of this prospectus \_\_\_\_\_, 2007

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# ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we have filed with the Securities and Exchange Commission, or the SEC. This prospectus does not contain all of the information included in the registration statement. The registration statement filed with the SEC includes exhibits that provide more details about the matters discussed in this prospectus. You should carefully read this prospectus, the related exhibits filed with the SEC and any prospectus supplement, together with the additional information described below under the headings Where You Can Find More Information and Incorporation by Reference. This prospectus incorporates certain important business and financial information about us that is not included in or delivered with this prospectus. We will provide without charge to each person to whom a copy of this prospectus is delivered, upon written or oral request of that person, a copy of any and all of this information. Requests for copies should be directed to Investor Relations Department, Icahn Enterprises L.P., 767 Fifth Avenue, Suite 4700, New York, New York 10153; (212) 702-4300. Our web site address is <http://www.icahnenterprises.com>. You should request this information at least five business days in advance of the date on which you expect to make your decision with respect to the exchange offer.

**In any event, in order to obtain timely delivery, you must request this information prior to \_\_\_\_\_, 200\_, which is five business days before the expiration date of the exchange offer.**

You should rely only on the information contained or incorporated by reference in this prospectus and in any accompanying prospectus supplement. We have not authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. You should assume that the information appearing in this prospectus, any prospectus supplement and any other document incorporated by reference is accurate only as of the date on the front cover of those documents. We do not imply that there has been no change in the information contained in this prospectus or in our affairs since that date by delivering this prospectus.

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## FORWARD-LOOKING STATEMENTS

This prospectus and the information incorporated herein by reference contain forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act; Section 27A of the Securities Act; and pursuant to the Private Securities Litigation Reform Act. These forward-looking statements are not historical facts, but rather our beliefs and expectations based on our current expectations, estimates, projections, beliefs and assumptions about our company and industry. Words such as anticipates, expects, intends, plans, seeks, estimates and similar expressions are intended to identify forward-looking statements. These statements are not guarantees of future performance and are subject to risks, uncertainties and other factors, some of which are beyond our control, are difficult to predict and could cause actual results to differ materially from those expressed or forecasted in the forward-looking statements. These risks include those set forth in the section of this prospectus called Risk Factors.

Those risks are representative of factors that could affect the outcome of the forward-looking statements. These and the other factors discussed elsewhere in this prospectus and the documents incorporated by reference herein are not necessarily all of the important factors that may cause our results to differ materially from those expressed in our forward-looking statements. We caution you not to place undue reliance on these forward-looking statements, which reflect our view only as of the respective dates of this prospectus and the documents incorporated herein by reference or other dates that are specified in those documents.

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## SUMMARY

*This summary highlights information contained in this prospectus and in the documents incorporated herein by reference. This summary does not contain all of the information that you should consider before making an investment decision. You should read this entire prospectus carefully, including the Risk Factors section in this prospectus; the financial statements and related notes contained in our Annual Report on Form 10-K and Form 10-K/A for the fiscal year ended December 31, 2006, filed with the SEC on March 6, 2007 and March 16, 2007, respectively; our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2007, June 30, 2007 and September 30, 2007 filed with the SEC on May 10, 2007, August 9, 2007 and November 9, 2007, respectively; and our Current Reports on Form 8-K filed with the SEC on October 24, 2007 and December 5, 2007, and any other documents incorporated herein by reference. As used in this prospectus, we, our, ours, us, company and Icahn Enterprises mean Icahn Enterprises L.P. and, unless the context otherwise indicates, include our consolidated subsidiaries.*

## Our Company

Icahn Enterprises L.P., or Icahn Enterprises, which was formerly known as American Real Estate Partners, L.P., is a master limited partnership formed in Delaware on February 17, 1987. We are a diversified holding company owning subsidiaries engaged in the following operating businesses: Investment Management, Metals, Real Estate and Home Fashion. On April 22, 2007, American Entertainment Properties Corp., or AEP, a wholly owned indirect subsidiary of Icahn Enterprises, entered into a Membership Interest Purchase Agreement with W2007/ACEP Holdings, LLC, an

affiliate of Whitehall Street Real Estate Funds, a series of real estate investment funds affiliated with Goldman, Sachs & Co., or Whitehall Street Real Estate Funds, to sell all of the issued and outstanding membership interests of American Casino & Entertainment Properties, LLC, or ACEP, which comprises our remaining gaming operations. The parties expect to close the transaction by the end of the first quarter of 2008. As a result, our gaming properties are now classified as discontinued operations and thus are not considered a reportable segment of our continuing operations. For the quarter ended September 30, 2007, the three related operating lines of our Real Estate segment were aggregated into one segment, since they were individually immaterial. On August 8, 2007, we acquired general partnership interests in the general partners of certain private investment funds managed and controlled by Carl C. Icahn and the general partnership interests in a newly formed management company. In addition, on November 5, 2007, we acquired 100% of the issued and outstanding capital stock of PSC Metals, Inc., or PSC Metals, a subsidiary of Philip Services Corporation, or Philip. PSC Metals is engaged in transporting, recycling and processing metals. See Business for a further description of these and other transactions.

Our primary business strategy is to continually evaluate our existing operating businesses with a view to maximizing value to our unitholders. We may also seek to acquire additional businesses that are distressed or in out-of-favor industries and will consider the divestiture of businesses. In addition, we invest our available liquidity in debt and equity securities with a view to enhancing returns as we continue to assess further acquisitions of operating businesses.

Our general partner is Icahn Enterprises G.P. Inc., or IEGP, which was formerly known as American Property Investors, Inc., a Delaware corporation, which is indirectly wholly owned by Carl C. Icahn. We own our businesses and conduct our investment activities through a subsidiary limited partnership, Icahn Enterprises Holdings L.P., or IEH, which was formerly known as American Real Estate Holdings Limited Partnership, in which we own a 99% limited partnership interest, and its subsidiaries. IEGP also acts as the general partner for IEH. IEGP has a 1% general partnership interest in each of us and IEH. As of September 30, 2007, affiliates of Mr. Icahn beneficially owned 64,288,061 units representing Icahn Enterprises limited partner interests, or the depositary units, representing approximately 91.2% of the outstanding depositary units, and 10,304,013 cumulative pay-in-kind redeemable preferred units, representing Icahn Enterprises limited partner interests, or the preferred units, representing approximately 86.5% of the outstanding preferred units.

Our depositary units trade on the New York Stock Exchange under its new symbol IEP.

Our principal executive offices are located at 767 Fifth Avenue, Suite 4700, New York, New York 10153. Our phone number is (212) 702-4300. Our web site address is <http://www.icahnenterprises.com>. Information on our website is not part of this prospectus.

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Icahn Enterprises Finance Corp., or IEF, which was formerly known as American Real Estate Finance Corp., a Delaware corporation, is our wholly owned subsidiary. IEF was incorporated on April 19, 2004 and was formed solely for the purpose of serving as co-issuer of debt securities of Icahn Enterprises. IEF does not and will not have any operations or assets and does not and will not have any revenues. IEF's principal business address is 767 Fifth Avenue, Suite 4700, New York, New York 10153 and its telephone number is (212) 702-4300.

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## Summary of the Exchange Offer

### The Offering of the Private Notes

On January 17, 2007, we issued \$500 million in aggregate principal amount of our private notes in an offering not registered under the Securities Act. At the time we issued the private notes on January 17, 2007, we entered into a registration rights agreement in which we agreed to offer to exchange the private notes for new notes which have been registered under the Securities Act. This exchange offer is intended to satisfy that obligation. The private notes issued January 17, 2007 were additional notes issued under an indenture dated February 7, 2005 as described elsewhere in this prospectus. On February 1, 2005, we issued and sold \$480.0 million of 7 1/8% senior notes due 2013, or the existing notes.

### The Exchange Offer

We are offering to exchange the new notes which have been registered under the Securities Act for the private notes. As of this date, there is \$500 million aggregate principal amount of private notes outstanding.

### Required Representations

In order to participate in this exchange offer, you will be required to make certain representations to us in a letter of transmittal, including that:

any new notes will be acquired by you in the ordinary course of your business;

you have not engaged in, do not intend to engage in, and do not have an arrangement or understanding with any person to participate in a distribution of the new notes; and

you are not an affiliate of our company.

### Resale of New Notes

We believe that, subject to limited exceptions, the new notes may be freely traded by you without compliance with the registration and prospectus delivery provisions of the Securities Act, provided that:

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

you are not participating, do not intend to participate and have no arrangement or understanding with any person to participate in the distribution of the new notes; and

you are not an affiliate of our company.

If our belief is inaccurate and you transfer any new note issued to you in the exchange offer without delivering a prospectus meeting the requirements of the Securities Act or without an exemption from registration of your new notes from such requirements, you may incur liability under the Securities Act. We do not assume, or indemnify you against, such liability.

Each broker-dealer that is issued new notes for its own account in exchange for private notes which were acquired by such broker-dealer as a result of market-making or other trading activities also must acknowledge that it has not entered into any arrangement or understanding with us or any of our affiliates to distribute the new



notes and will deliver a prospectus meeting the requirements of the Securities Act in connection with any resale of the new notes issued in the exchange offer.

We have agreed in the registration rights agreement that a broker-dealer may use this prospectus for an offer to resell, resale or other transfer of the new notes issued to it in the exchange offer.

#### Expiration Date

The exchange offer will expire at 5:00 p.m., New York City time, on \_\_\_\_\_, 200\_, unless extended, in which case the term expiration date shall mean the latest date and time to which we extend the exchange offer.

#### Conditions to the Exchange Offer

The exchange offer is subject to certain customary conditions, which may be waived by us. The exchange offer is not conditioned upon any minimum principal amount of private notes being tendered.

#### Procedures for Tendering Private Notes

If you wish to tender your private notes for exchange, you must transmit to Wilmington Trust Company, as exchange agent, at the address set forth in this prospectus under the heading The Exchange Offer Exchange Agent, and on the front cover of the letter of transmittal, on or before the expiration date, a properly completed and duly executed letter of transmittal, which accompanies this prospectus, or a facsimile of the letter of transmittal and either:

the private notes and any other required documentation, to the exchange agent; or

a computer generated message transmitted by means of DTC's Automated Tender Offer Program system and received by the exchange agent and forming a part of a confirmation of book entry transfer in which you acknowledge and agree to be bound by the terms of the letter of transmittal.

If either of these procedures cannot be satisfied on a timely basis, then you should comply with the guaranteed delivery procedures described below. By executing the letter of transmittal, each holder of private notes will make certain representations to us described under The Exchange Offer Procedures for Tendering.

#### Special Procedures for Beneficial Owners

If you are a beneficial owner whose private notes are registered in the name of a broker, dealer, commercial bank, trust company or other nominee and you wish to tender your private notes in the exchange offer, you should contact such registered holder promptly and instruct such registered holder to tender on your behalf. If you wish to tender on your own behalf, you must, prior to completing and executing the letter of transmittal and delivering your private notes, either make appropriate arrangements to register ownership of the private notes in your name or obtain a properly completed bond power from the registered holder. The transfer of registered ownership may take considerable time and may not be able to be completed prior to the expiration date.

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#### Guaranteed Delivery Procedures

If you wish to tender private notes and time will not permit the documents required by the letter of transmittal to reach the exchange agent prior to the expiration date, or the procedure for book-entry transfer cannot be completed on a timely basis, you must tender your private notes according to the guaranteed delivery procedures described under The Exchange Offer Guaranteed Delivery Procedures.

#### Acceptance of Private Notes and Delivery of New Notes

Subject to the conditions described under The Exchange Offer Conditions, we will accept for exchange any and all private notes which are validly tendered in the exchange offer and not withdrawn, prior to 5:00 p.m., New York City time, on the expiration date.

#### Withdrawal Rights

You may withdraw your tender of private notes at any time prior to 5:00 p.m., New York City time, on the expiration date, subject to compliance with the procedures for withdrawal described in this prospectus under the

#### Summary of the Exchange Offer

heading The Exchange Offer Withdrawal of Tenders.

#### Federal Income Tax Consequences

For a discussion of the material federal income tax considerations relating to the exchange of private notes for the new notes as well as the ownership of the new notes, see Certain U.S. Federal Income Tax Consequences.

#### Exchange Agent

The Wilmington Trust Company is serving as the exchange agent. The address, telephone number and facsimile number of the exchange agent are set forth in this prospectus under the heading The Exchange Offer Exchange Agent.

#### Consequences of Failure to Exchange Private Notes

If you do not exchange private notes for new notes, you will continue to be subject to the restrictions on transfer provided in the private notes and in the indenture governing the private notes. In general, the unregistered private notes may not be offered or sold, unless they are registered under the Securities Act, except pursuant to an exemption from, or in a transaction not subject to, the Securities Act and applicable state securities laws.

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## **The New Notes**

The terms of the new notes we are issuing in this exchange offer and the private notes that are outstanding are identical in all material respects except:

the new notes will be registered under the Securities Act;

the new notes will not contain transfer restrictions and registration rights that relate to the private notes.

The new notes will evidence the same debt as the private notes and will be governed by the same indenture.

References to the notes include both private notes and new notes.

#### Issuer

Icahn Enterprises is a holding company. Its operations are conducted through its subsidiaries and substantially all of its assets consist of a 99% limited partnership interest in its subsidiary, IEH, which is a holding company for its operating subsidiaries and investments. The new notes will be guaranteed by IEH.

#### Co-Issuer

IEF is a wholly owned subsidiary of Icahn Enterprises. It was formed solely for the purpose of serving as a co-issuer of debt securities of Icahn Enterprises in order to facilitate offerings of the debt securities. Other than as a co-issuer of the notes, IEF does not and will not have any operations or assets and will not have any revenues. As a result, holders of the new notes should not expect IEF to participate in servicing any obligations on the new notes.

#### Notes Offered

\$500 million in aggregate principal amount of 7 1/8% senior notes due 2013.

#### Maturity

February 15, 2013.

#### Interest Payment Dates

February 15 and August 15 of each year, commencing February 15, 2007.

#### Guarantee

If we cannot make payments on the new notes when they are due, IEH must make them instead. Other than IEH, none of our subsidiaries will guarantee payments on the new notes.

#### Ranking

The new notes and the guarantee will rank equally with all of our and the guarantor's existing and future senior unsecured indebtedness, including our existing notes, and will rank senior to all of our and the guarantor's existing and future subordinated indebtedness. The new notes and the guarantee will be effectively subordinated to all of our and the guarantor's existing and future secured indebtedness, to the extent of the collateral securing such

indebtedness. The new notes and the guarantee also will be effectively subordinated to all indebtedness and other liabilities, including trade payables, of all our subsidiaries other than IEH. As of September 30, 2007, the new notes and the guarantee would have been effectively subordinated to an aggregate of \$371.0 million of IEH's secured debt and our subsidiaries' debt, excluding trade payables.

#### Optional Redemption

We may, at our option, redeem some or all of the new notes at any time on or after February 15, 2009, at the redemption prices listed under "Description of Notes - Optional Redemption."

In addition, prior to February 15, 2008, we may, at our option, redeem up to 35% of the new notes with the proceeds of certain sales of our equity at the redemption price listed under "Description of Notes - Optional Redemption." We may make the

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redemption only if, after the redemption, at least 65% of the aggregate principal amount of the notes issued remains outstanding.

#### Redemption Based on Gaming Laws

The new notes are subject to mandatory disposition and redemption requirements following certain determinations by applicable gaming authorities. On April 22, 2007, AEP entered into a Membership Interest Purchase Agreement with W2007/ACEP Holdings, LLC, an affiliate of Whitehall Street Real Estate Funds, to sell all of the issued and outstanding membership interests of ACEP which comprises our remaining gaming operations. If the sale is consummated, the new notes will no longer be subject to redemption based on gaming laws.

#### Certain Covenants

We will issue the new notes under the indenture with IEH and Wilmington Trust Company, as trustee acting on your behalf, dated February 7, 2005, which was established in connection with our existing notes. The indenture, among other things, restricts our and IEH's ability to:

incur additional debt;

pay dividends and make distributions;

repurchase equity securities;

create liens;

enter into transactions with affiliates; and

merge or consolidate.

Our subsidiaries other than IEH will not be restricted in their ability to incur debt, create liens or merge or consolidate.

#### Absence of Established Market for Notes

The new notes will be new securities for which there is currently no market. We cannot assure you that a liquid market for the new notes will develop or be maintained.

#### Liquidated Damages

Pursuant to the registration rights agreement entered into in connection with the issuance of the private notes, we agreed to register the new notes under the Securities Act. A preliminary registration statement on Form S-4 with respect thereto was filed on June 21, 2007. Pursuant to the registration rights agreement, the registration statement must be declared effective by the SEC on or before November 13, 2007. Since the registration statement was not declared effective in a timely manner, we are required to pay to the holders of the private notes liquidated damages in an amount equal to \$0.05 per week per \$1,000 in principal amount of the private notes for each week or portion thereof that the registration statement has not been declared effective for the first 90-day period following November 13, 2007, with such liquidated damages increasing by an additional \$0.05 per week per \$1,000 in principal amount of the private notes with respect to each subsequent 90-day period until the registration statement has been declared effective, up to a maximum amount of liquidated damages of \$0.50 per week per \$1,000 in principal amount of the private notes. All such accrued liquidated damages shall be paid by us on each February 15th and August 15th until the registration statement has been declared effective.

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## **RISK FACTORS**

*You should consider carefully each of the following risks and all other information contained in this prospectus before deciding to invest in the notes.*

### **Risks Relating to the Exchange Offer**

#### **Holders who fail to exchange their private notes will continue to be subject to restrictions on transfer.**

If you do not exchange your private notes for new notes in the exchange offer, you will continue to be subject to the restrictions on transfer of your private notes described in the legend on your private notes. The restrictions on transfer of your private notes arise because we issued the private notes under exemptions from, or in transactions not subject to, the registration requirements of the Securities Act and applicable state securities laws. In general, you may only offer or sell the private notes if they are registered under the Securities Act and applicable state securities laws, or are offered and sold under an exemption from these requirements. We do not plan to register the private notes under the Securities Act.

#### **Broker-dealers or holders of notes may become subject to the registration and prospectus delivery requirements of the Securities Act.**

Any broker-dealer that:

exchanges its private notes in the exchange offer for the purpose of participating in a distribution of the new notes or resells new notes that were received by it for its own account in the exchange offer

may be deemed to have received restricted securities and may be required to comply with the registration and prospectus delivery requirements of the Securities Act in connection with any resale transaction by that broker-dealer.

Any profit on the resale of the new notes and any commission or concessions received by a broker-dealer may be deemed to be underwriting compensation under the Securities Act. In addition to broker-dealers, any holder of notes that exchanges its private notes in the exchange offer for the purpose of participating in a distribution of the new notes

may be deemed to have received restricted securities and may be required to comply with the registration and prospectus delivery requirements of the Securities Act in connection with any resale transaction by that holder.

## **We cannot guarantee that there will be a trading market for the new notes.**

The new notes are a new issue of securities and currently there is no market for them. We do not intend to apply to have the new notes listed or quoted on any exchange or quotation system. Accordingly, we cannot assure you that a liquid market will develop for the new notes.

The liquidity of any market for the new notes will depend on a variety of factors, including:

the number of holders of the new notes;  
our performance; and  
the market for similar securities and the interest of securities dealers in making a market in the new notes.

### **A liquid trading market may not develop for the new notes.**

Historically, the market for non-investment grade debt has been subject to disruptions that have caused substantial volatility in the prices of securities similar to the new notes. The market, if any, for the new notes may experience similar disruptions that may adversely affect the prices at which you may sell your new notes. If an active trading market does not develop or is not maintained, the market price and liquidity of the new notes may be adversely affected.

To the extent private notes are tendered and accepted in the exchange offer, the trading market, if any, for the private notes that are not so tendered would be adversely affected.

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# **Risks Relating to Our Structure and Indebtedness**

## **Our general partner and its control person could exercise their influence over us to your detriment.**

Mr. Icahn, through affiliates, currently owns 100% of IEGP, our general partner, and approximately 86.5% of our outstanding preferred units and approximately 91.2% of our depositary units and, as a result, has the ability to influence many aspects of our operations and affairs. IEGP also is the general partner of IEH.

The interests of Mr. Icahn, including his interests in entities in which he and we have invested or may invest in the future, may differ from your interests as a noteholder and, as such, he may take actions that may not be in your interest. For example, if we encounter financial difficulties or are unable to pay our debts as they mature, Mr. Icahn's interests might conflict with your interests as a noteholder.

In addition, if Mr. Icahn were to sell, or otherwise transfer, some or all of his interests in us to an unrelated party or group, a change of control could be deemed to have occurred under the terms of the indenture governing the notes which would require us to offer to repurchase all outstanding notes at 101% of their principal amount plus accrued and unpaid interest and liquidated damages, if any, to the date of repurchase. However, it is possible that we will not have sufficient funds at the time of the change of control to make the required repurchase of notes.

## **We have engaged, and in the future may engage, in transactions with our affiliates.**

We have invested and may in the future invest in entities in which Mr. Icahn also invests. We also have purchased and may in the future purchase entities or investments from him or his affiliates. Although IEGP has never received fees in connection with our investments, our partnership agreement allows for the payment of these fees. Mr. Icahn may pursue other business opportunities in industries in which we compete and there is no requirement that any additional business opportunities be presented to us. We continuously identify, evaluate and engage in discussions concerning potential investments and acquisitions, including potential investments in and acquisitions of affiliates of Mr. Icahn. There cannot be any assurance that any potential transactions that we consider will be completed.

## **We and IEH are holding companies and will depend on the businesses of our subsidiaries to satisfy our obligations under the notes.**

We and IEH are holding companies. In addition to cash and cash equivalents, U.S. government and agency obligations, marketable equity and debt securities and other short-term investments, our assets consist primarily of investments in our subsidiaries. Moreover, if we make significant investments in operating businesses, it is likely that we will reduce the liquid assets at Icahn Enterprises and IEH in order to fund those investments and the ongoing operations of our subsidiaries. Consequently, our cash flow and our ability to meet our debt service obligations may depend on the cash flow of our subsidiaries and the payment of funds to us by our subsidiaries in the form of dividends, distributions, loans or otherwise.

The operating results of our subsidiaries may not be sufficient to make distributions to us. In addition, our subsidiaries are not obligated to make funds available to us for payment on the notes or otherwise, and distributions and intercompany transfers from our subsidiaries to us may be restricted by applicable law or covenants contained in debt agreements and other agreements to which these subsidiaries may be subject or enter into in the future. The terms of any borrowings of our subsidiaries or other entities in which we own equity may restrict dividends, distributions or loans to us. For example, we have credit facilities for WestPoint International, Inc., or WPI, our majority owned subsidiary, and our real estate development properties that also restrict dividends, distributions and other transactions with us. To the degree any distributions and transfers are impaired or prohibited, our ability to make payments on the notes and other debt will be limited.

## **We, IEH or our subsidiaries may be able to incur substantially more debt.**

We, IEH or our subsidiaries may be able to incur substantial additional indebtedness in the future. The terms of the indenture governing the notes described herein, as well as the indentures governing our 8.125% senior notes due 2012 and our variable rate senior convertible notes due 2013, do not prohibit us or our subsidiaries from doing so. We and IEH may incur additional indebtedness if we comply with certain financial tests contained in the indentures that govern these notes, including the indenture governing the notes described

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herein. As of September 30, 2007, based upon these tests, we and IEH could have incurred up to approximately \$1.2 billion of additional indebtedness. However, our subsidiaries, other than IEH are not subject to any of the covenants contained in the indentures (including the indenture governing the notes described herein), including the covenant restricting debt incurrence. If new debt is added to our, IEH's and our subsidiaries' current debt levels, the related risks that we, IEH and they now face could intensify.

**The notes will be effectively subordinated to any secured indebtedness, and all the indebtedness and liabilities of our subsidiaries other than IEH.**

The notes will be effectively subordinated to our and IEH's existing and future secured indebtedness to the extent of the collateral securing such indebtedness. We and IEH may be able to incur substantial additional secured indebtedness in the future. The terms of the indenture permit us and IEH to do so. The notes will also be effectively subordinated to all the indebtedness and liabilities, including trade payables, of all of our subsidiaries, other than IEH. In the event of a bankruptcy, liquidation or reorganization of any of our subsidiaries, other than IEH, holders of their indebtedness and their trade creditors will generally be entitled to payment of their claims from the assets of those subsidiaries before any assets are made available for distribution to us.

**Our subsidiaries, other than IEH, will not be subject to any of the covenants in the indenture for the notes and only IEH will guarantee the notes. We may not be able to rely on the cash flow or assets of our subsidiaries to pay our indebtedness.**

Our subsidiaries, other than IEH, will not be subject to the covenants under the indenture for the notes. We may form additional subsidiaries in the future which will not be subject to the covenants under the indenture for the notes. Of our existing and future subsidiaries, only IEH is required to guarantee the notes. Our existing and future non-guarantor subsidiaries may enter into financing arrangements that limit their ability to make dividends, distributions, loans or other payments to fund payments in respect of the notes. Accordingly, we may not be able to rely on the cash flow or assets of our subsidiaries to pay the notes.

## **Risks Relating to the Notes**

**Our failure to comply with the covenants contained in any of our debt instruments, including the indenture governing the notes (including our failure as a result of events beyond our control), could result in an event of default which would materially and adversely affect our financial condition.**

If there were an event of default under one of our debt instruments, the holders of the defaulted debt could cause all amounts outstanding with respect to that debt to be due and payable immediately. In addition, any event of default or declaration of acceleration under one debt instrument could result in an event of default under one or more of our other debt instruments, including the notes. It is possible that, if the defaulted debt is accelerated, our assets and cash flow may not be sufficient to fully repay borrowings under our outstanding debt instruments and we cannot assure you that we would be able to refinance or restructure the payments on those debt securities.

**To service our indebtedness, we will require a significant amount of cash. Our ability to maintain our current cash position or generate cash depends on many factors beyond our control.**

Our ability to make payments on and to refinance our indebtedness, including the notes, and to fund operations will depend on existing cash balances and our ability to generate cash in the future. This, to a certain extent, is subject to general economic, financial, competitive, regulatory and other factors that are beyond our control.

Our current businesses and businesses that we acquire may not generate sufficient cash to service our debt, including

the notes. In addition, we may not generate sufficient cash flow from operations or investments and future borrowings may not be available to us in an amount sufficient to enable us to service our indebtedness, including the notes, or to fund our other liquidity needs. We may need to refinance all or a portion of our indebtedness, including the notes, on or before maturity. We cannot assure you that we will be able to refinance any of our indebtedness, including the notes, on commercially reasonable terms or at all.

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**The indenture does not restrict our ability to change our lines of business or invest the proceeds of asset sales and allows for the sale of all or substantially all of our and IEH's assets without the notes being assumed by the acquirers.**

The indenture does not restrict in any way the businesses in which we may engage and if we were to change our current lines of business, in whole or in part, you would not be entitled to accelerated repayment of the notes. We also are not required to offer to purchase notes with the proceeds from asset sales, including in the event of the sale of all or substantially all of our assets or IEH's assets, and we may reinvest the proceeds without the approval of noteholders. In addition, we and IEH may sell all or substantially all of our and its assets without the notes being assumed by the acquirers.

**We may not have sufficient funds necessary to finance the change of control offer required by the indenture.**

Upon the occurrence of certain specific kinds of change of control events, we will be required to offer to repurchase all outstanding notes at 101% of their principal amount plus accrued and unpaid interest and liquidated damages, if any, to the date of repurchase. Mr. Icahn, through affiliates, currently owns 100% of IEGP and approximately 91.2% of our outstanding depositary units and 86.5% of our outstanding preferred units. If Mr. Icahn were to sell or otherwise transfer some or all of his interests in us to unrelated parties, a change of control could be deemed to have occurred under the terms of the indenture governing the notes. However, it is possible that we will not have sufficient funds at the time of the change of control to make the required repurchase of notes.

**Federal and state statutes allow courts, under specific circumstances, to void guarantees and require noteholders to return payments received from the guarantor.**

Under the federal bankruptcy law and comparable provisions of state fraudulent transfer laws, a guarantee could be voided, or claims in respect of a guarantee could be subordinated to all other debts of that guarantor if, among other things, the guarantor, at the time it incurred the indebtedness evidenced by its guarantee:

received less than reasonably equivalent value or fair consideration for the incurrence of such guarantee; and  
was insolvent or rendered insolvent by reason of such incurrence; or  
was engaged in a business or transaction for which the guarantor's remaining assets constituted unreasonably small capital; or  
intended to incur, or believed that it would incur, debts beyond its ability to pay such debts as they mature.

In addition, any payment by that guarantor pursuant to its guarantee could be voided and required to be returned to the guarantor, or to a fund for the benefit of the creditors of the guarantor.

To service our indebtedness, we will require a significant amount of cash. Our ability to maintain our current cash po



The measures of insolvency for purposes of these fraudulent transfer laws will vary depending upon the law applied in any proceeding to determine whether a fraudulent transfer has occurred. Generally, however, a guarantor would be considered insolvent if:

the sum of its debts, including contingent liabilities, was greater than the fair saleable value of all of its assets; or the present fair saleable value of its assets was less than the amount that would be required to pay its probable liability on its existing debts, including contingent liabilities, as they become absolute and mature; or  
it could not pay its debts as they become due.

On the basis of historical financial information, recent operating history and other factors, we believe that IEH, after giving effect to its guarantee of these notes, will not be insolvent, will not have unreasonably small capital for the businesses in which it is engaged and will not have incurred debts beyond its ability to pay

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such debts as they mature. We cannot assure you, however, as to what standard a court would apply in making these determinations or that a court would agree with our conclusions in this regard.

**As a noteholder you may be required to comply with licensing, qualification or other requirements under gaming laws and could be required to dispose of the notes.**

Currently, ACEP's casino assets are comprised of the Stratosphere Casino Hotel & Tower, the Arizona Charlie's Decatur, the Arizona Charlie's Boulder and the Aquarius Casino Resort. We may be required to disclose the identities of the holders of the notes to the Nevada gaming authorities upon request. The Nevada Gaming Commission may, in its discretion, require a holder of the notes to file an application, be investigated and be found suitable to hold the notes. In addition, the Nevada Gaming Commission may, in its discretion, require the holder of any debt security of a company registered by the Nevada Gaming Commission as a publicly traded corporation to file an application, be investigated and be found suitable to own such debt security.

If a record or beneficial holder of a note is required by the Nevada Gaming Commission to be found suitable, such owner will be required to apply for a finding of suitability within 30 days after request of such gaming authority or within such earlier time prescribed by such gaming authority. The applicant for a finding of suitability must pay all costs of the application and investigation for such finding of suitability. If the Nevada Gaming Commission determines that a person is unsuitable to own such security, then, pursuant to the Nevada Gaming Control Act, we can be sanctioned, including the loss of our approvals, if, without the prior approval of the Nevada Gaming Commission, we:

pay to the unsuitable person any dividend, interest, or any distribution whatsoever;  
recognize any voting right of the unsuitable person with respect to such securities;  
pay the unsuitable person remuneration in any form; or

make any payment to the unsuitable person by way of principal, redemption, conversion, exchange, liquidation or similar transaction.

Each holder of the notes will be deemed to have agreed, to the extent permitted by law, that if the Nevada gaming authorities determine that a holder or beneficial owner of the notes must be found suitable, and if that holder or beneficial owner either refuses to file an application or is found unsuitable, that holder shall, upon our request, dispose of its notes within 30 days after receipt of our request, or earlier as may be ordered by the Nevada gaming authorities. We will also have the right to call for the redemption of notes of any holder at any time to prevent the loss or material impairment of a gaming license or an application for a gaming license at a redemption price equal to:

Federal and state statutes allow courts, under specific circumstances, to void guarantees and require noteholders to

the lesser of the cost paid by the holder or the fair market value of the notes, in each case, plus accrued and unpaid interest and liquidated damages, if any, to the earlier of the date of redemption, or earlier as may be required by the Nevada gaming authorities or the finding of unsuitability by the Nevada gaming authorities; or

such other lesser amount as may be ordered by the Nevada gaming authorities.

We will notify the trustee under the indenture in writing of any redemption as soon as practicable. We will not be responsible for any costs or expenses you may incur in connection with your application for a license, qualification or a finding of suitability, or your compliance with any other requirement of a gaming authority. The indenture also provides that as soon as a gaming authority requires you to sell your notes, you will, to the extent required by applicable gaming laws, have no further right:

to exercise, directly or indirectly, any right conferred by the notes or the indenture; or to receive from us any interest, dividends or any other distributions or payments, or any remuneration in any form, relating to the notes, except the redemption price we refer to above.

On April 22, 2007, AEP entered into a Membership Interest Purchase Agreement with W2007/ACEP Holdings, LLC, an affiliate of Whitehall Street Real Estate Funds, to sell all of the issued and outstanding

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membership interests of ACEP, which comprise our remaining gaming operations. If the transaction is consummated, the above-referenced gaming requirements will be inapplicable.

### **Since we are a limited partnership, you may not be able to pursue legal claims against us in U.S. federal courts.**

We are a limited partnership organized under the laws of the state of Delaware. Under the rules of federal civil procedure, you may not be able to sue us in federal court on claims other than those based solely on federal law, because of lack of complete diversity. Case law applying diversity jurisdiction deems us to have the citizenship of each of our limited partners. Because we are a publicly traded limited partnership, it may not be possible for you to sue us in a federal court because we have citizenship in all 50 U.S. states and operations in many states. Accordingly, you will be limited to bringing any claims in state court. Furthermore, IEF, our corporate co-issuer for the notes, has only nominal assets and no operations. While you may be able to sue the corporate co-issuer in federal court, you are not likely to be able to realize on any judgment rendered against it.

### **We may be subject to the pension liabilities of our affiliates.**

Mr. Icahn, through certain affiliates, currently owns 100% of IEGP and approximately 91.2% of our outstanding depositary units and 86.5% of our outstanding preferred units. Applicable pension and tax laws make each member of a controlled group of entities, generally defined as entities in which there are at least an 80% common ownership interest, jointly and severally liable for certain pension plan obligations of any member of the controlled group. These pension obligations include ongoing contributions to fund the plan, as well as liability for any unfunded liabilities that may exist at the time the plan is terminated. In addition, the failure to pay these pension obligations when due may result in the creation of liens in favor of the pension plan or the Pension Benefit Guaranty Corporation, or the PBGC, against the assets of each member of the controlled group.

As a result of the more than 80% ownership interest in us by Mr. Icahn's affiliates, we and our subsidiaries are subject to the pension liabilities of all entities in which Mr. Icahn has a direct or indirect ownership interest of at least 80%.

One such entity, ACF Industries LLC, or ACF, is the sponsor of several pension plans which, as of December 31, 2006, were not underfunded on an ongoing actuarial basis but would be underfunded by approximately \$87.2 million

As a noteholder you may be required to comply with licensing, qualification or other requirements under gaming law

if those plans were terminated, as most recently reported by the plans' actuaries. These liabilities could increase or decrease, depending on a number of factors, including future changes in promised benefits, investment returns, and the assumptions used to calculate the liability. As members of the controlled group, we would be liable for any failure of ACF to make ongoing pension contributions or to pay the unfunded liabilities upon a termination of the ACF pension plans. In addition, other entities now or in the future within the controlled group that includes us may have pension plan obligations that are, or may become, underfunded and we would be liable for any failure of such entities to make ongoing pension contributions or to pay the unfunded liabilities upon a termination of such plans.

The current underfunded status of the ACF pension plans requires ACF to notify the PBGC of certain reportable events, such as if we cease to be a member of the ACF controlled group, or if we make certain extraordinary dividends or stock redemptions. The obligation to report could cause us to seek to delay or reconsider the occurrence of such reportable events.

Starfire Holding Corporation, or Starfire, which is 100% owned by Mr. Icahn, has undertaken to indemnify us and our subsidiaries from losses resulting from any imposition of certain pension funding or termination liabilities that may be imposed on us and our subsidiaries or our assets as a result of being a member of the Icahn controlled group. The Starfire indemnity (which does not extend to pension liabilities of our subsidiaries that would be imposed on us as a result of our interest in these subsidiaries and not as a result of Mr. Icahn's and his affiliates' more than 80% ownership interest in us) provides, among other things, that so long as such contingent liabilities exist and could be imposed on us, Starfire will not make any distributions to its stockholders that would reduce its net worth to below \$250.0 million. Nonetheless, Starfire may not be able to fund its indemnification obligations to us.

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### **We are subject to the risk of possibly becoming an investment company.**

Because we are a holding company and a significant portion of our assets may, from time to time, consist of investments in companies in which we own less than a 50% interest, we run the risk of inadvertently becoming an investment company that is required to register under the Investment Company Act of 1940, as amended, or the Investment Company Act. Registered investment companies are subject to extensive, restrictive and potentially adverse regulation relating to, among other things, operating methods, management, capital structure, dividends and transactions with affiliates. Registered investment companies are not permitted to operate their business in the manner in which we operate our business, nor are registered investment companies permitted to have many of the relationships that we have with our affiliated companies.

In order not to become an investment company required to register under the Investment Company Act, we monitor the value of our investments and structure transactions with an eye toward the Investment Company Act. As a result, we may structure transactions in a less advantageous manner than if we did not have Investment Company Act concerns, or we may avoid otherwise economically desirable transactions due to those concerns. In addition, events beyond our control, including significant appreciation or depreciation in the market value of certain of our publicly traded holdings, or adverse developments with respect to our ownership of certain of our subsidiaries, such as our potential loss of control of WPI, could result in our inadvertently becoming an investment company.

If it were established that we were an investment company, there would be a risk, among other material adverse consequences, that we could become subject to monetary penalties or injunctive relief, or both, in an action brought by the SEC, that we would be unable to enforce contracts with third parties or that third parties could seek to obtain rescission of transactions with us undertaken during the period it was established that we were an unregistered investment company.

We may be subject to the pension liabilities of our affiliates.

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## **We may become taxable as a corporation.**

We believe that we have been and are properly treated as a partnership for federal income tax purposes. This allows us to pass through our income and deductions to our partners. However, the Internal Revenue Service, or IRS, could challenge our partnership status and we could fail to qualify as a partnership for past years as well as future years.

Qualification as a partnership involves the application of highly technical and complex provisions of the Internal Revenue Code of 1986, as amended, or the Code. For example, a publicly traded partnership is generally taxable as a corporation unless 90% or more of its gross income is qualifying income, which includes interest, dividends, oil and gas revenues, real property rents, gains from the sale or other disposition of real property, gain from the sale or other disposition of capital assets held for the production of interest or dividends, and certain other items. We believe that in all prior years of our existence at least 90% of our gross income was qualifying income and we intend to structure our business in a manner such that at least 90% of our gross income will constitute qualifying income this year and in the future. However, there can be no assurance that such structuring will be effective in all events to avoid the receipt of more than 10% of non-qualifying income. If less than 90% of our gross income constitutes qualifying income, we may be subject to corporate tax on our net income at a federal rate of up to 35% plus possible state taxes. Further, if less than 90% of our gross income constituted qualifying income for past years, we may be subject to corporate-level tax plus interest and possibly penalties. In addition, if we register under the Investment Company Act, it is likely that we would be treated as a corporation for U.S. federal income tax purposes. The cost of paying federal and possibly state income tax, either for past years or going forward, could be a significant liability and would reduce our funds available to make interest and principal payments on our debt securities, including the notes. To meet the qualifying income test, we may structure transactions in a manner that is less advantageous than if this were not a consideration, or we may avoid otherwise economically desirable transactions.

Legislation has been introduced into Congress which, if enacted, could have a material and adverse effect on us. These proposals include legislation which would tax publicly traded partnerships engaged in the asset management business, such as us, as corporations. Other proposals would treat the income from carried interests, when recognized for tax purposes, as ordinary income and as not qualifying as investment income for purposes of the 90% investment income test that publicly traded partnerships must meet to be classified as partnerships. It is unclear whether such legislation will be enacted. Moreover, it is unclear what specific

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provisions may be enacted, including what the effective date will be, and accordingly what any such legislation's impact will be on us. It is possible that if such legislation were enacted we would be treated as an association, taxable as a corporation, which would materially increase our taxes. As an alternative, we might be required to restructure our operations, and possibly dispose of certain businesses, in order to avoid or mitigate the impact of any such legislation.

## **Certain members of our management team may be involved in other business activities that may involve conflicts of interest.**

Certain individual members of our management team may, from time to time, be involved in the management of other businesses, including those owned or controlled by Mr. Icahn and his affiliates. Accordingly, these individuals may focus a portion of their time and attention on managing these other businesses. Conflicts may arise in the future between our interests and the interests of the other entities and business activities in which such individuals are involved.

## Risks Relating to Our Business

### General

In addition to the following risk factors specific to each of our businesses, all of our businesses are subject to the effects of the following:

the continued threat of terrorism;  
economic downturn;  
loss of any of our or our subsidiaries' key personnel;  
the unavailability, as needed, of additional financing; and  
the unavailability of insurance at acceptable rates.

### Gaming

#### **Our sale of ACEP may not be successfully completed.**

On April 22, 2007, AEP entered into a Membership Interest Purchase Agreement with Whitehall Street Real Estate Funds to sell all of the issued and outstanding membership interests of ACEP, which comprises our remaining gaming operations. The transaction is subject to the approval of the Nevada Gaming Commission and the Nevada State Gaming Control Board, as well as customary conditions. The parties expect to close the transaction by the end of the first quarter in 2008; however, we cannot assure you that we will be able to consummate the transaction.

*The following risks relate to our current gaming operations.*

#### **The gaming industry is highly regulated. The gaming authorities and state and municipal licensing authorities have significant control over our operations.**

Our properties currently conduct licensed gaming operations in Nevada. Various regulatory authorities, including the Nevada State Gaming Control Board and the Nevada Gaming Commission, require our properties to hold various licenses and registrations, findings of suitability, permits and approvals to engage in gaming operations and to meet requirements of suitability. These gaming authorities also control approval of ownership interests in gaming operations. These gaming authorities may deny, limit, condition, suspend or revoke our gaming licenses, registrations, findings of suitability or the approval of any of our ownership interests in any of our licensed gaming operations, any of which could have a significant adverse effect on our business, financial condition and results of operations, for any cause they may deem reasonable. If we violate gaming laws or regulations that are applicable to us, we may have to pay substantial fines or forfeit assets. If, in the future, we operate or have an ownership interest in casino gaming facilities located outside of Nevada, we would also be subject to the gaming laws and regulations of those other jurisdictions.

The sale of alcoholic beverages at our gaming properties is subject to licensing and regulation by local authorities. Any limitation, condition, suspension or revocation of, or disciplinary action with respect to, any

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such license would reduce the number of visitors to our casinos to the extent the availability of alcoholic beverages is important to them. Any reduction in our number of visitors will reduce our revenue and cash flow.

## **Rising operating costs for our gaming properties could have a negative impact on our profitability.**

The operating expenses associated with our gaming properties could increase due to some of the following factors:

our properties use significant amounts of electricity, natural gas and other forms of energy, and energy price increases may reduce our profitability;

our properties use significant amounts of water and a water shortage may adversely affect our operations; some of our employees are covered by collective bargaining agreements and we may incur higher costs or work slow-downs or stoppages due to union activities; and

our reliance on slot machine revenues and the concentration of manufacturing of slot machines in certain companies could impose additional costs on us.

## **We face substantial competition in the gaming industry.**

The gaming industry in general, and the markets in which we compete in particular, are highly competitive:

we compete with many world-class destination resorts with greater name recognition and different attractions, amenities and entertainment options;

we compete with the continued growth of gaming on Native American tribal lands;

the existence of legalized gambling in other jurisdictions may reduce the number of visitors to our properties; certain states have legalized, and others may legalize, casino gaming in specific venues, including race tracks and/or in specific areas, including metropolitan areas from which we traditionally attract customers; and

our properties also compete, and will in the future compete, with all forms of legalized gambling.

Many of our competitors have greater financial, selling and marketing, technical and other resources than we do. We may not be able to compete effectively with our competitors and we may lose market share, which could reduce our revenue and cash flow.

## **We cannot guarantee that we will be able to recover our investment made in connection with the acquisition of the Aquarius.**

On May 19, 2006, our wholly owned subsidiary, AREP Laughlin Corporation, acquired the Aquarius Casino Resort, or the Aquarius, from affiliates of Harrah's Operating Company, Inc., or Harrah's, for approximately \$113.6 million, including working capital. Acquisitions generally involve significant risks, including difficulties in the assimilation of the operations, services and corporate culture of the acquired company.

Pursuant to Membership Interest Purchase Agreement that AEP has entered into with Whitehall Street Real Estate Funds to sell the issued and outstanding membership interests of ACEP, we have agreed to make capital expenditures, including \$10.5 million through 2007 to refurbish rooms, upgrade amenities and acquire new gaming equipment for the Aquarius.

There can be no assurance that this acquisition will be profitable or that we will be able to recover our investments either upon the sale of ACEP or, if the sale is not consummated, in our future gaming operations.

## Real Estate Operations

### **Our investment in property development may be more costly than anticipated.**

We have invested and expect to continue to invest in unentitled land, undeveloped land and distressed development properties. These properties involve more risk than properties on which development has been completed. Unentitled land may not be approved for development. These investments do not generate any operating revenue, while costs are incurred to obtain government approvals and develop the properties. Construction may not be completed within budget or as scheduled and projected rental levels or sales prices may not be achieved and other unpredictable contingencies beyond our control could occur. We will not be able to recoup any of such costs until such time as these properties, or parcels thereof, are either disposed of or developed into income-producing assets.

### **We may be subject to environmental liability as an owner or operator of development and rental real estate.**

Under various federal, state and local laws, ordinances and regulations, an owner or operator of real property may become liable for the costs of removal or remediation of certain hazardous substances, pollutants and contaminants released on, under, in or from its property. These laws often impose liability without regard to whether the owner or operator knew of, or was responsible for, the release of such substances. To the extent any such substances are found in or on any property invested in by us, we could be exposed to liability and be required to incur substantial remediation costs. The presence of such substances or the failure to undertake proper remediation may adversely affect the ability to finance, refinance or dispose of such property. We generally conduct a Phase I environmental site assessment on properties in which we are considering investing. A Phase I environmental site assessment involves record review, visual site assessment and personnel interviews, but does not typically include invasive testing procedures such as air, soil or groundwater sampling or other tests performed as part of a Phase II environmental site assessment. Accordingly, there can be no assurance that these assessments will disclose all potential liabilities or that future property uses or conditions or changes in applicable environmental laws and regulations or activities at nearby properties will not result in the creation of environmental liabilities with respect to a property.

## Home Fashion Operations

### **Pending legal proceedings may result in our ownership of WPI's common stock being reduced to less than 50%. A legal action in Delaware challenges the issuance to us of the preferred stock of WPI. Uncertainties arising from these proceedings may adversely affect WPI's operations and prospects and the value of our investment in it.**

As of September 30, 2007, we owned approximately 67.7% of the outstanding shares of common stock and 100% of the preferred stock of WPI. As a result of a decision of the U.S. District Court for the Southern District of New York reversing certain provisions of the Bankruptcy Court order pursuant to which we acquired our ownership of a majority of the common stock of WPI, the proceedings in the Bankruptcy Court on remand and the proceedings filed in the Court of Chancery in the State of Delaware, our percentage of the outstanding shares of common stock of WPI could be reduced to less than 50% and perhaps substantially less and our ownership of the preferred stock of WPI could also be affected.

If we were to lose control of WPI, it could adversely affect the business and prospects of WPI and the value of our investment in it. In addition, we consolidated the balance sheet of WPI as of September 30, 2007 and WPI's results of operations for the period from the date of acquisition (August 8, 2005) through September 30, 2007. If we were to

own less than 50% of the outstanding common stock or the challenge to our preferred stock ownership is successful, we would have to evaluate whether we should consolidate WPI and if so our financial statements could be materially different than as presented as of September 30, 2007, June 30, 2007, March 31, 2007, December 31, 2006 and December 31, 2005 and for the periods then ended.

**WPI acquired its business from its former owners through bankruptcy proceedings. We cannot assure you that it will be able to operate profitably.**

WPI acquired the assets of WestPoint Stevens Inc., or WestPoint Stevens, as part of its bankruptcy proceedings. Certain of the issues that contributed to WestPoint Stevens' filing for bankruptcy, such as intense industry competition, the inability to produce goods at a cost competitive with overseas suppliers, the increasing prevalence of direct sourcing by principal customers and continued incurrence of overhead costs

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associated with an enterprise larger than the current business can profitably support, continue to exist and may continue to affect WPI's business operations and financial condition adversely. In addition, during the protracted bankruptcy proceedings of WestPoint Stevens, several of its customers reduced the volume of business done with WestPoint Stevens. We have installed new management to address these issues, but we cannot assure you that new management will be effective.

WPI operated at a loss during year 2006 as well as for the nine months ended September 30, 2007, and we expect that WPI will continue to operate at a loss during the remainder of 2007. We cannot assure you that it will be able to operate profitably in the future.

**The loss of any of WPI's large customers could have an adverse effect on WPI's business.**

During 2006 and the nine-month period ended September 30, 2007, WPI's six largest customers accounted for approximately 50% and 53%, respectively, of its net sales. Other retailers have indicated that they intend to significantly increase their direct sourcing of home fashion products from foreign sources. The loss of any of WPI's largest accounts, or a material portion of sales to those accounts, would have an adverse effect upon its business, which could be material.

**A portion of WPI's sales are derived from licensed designer brands. The loss of a significant license could have an adverse effect on WPI's business.**

A portion of WPI's sales is derived from licensed designer brands. The license agreements for WPI's designer brands generally are for a term of two or three years. Some of the licenses are automatically renewable for additional periods, provided that sales thresholds set forth in the license agreements are met. The loss of a significant license could have an adverse effect upon WPI's business, which effect could be material. Under certain circumstances, these licenses can be terminated without WPI's consent due to circumstances beyond WPI's control.

**A shortage of the principal raw materials WPI uses to manufacture its products could force WPI to pay more for those materials and, possibly, cause WPI to increase its prices, which could have an adverse effect on WPI's**

Pending legal proceedings may result in our ownership of WPI's common stock being reduced to less than 24.50%. A



## **operations.**

Any shortage in the raw materials WPI uses to manufacture its products could adversely affect its operations. The principal raw materials that WPI uses in the manufacture of its products are cotton of various grades and staple lengths and polyester and nylon in staple and filament form. Since cotton is an agricultural product, its supply and quality are subject to weather patterns, disease and other factors. The price of cotton is also influenced by supply and demand considerations, both domestically and worldwide, and by the cost of polyester. Although WPI has been able to acquire sufficient quantities of cotton for its operations in the past, any shortage in the cotton supply by reason of weather patterns, disease or other factors, or a significant increase in the price of cotton, could adversely affect its operations.

The price of man-made fibers, such as polyester and nylon, is influenced by demand, manufacturing capacity and costs, petroleum prices, cotton prices and the cost of polymers used in producing these fibers. In particular, the effect of increased energy prices may have a direct impact upon the cost of dye and chemicals, polyester and other synthetic fibers. Any significant prolonged petrochemical shortages could significantly affect the availability of man-made fibers and could cause a substantial increase in demand for cotton. This could result in decreased availability of cotton and possibly increased prices and could adversely affect WPI's operations.

### **The home fashion industry is highly competitive and WPI's success depends on WPI's ability to compete effectively in the market.**

The home fashion industry is highly competitive. WPI's future success will, to a large extent, depend on its ability to remain a low-cost producer and to remain competitive. WPI competes with both foreign and domestic companies on, among other factors, the basis of price, quality and customer service. In the home fashion market, WPI competes with many companies. WPI's future success depends on its ability to remain competitive in the areas of marketing, product development, price, quality, brand names, manufacturing capabilities, distribution and order processing. We cannot assure you of WPI's ability to compete effectively in any of these areas. Any failure to compete effectively could adversely affect WPI's sales and, accordingly, its

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operations. Additionally, the easing of trade restrictions over time has led to growing competition from low priced products imported from Asia and Latin America. The lifting of import quotas in 2005 has accelerated the loss of WPI's market share. There can be no assurance that the foreign competition will not grow to a level that could have an adverse effect upon WPI's ability to compete effectively.

### **WPI intends to increase the percentage of its products that are made overseas. There is no assurance that WPI will be successful in obtaining goods of sufficient quality on a timely basis and on advantageous terms. WPI will be subject to additional risks relating to doing business overseas.**

WPI intends to increase the percentage of its products that are made overseas and may face additional risks associated with these efforts. Adverse factors that WPI may encounter include:

- logistical challenges caused by distance;
- language and cultural differences;
- legal and regulatory restrictions;
- the difficulty of enforcing agreements with overseas suppliers;
- currency exchange rate fluctuations;

A shortage of the principal raw materials WPI uses to manufacture its products could force WPI to pay more for those

political and economic instability; and  
potential adverse tax consequences.

**We intend to close substantially all of our retail stores in our continuing restructuring efforts.**

We intend to close substantially all of our retail stores based on a comprehensive evaluation of the stores' long-term growth prospects and their on-going value to the business. On October 18, 2007, we entered into an agreement to sell the inventory at substantially all of WPI's retail stores. To improve WPI's competitive position, WPI intends to continue to restructure its operations to significantly reduce its cost of sales by closing certain plants located in the United States, sourcing goods from lower-cost overseas facilities and, potentially, acquiring manufacturing facilities outside of the United States. There is no assurance that WPI will be successful in its continuing restructuring efforts, the failure of which could adversely impact WPI's profitability and ability to compete effectively.

**There has been consolidation of retailers of WPI's products that may reduce its profitability.**

Retailers of consumer goods have consolidated and become more powerful over time. As buying power has become more concentrated, pricing pressure on vendors has grown. With the ability to buy imported products directly from foreign sources, retailers' pricing leverage has increased and also allowed for growth in private label brands that displace and compete with WPI's proprietary brands. Retailers' pricing leverage has resulted in a decline in WPI's unit pricing and margins and resulted in a shift in product mix to more private label programs. If WPI is unable to diminish the decline in its pricing and margins, it may not be able to achieve or maintain profitability.

**WPI is subject to various federal, state and local environmental and health and safety laws and regulations. If it does not comply with these regulations, it may incur significant costs in the future to become compliant.**

WPI is subject to various federal, state and local laws and regulations governing, among other things, the discharge, storage, handling, usage and disposal of a variety of hazardous and non-hazardous substances and wastes used in, or resulting from, its operations, including potential remediation obligations under those laws and regulations. WPI's operations are also governed by federal, state and local laws and regulations relating to employee safety and health which, among other things, establish exposure limitations for cotton dust, formaldehyde, asbestos and noise, and which regulate chemical, physical and ergonomic hazards in the workplace. Consumer product safety laws, regulations and standards at the federal and state level govern the manufacture and sale of products by WPI. Although WPI does not expect that compliance with any of these laws and regulations will adversely affect its operations, we cannot assure you that regulatory requirements will not become more stringent in the future or that WPI will not incur significant costs to comply with those requirements.

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**Investment Management**

**The historical and unaudited pro forma financial information for our investment management operations is not necessarily indicative of the future performance of our investment management operations.**

The financial results of our investment management operations are primarily driven by the assets under management, or AUM, and the performance of the Private Funds (as defined herein). The historical consolidated financial information contained in our Current Report on Form 8-K filed with the SEC on October 24, 2007 (which we refer to as our October Form 8-K) for our investment management operations is not indicative of the future financial results of our investment management operations. In particular, with respect to the historical returns of our investment management operations:

in the past few years, the rates of returns of certain of the Private Funds have benefited from favorable market conditions and profitable investment opportunities that may not repeat themselves; the rates of return reflect the historical cost configuration of our investment management operations, which may change in the future due to factors beyond our control, including changes in laws; and future returns may be affected by the risks described elsewhere in this report, including risks of the industries and businesses in which a particular fund invests.

In addition, the unaudited pro forma financial information contained in our October Form 8-K with respect to our investment management operations gives effect to our acquisition of the general partnership interests in the General Partners of the Private Funds and New Icahn Management (as each term is defined herein) on August 8, 2007 as if it had occurred on November 1, 2004 for statements of operations purposes and June 30, 2007 for balance sheet purposes. The unaudited pro forma condensed consolidated results do not purport to be indicative of the financial position and results of operations that we will achieve in the future, or that we would have obtained if the acquisition of the interests in the Private Funds and New Icahn Management were effective as of the date indicated above.

**Poor performance of the Private Funds could cause a decline in our investment management operations revenue, may reduce or eliminate our incentive allocations for one or more periods, and may adversely affect AUM for the Private Funds.**

Our revenue from our investment management operations is derived principally from three sources: (1) management fees; (2) incentive allocations, earned based upon the Private Funds performance; and (3) gains or losses in our investments in the Private Funds. In the event that one or more of the Private Funds were to perform poorly, our investment management operations revenue could decline. Moreover, in the event that the performance of one or more Private Funds is negative, our investment management operations revenue could decline and we may not receive any incentive allocation. Furthermore, if a Private Fund has net losses (from net realized and unrealized losses), such losses will be carried forward and incentive allocations will not be earned until such losses are recovered. Moreover, we could experience losses on our investments of our own principal as a result of any such poor performance of the Private Funds. Poor performance could make it more difficult for the Private Funds to raise new capital. Poor performance may cause existing investors in the Private Funds to redeem their investments in the Private Funds. Investors and potential investors in the Private Funds continually assess the Private Funds performance. The ability of the Private Funds to raise capital, and the avoidance of excessive redemption levels, will depend on the Private Funds continued performance at a level that is satisfactory to investors and potential investors in the Private Funds.

**Successful execution of the Private Funds investment strategy involves many risks, certain of which are outside of our control.**

The success of the Private Funds' investment strategy may require, among other things: (i) that the Investment Management and GP Entities (as defined herein) properly identify companies whose securities prices can be improved through corporate and/or strategic action; (ii) that the Private Funds acquire sufficient securities of such companies at a sufficiently attractive price; (iii) that the Private Funds avoid triggering anti-takeover and regulatory obstacles while aggregating their positions; (iv) that management of portfolio companies and other security holders respond positively to our proposals and (v) that the market price of a

The historical and unaudited pro forma financial information for our investment management operations is not neces

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portfolio company's securities increases in response to any actions taken by the portfolio company. We can not assure you that any of the foregoing will succeed.

Our investment management operations are materially affected by conditions in the global markets and economic conditions throughout the world. The global market and economic climate may deteriorate because of many factors beyond the control of the Investment Management and GP Entities, including rising interest rates or inflation, terrorism or political uncertainty. In the event of a market downturn, the Private Funds could be affected in different ways. Furthermore, while difficult market conditions may increase opportunities to make certain distressed asset investments, such conditions may also increase the risk of default with respect to investments held by the Private Funds that have significant debt investments.

**The Private Funds may fail to realize any profits from their investment activities for a considerable period of time and we may lose some or all of the principal amount we invest in the Private Funds. This risk may be magnified due to concentration of investments and investments in undervalued securities.**

Our investment management operations revenue depends on the investments made by the Private Funds. Certain investment positions in which each Private Fund may have an interest will be illiquid. The Private Funds may own restricted or non-publicly traded securities and securities traded on foreign exchanges. These investments could prevent a Private Fund from liquidating unfavorable positions promptly and subject the Private Fund to substantial losses.

At any given time, a Private Fund's assets may become highly concentrated within a particular company, industry, asset category, trading style or financial or economic market. In that event, the Private Fund's portfolio will be more susceptible to fluctuations in value resulting from adverse economic conditions affecting the performance of that particular company, industry, asset category, trading style or economic market than a less concentrated portfolio would be. As a result, the Private Fund's investment portfolio could become concentrated and its aggregate return may be volatile and may be affected substantially by the performance of only one or a few holdings.

The Private Funds seek to invest in securities that are undervalued. The identification of investment opportunities in undervalued securities is a difficult task, and there are no assurances that such opportunities will be successfully recognized or acquired. While investments in undervalued securities offer the opportunity for above-average capital appreciation, these investments involve a high degree of financial risk and can result in substantial losses. Returns generated from the Private Funds' investments may not adequately compensate for the business and financial risks assumed.

From time to time, each Private Fund may invest in bonds or other fixed income securities, such as commercial paper and higher yielding (and, therefore, higher risk) debt securities. It is likely that a major economic recession could disrupt severely the market for such securities and may have an adverse impact on the value of such securities. In addition, it is likely that any such economic downturn could adversely affect the ability of the issuers of such securities to repay principal and pay interest thereon and increase the incidence of default for such securities.

For reasons not necessarily attributable to any of the risks set forth in this prospectus (for example, supply/demand imbalances or other market forces), the prices of the securities in which the Private Funds invest may decline

Successful execution of the Private Funds' investment strategy involves many risks, certain of which are outside of

substantially. In particular, purchasing assets at what may appear to be undervalued levels is no guarantee that these assets will not be trading at even more undervalued levels at a time of valuation or at the time of sale.

## **The use of leverage in investments by the Private Funds poses a significant degree of risk and enhances the possibility of significant loss in the value of the investments in the Private Funds.**

Each Private Fund may leverage its capital if its general partner believes that the use of leverage may enable the Private Fund to achieve a higher rate of return. Accordingly, a Private Fund may pledge its securities in order to borrow additional funds for investment purposes. Each Private Fund may also leverage its investment return with options, short sales, swaps, forwards and other derivative instruments. The amount of borrowings that each Private Fund may have outstanding at any time may be substantial in relation to its capital.

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While leverage may present opportunities for increasing a Private Fund's total return, leverage may increase losses as well. Accordingly, any event that adversely affects the value of an investment by a Private Fund would be magnified to the extent such fund is leveraged. The cumulative effect of the use of leverage by each Private Fund in a market that moves adversely to the Private Fund's investments could result in a substantial loss to the Private Fund that would be greater than if the Private Fund was not leveraged.

In general, the use of short-term margin borrowings results in certain additional risks to the Private Funds. For example, should the securities pledged to brokers to secure any Private Fund's margin accounts decline in value, the Private Fund could be subject to a margin call, pursuant to which it must either deposit additional funds or securities with the broker, or suffer mandatory liquidation of the pledged securities to compensate for the decline in value. In the event of a sudden drop in the value of any of the Private Fund's assets, the Private Fund might not be able to liquidate assets quickly enough to satisfy its margin requirements.

Any of the Private Funds may enter into repurchase and reverse repurchase agreements. When a Private Fund enters into a repurchase agreement, it sells securities issued by the U.S. or a non-U.S. government, or agencies thereof, to a broker-dealer or financial institution, and agrees to repurchase such securities for the price paid by the broker-dealer or financial institution, plus interest at a negotiated rate. In a reverse repurchase transaction, the Private Fund buys securities issued by the U.S. or a non-U.S. government, or agencies thereof, from a broker-dealer or financial institution, subject to the obligation of the broker-dealer or financial institution to repurchase such securities at the price paid by the Private Fund, plus interest at a negotiated rate. The use of repurchase and reverse repurchase agreements by any of the Private Funds involves certain risks. For example, if the seller of securities to a Private Fund under a reverse repurchase agreement defaults on its obligation to repurchase the underlying securities, as a result of its bankruptcy or otherwise, the Private Fund will seek to dispose of such securities, which action could involve costs or delays. If the seller becomes insolvent and subject to liquidation or reorganization under applicable bankruptcy or other laws, the Private Fund's ability to dispose of the underlying securities may be restricted. Finally, if a seller defaults on its obligation to repurchase securities under a reverse repurchase agreement, the Private Fund may suffer a loss to the extent it is forced to liquidate its position in the market, and proceeds from the sale of the underlying securities are less than the repurchase price agreed to by the defaulting seller.

The financing used by each Private Fund to leverage its portfolio will be extended by securities brokers and dealers in the marketplace in which the Private Fund invests. While the Private Fund will attempt to negotiate the terms of these financing arrangements with such brokers and dealers, its ability to do so will be limited. The Private Fund is therefore subject to changes in the value that the broker-dealer ascribes to a given security or position, the amount of margin

The Private Funds may fail to realize any profits from their investment activities for a considerable period of time and

required to support such security or position, the borrowing rate to finance such security or position and/or such broker-dealer's willingness to continue to provide any such credit to the Private Fund. Because each Private Fund currently has no alternative credit facility which could be used to finance its portfolio in the absence of financing from broker-dealers, it could be forced to liquidate its portfolio on short notice to meet its financing obligations. The forced liquidation of all or a portion of the Private Fund's portfolios at distressed prices could result in significant losses to the Private Fund.

**The possibility of increased regulatory focus could result in additional burdens on our investment management operations. Changes in tax law could adversely affect us.**

As a result of recent highly publicized financial scandals, investors have exhibited concerns over the integrity of the U.S. financial markets, and the regulatory environment in which our investment management business operates is subject to further regulation in addition to the rules already promulgated. In particular, in recent years, there has been ongoing debate by U.S. and foreign governments regarding new rules and regulations for investment funds. Our investment management operations may be adversely affected by the enactment of new or revised regulations, or changes in the interpretation or enforcement of rules and regulations imposed by the SEC, other U.S. or foreign governmental regulatory authorities or self-regulatory organizations that supervise the financial markets. For example, the SEC may require all hedge fund managers to register under the Investment Advisors Act of 1940, as amended.

Such changes could place limitations on the type of investor that can invest in the Private Funds. Further, such changes may limit the scope of investment activities that may be undertaken by the Private Funds' managers. Any such changes could increase the

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cost of our investment management operations doing business and/or materially adversely impact its profitability. In addition, the securities and futures markets are subject to comprehensive statutes, regulations and margin requirements. The SEC, other regulators and self-regulatory organizations and exchanges are authorized to take extraordinary actions in the event of market emergencies. The regulation of derivatives transactions and funds that engage in such transactions is an evolving area of law and is subject to modification by government and judicial action. The effect of any future regulatory change on the Private Funds could be substantial and adverse.

In addition, changes in tax law could adversely affect us. Legislation has been introduced in Congress which, if enacted, could have a material and adverse effect on us. Proposals include legislation which would tax publicly traded partnerships engaged in the investment management business, such as us, as corporations. Other proposals would treat the income from carried interests, when recognized for tax purposes, as ordinary income and as not qualifying as investment income for purposes of the 90% investment income test that publicly traded partnerships must meet to be classified as partnerships. It is unclear whether such legislation will be enacted. Moreover, it is unclear what specific provisions may be enacted, including what the effective date will be, and accordingly what any such legislation's impact will be on us. It is possible that if such legislation were enacted we would be treated as an association, taxable as a corporation, which would materially increase our taxes. As an alternative, we might be required to restructure our operations, and possibly dispose of certain businesses, in order to avoid or mitigate the impact of any such legislation.

**The investment management business is intensely competitive.**

The investment management business is intensely competitive, with competition based on a variety of factors, including investment performance, the quality and experience of investment professionals and business reputation.

The use of leverage in investments by the Private Funds poses a significant degree of risk and enhances the possibility

The Private Funds compete for fund investors, investment opportunities and talent with an increasing number of hedge funds, private equity funds, specialized funds, traditional asset managers, commercial banks and other financial institutions.

Several of our competitors have recently raised, or are expected to raise, significant amounts of capital and many of them have similar investment objectives to the Private Funds, which may create additional competition for investment opportunities for the Private Funds and may reduce the size and duration of pricing inefficiencies that many alternative investment strategies seek to exploit. Our competitors may benefit from a lower cost of capital or have higher risk tolerance or different risk assessments, which may allow them to bid more aggressively than us.

The Private Funds may lose investment opportunities in the future if they do not match investment prices, structures and terms offered by competitors. Alternatively, the Private Funds may experience decreased rates of return and increased risks of loss if they match investment price structures and terms offered by competitors. In addition, changes in the global capital markets could diminish the attractiveness of the Private Funds relative to investments in other investment products. This competitive pressure could materially adversely affect the ability of the Investment Management and GP Entities to make successful investments for the Private Funds and reduce the AUM of the Private Funds; either of which would materially adversely impact our investment management operations revenue and earnings.

These and other factors could reduce our investment management operations revenue and earnings and materially adversely affect our investment management operations.

### **The failure of Mr. Icahn to participate in the management of the Private Funds could have a material adverse effect on the Private Funds and on us.**

The success of the Private Funds depends upon the ability of the Investment Management and GP Entities to develop and implement investment strategies that achieve the Private Funds investment objectives. Subjective decisions made by employees of the Investment Management and GP Entities may cause the Private Funds to incur losses or to miss profit opportunities on which the Private Funds would otherwise have capitalized. In the event that Mr. Icahn ceases to participate in the management of the Private Funds, the consequences to the Private Funds and our investment in them could be material and adverse and could lead to the premature termination of the Private Funds.

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In the event that Mr. Icahn dies, or is unable, by reason of illness or injury, to perform his duties as chief executive officer of the General Partners for 90 consecutive days, or for any reason other than death, illness or injury ceases to perform those duties, the investors in each of the Private Funds will have certain redemption rights. The occurrence of such an event could have a material adverse effect on the revenues and earnings of our investment management business, and the ability of the Private Funds to maintain or grow their AUM. Such redemptions could lead possibly to a liquidation of one or more of the Private Funds and a corresponding elimination of our management fees and potential to earn incentive allocations. The loss of Mr. Icahn could, therefore, ultimately result in a loss of substantially all of the earnings of our investment management business.

### **The Private Funds make investments in companies we do not control.**

Investments by the Private Funds include investments in debt or equity securities of publicly traded companies that we do not control. Such investments may be acquired by a Private Fund through open market trading activities or through purchases of securities from the issuer. These investments will be subject to the risk that the company in which the

The investment management business is intensely competitive.

investment is made may make business, financial or management decisions with which the Investment Management and GP Entities disagree or that the majority of stakeholders or the management of the company may take risks or otherwise act in a manner that does not serve the best interests of the Private Fund. In addition, a Private Fund may make investments in which it shares control over the investment with co-investors, which may make it more difficult for it to implement its investment approach or exit the investment when it otherwise would. If any of the foregoing were to occur, the values of the investments by the Private Funds could decrease and our investment management operations revenues could suffer as a result.

## **The ability to hedge investments successfully is subject to numerous risks.**

Although the Investment Management and GP Entities have not generally hedged investments against market risk, the Private Funds may utilize financial instruments, both for investment purposes and for risk management purposes in order to (i) protect against possible changes in the market value of a Private Fund's investment portfolios resulting from fluctuations in the securities markets and changes in interest rates; (ii) protect a Private Fund's unrealized gains in the value of their investment portfolios; (iii) facilitate the sale of any such investments; (iv) enhance or preserve returns, spreads or gains on any investment in the Private Fund's portfolio; (v) hedge the interest rate or currency exchange rate on any of the Private Fund's liabilities or assets; (vi) protect against any increase in the price of any securities the Investment Management and GP Entities anticipate purchasing at a later date or (vii) for any other reason that the Investment Management and GP Entities deem appropriate.

The success of any hedging activities will depend, in part, upon the degree of correlation between the performance of the instruments used in the hedging strategy and the performance of the portfolio investments being hedged. Since the characteristics of many securities change as markets change or time passes, the success of our investment management operations' hedging strategy will also be subject to the ability of the Investment Management and GP Entities to continually recalculate, readjust and execute hedges in an efficient and timely manner. While a Private Fund may enter into hedging transactions to seek to reduce risk, such transactions may result in a poorer overall performance for the Private Fund than if it had not engaged in such hedging transactions. For a variety of reasons, a Private Fund may not seek to establish a perfect correlation between the hedging instruments utilized and the portfolio holdings being hedged. Such an imperfect correlation may prevent the Private Fund from achieving the intended hedge or expose the Private Fund to risk of loss. A Private Fund may not hedge against a particular risk because it does not regard the probability of the risk occurring to be sufficiently high as to justify the cost of the hedge, or because the Investment Management and GP Entities do not foresee the occurrence of the risk.

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### **We are subject to third-party litigation risks attributable to our investment management operations that could result in significant liabilities, which could adversely affect our results of operations, financial condition and liquidity.**

Some of the tactics that the Private Funds may use involve litigation. The Private Funds could be a party to lawsuits they initiate or are initiated by a company in which the Private Funds invest, other shareholders, or state and federal governmental bodies. There can be no assurance that litigation, once begun, would be resolved in favor of the Private Funds.

In addition, we will be exposed to risk of litigation by a Private Fund's investors if the Investment Management and GP Entities' management of the Private Fund is alleged to constitute gross negligence, willful misconduct or dishonesty or breach of contract or organizational documents. Further, the Private Fund may be subject to third-party



litigation arising from investors' dissatisfaction with the performance of the Private Fund or based on claims that it improperly exercised control or influence over portfolio investments. The Private Funds and the Investment Management and GP Entities may also be exposed to the risk of litigation or investigation by investors or regulators relating to transactions which presented conflicts of interest that were not properly addressed. In such actions, we would be obligated to bear legal, settlement and other costs (which may exceed our available insurance coverage). In addition, our rights to indemnification from the applicable Private Funds may be challenged.

Certain of the Private Funds are incorporated or formed under the laws of the Cayman Islands. Cayman Islands laws, particularly with respect to shareholder rights, partner rights and bankruptcy, may differ from the laws of the United States and could change possibly to the detriment of the applicable Private Fund.

**The Private Funds may invest in companies that are based outside of the United States, which may expose the Private Funds to additional risks not typically associated with investing in companies that are based in the United States.**

Investments in securities of non-U.S. issuers (including non-U.S. governments) and securities denominated or whose prices are quoted in non-U.S. currencies pose, to the extent not hedged, currency exchange risks (including blockage, devaluation and non-exchangeability), as well as a range of other potential risks, which could include expropriation, confiscatory taxation, imposition of withholding or other taxes on dividends, interest, capital gains or other income, political or social instability, illiquidity, price volatility and market manipulation. In addition, less information may be available regarding securities of non-U.S. issuers, and non-U.S. issuers may not be subject to accounting, auditing and financial reporting standards and requirements comparable to, or as uniform as, those of U.S. issuers. Transaction costs of investing in non-U.S. securities markets are generally higher than in the United States. There is generally less government supervision and regulation of exchanges, brokers and issuers than there is in the United States. The Private Funds may have greater difficulty taking appropriate legal action in non-U.S. courts. Non-U.S. markets also have different clearance and settlement procedures which in some markets have at times failed to keep pace with the volume of transactions, thereby creating substantial delays and settlement failures that could adversely affect the Private Funds' performance. Investments in Non-U.S. market may result in imposition of non-U.S. taxes or withholding on income and gains recognized with respect to such securities. There can be no assurance that adverse developments with respect to such risks will not materially adversely affect the Private Funds' investments that are held in certain countries or the returns from these investments.

**The Private Funds' investments are subject to numerous additional risks.**

Generally, there are few limitations on the execution of the Private Funds' investment strategies, which are subject to the sole discretion of the Investment Management and GP Entities.

The Private Funds may engage in short-selling, which is subject to the theoretically unlimited risk of loss because there is no limit on how much the price of a security may appreciate before the short position is closed out. The Private Funds may be subject to losses if a security lender demands return of the lent securities and an alternative lending source cannot be found or if the Private Funds are otherwise unable to borrow securities that are necessary to hedge its positions.

The Private Funds may effect transactions through over-the-counter or interdealer markets. The participants in such markets are typically not subject to credit evaluation and regulatory oversight as

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are members of exchange-based markets. This exposes the Private Funds to the risk that a counterparty will not settle a transaction in accordance with its terms and conditions because of a dispute over the terms of the contract (whether or not *bona fide*) or because of a credit or liquidity problem, thus causing the Private Fund to suffer a loss. Such counterparty risk is accentuated for contracts with longer maturities where events may intervene to prevent settlement, or where a Private Fund has concentrated its transactions with a single or small group of its counterparties. The Private Funds are not restricted from dealing with any particular counterparty or from concentrating any or all of the Private Funds transactions with one counterparty. Moreover, Private Funds have no internal credit function which evaluates the creditworthiness of their counterparties. The ability of the Private Funds to transact business with any one or number of counterparties, the lack of any meaningful and independent evaluation of such counterparties' financial capabilities and the absence of a regulated market to facilitate settlement may increase the potential for losses by the Private Funds.

Credit risk may arise through a default by one of several large institutions that are dependent on one another to meet their liquidity or operational needs, so that a default by one institution causes a series of defaults by other institutions. This systemic risk may materially adversely affect the financial intermediaries (such as prime brokers, clearing agencies, clearing houses, banks, securities firms and exchanges) with which the Private Funds interact on a daily basis.

The efficacy of investment and trading strategies depends largely on the ability to establish and maintain an overall market position in a combination of financial instruments. The Private Funds trading orders may not be executed in a timely and efficient manner due to various circumstances, including systems failures or human error. In such event, the Private Funds might only be able to acquire some but not all of the components of the position, or if the overall positions were to need adjustment, the Private Funds might not be able to make such adjustment. As a result, the Private Funds would not be able to achieve the market position selected by the Investment Management and GP Entities and might incur a loss in liquidating their position.

## **Metals Operations**

**The principal markets served by our scrap metals operations are highly competitive. We may have difficulty competing with companies that have a lower cost structure than ours.**

Our scrap metals business operates in a highly competitive environment. We primarily provide services to industrial companies. Many other companies offer the same or similar services and compete with our metals business on a number of bases including, but not limited to: (i) price; (ii) quality of service; (iii) proximity to the consumer; (iv) proximity to sources of supply; (v) local or regional presence; (vi) technology; (vii) safety performance and (viii) financial strength. Many of these competitors have greater financial resources than we do either nationally or in the particular locale in which they operate. In addition, some of these competitors are larger and have more diverse businesses than we do. Some of our foreign competitors may be able to pursue business opportunities without regard for the laws and regulations with which we must comply, such as environmental regulations. These companies may have a lower cost structure, more operating flexibility and consequently they may be able to offer better prices and more services than we can. We cannot assure you that we will be able to compete successfully with these companies.

In addition to larger companies, we compete with many smaller competitors operating locally in this highly fragmented market. Some of the companies may have lower operating costs and may be able to compete more effectively on price.

## **Prices of commodities are volatile and markets are competitive.**

We are exposed to commodity price risk during the period that we have title to products that are held in inventory for processing and/or resale. Prices of commodities, including scrap metals, can be volatile due to numerous factors beyond our control, including:

general economic conditions;  
labor costs;  
competition;  
financial condition of our major customers;

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access and costs associated with transportation systems;  
the availability of imports;  
the availability and relative pricing of scrap metal substitutes; and  
import duties, ocean freight costs, tariffs and currency exchange rates.

In an increasing price environment for raw materials, competitive conditions may limit our ability to pass on price increases to our consumers. In a decreasing price environment for processed scrap, we may not have the ability to fully recoup the cost of raw scrap metal we process and sell to our customers. New entrants into our markets could result in higher purchase prices for raw materials and lower margins from our scrap metals. Prices in the scrap metal industry are established and adjusted monthly by the major steel producers. The price of ferrous scrap is a significant factor influencing the profitability of the scrap metals industry.

**Increases in steel imports could adversely affect the demand for scrap metals domestically.**

Our scrap metals operations may be adversely affected by increases in steel imports into the United States, which will have an adverse impact on domestic steel production and a corresponding adverse impact on the demand for scrap metals domestically. Additionally, our scrap metals business could be negatively affected by strengthening in the U.S. dollar or increased freight costs which could negatively impact export sales and a stronger U.S. dollar could also attract imports of scrap or scrap substitutes, reducing demand for our scrap metals.

**A significant increase in the use of scrap metals alternatives by consumers of processed scrap metals could reduce demand for our products.**

During periods of high demand for scrap metals, tightness can develop in the supply and demand for ferrous scrap. The relative scarcity of ferrous scrap, particularly prime or industrial grades, and its high price during such periods have created opportunities for producers of alternatives to scrap metals, such as pig iron and direct reduced iron pellets and others. Although these alternatives have not been a major factor in the industry to date, we cannot assure you that the use of alternatives to scrap metals may not proliferate in the future if the prices for scrap metals rise, if the supplies of available unprepared ferrous scrap tighten, or if costs to import scrap decline precipitously.

**The profitability of our scrap recycling operations depends, in part, on the availability of an adequate source of supply.**

As part of our scrap metals operations, we procure scrap inventory from numerous sources. These suppliers generally are not bound by long-term contracts and have no obligation to sell scrap metals to us. In periods of low industry prices, suppliers may elect to hold scrap to wait for higher prices or intentionally slow their scrap collection activities.

If a substantial number of scrap suppliers cease selling scrap metals to us, our scrap metals operations could be materially and adversely affected. In addition, a slowdown of industrial production in the United States would reduce the supply of industrial grades of scrap metal to the scrap metals recycling industry, resulting in our metals operations having less scrap to process and market.

## **Our scrap metals operations present significant risk of injury or death.**

Because of the heavy industrial activities conducted at our facilities, there exists a risk of serious injury or death to our employees or other visitors of our scrap metals operations, notwithstanding the safety precautions we take. Our scrap metals operations are subject to regulation by federal, state and local agencies responsible for employee health and safety, including the Occupational Safety and Health Administration. While we have in place policies to minimize such risks, we may nevertheless be unable to avoid material liabilities for any death or injury that may occur in the future and these types of incidents may have a material adverse effect on our scrap metals operations.

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## **Our scrap metals operations are subject to stringent regulations, particularly under applicable environmental laws.**

We are subject to comprehensive local, state, federal statutory and regulatory environmental requirements relating to, among others:

- the acceptance, storage, handling and disposal of solid, hazardous and Toxic Substances Control Act waste;
- the discharge of materials into air;
- the management and treatment of wastewater and storm water;
- the remediation of soil and groundwater contamination;
- the restoration of natural resource damages; and
- the protection of our employees' health and safety.

We believe that we are currently in material compliance with applicable statutes and regulations governing the protection of human health and the environment, including employee health and safety. We can give you no assurance, however, that we will continue to be in material compliance or avoid material fines, penalties and expenses associated with compliance issues in the future.

Such laws and regulations also require manifests to be completed and delivered in connection with any shipment of prescribed materials so that the movement and disposal of such materials can be traced and the persons responsible for any mishandling of such materials identified. Regulatory requirements may also be imposed as conditions of operating permits or licenses both initially and upon renewal or modification. As part of our scrap metals business, we must properly remove, handle, recycle or dispose of waste materials or incur liability. Transportation, transfer, storage and disposal of waste is difficult and accidents may occur. These laws and regulations are stringent and are likely to become more stringent. Existing and new laws and regulations may require our scrap metals operations to modify, supplement, replace or curtail its operating methods or to modify or replace facilities or equipment at costs which may be substantial without any corresponding increase in revenues.

Hazardous substances are present in some of the processing, transfer and storage facilities owned by our scrap metal business and landfill facilities used by our scrap metals business. Remediation may be required at these sites at substantial cost. We cannot assure you that the ultimate cost and expense of corrective action will not substantially exceed any reserves and have a material adverse impact on our scrap metals operations. In addition, governments have from time to time required companies to remediate sites where materials were properly disposed because those governments have instituted higher standards.

We are required to obtain, and must comply with, various permits and licenses to conduct our scrap metals operations. Failure to obtain or violations of any permit or license, if not remedied, could result in our incurring substantial fines, suspension of our scrap metals operations or closure of a site. Further, our scrap metals operations are conducted

primarily outdoors and as such, depending on the nature of the ground cover, involve the risk of releases of wastes and other regulated materials to the soil and, possibly, to groundwater. From time to time, as part of our continuous improvement programs, we incur costs to improve environmental control systems.

## **Our scrap metals operations may be subject to public opposition and adverse publicity that could delay or limit our scrap metals development and expansion.**

A high level of public concern exists over industrial by-products recovery operations including the location and operation of transfer, processing, storage and disposal facilities and the collection, processing or handling of industrial by-products and waste materials, particularly hazardous materials. Zoning, permit and licensing applications and proceedings and regulatory enforcement proceedings are all matters open to public scrutiny and comment. As a result, from time to time, our scrap metals operations may be subject to citizen opposition and adverse publicity that may have a negative effect on operations and delay or limit the expansion and developing of operating properties, and could have a material adverse effect on our scrap metals operations.

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## **We may be unable to obtain adequate environmental impairment insurance.**

Our scrap metals business is subject to potential liability for personal injuries caused by releases of hazardous substances and for remediation of risks posed by hazardous substances. Consistent with industry trends, we may be unable to obtain an adequate amount of environmental impairment insurance for our scrap metals business at a reasonable premium to cover liability to third persons for environmental damage. Accordingly, if our scrap metals operations were to incur liability for environmental damage either not provided for under such coverage or in excess of such coverage, our scrap metals operations could be materially or adversely affected.

## **Investments**

## **We may not be able to identify suitable investments, and our investments may not result in favorable returns or may result in losses.**

Our partnership agreement allows us to take advantage of investment opportunities we believe exist outside of our operating businesses. The equity securities in which we may invest may include common stock, preferred stock and securities convertible into common stock, as well as warrants to purchase these securities. The debt securities in which we may invest may include bonds, debentures, notes, or non-rated mortgage-related securities, municipal obligations, bank debt and mezzanine loans. Certain of these securities may include lower rated or non-rated securities which may provide the potential for higher yields and therefore may entail higher risk and may include the securities of bankrupt or distressed companies. In addition, we may engage in various investment techniques, including derivatives, options and futures transactions, foreign currency transactions, short sales and leveraging for either hedging or other purposes. We may concentrate our activities by owning significant or controlling interest in certain investments. We may not be successful in finding suitable opportunities to invest our cash and our strategy of investing in undervalued assets may expose us to numerous risks.

We have entered into a covered affiliate agreement, pursuant to which we (and certain of our subsidiaries) have agreed, in general, to be bound by certain restrictions on our investments in any assets that the General Partners deem

Our scrap metals operations are subject to stringent regulations, particularly under applicable environmental laws.

suitable for the Private Funds, other than government and agency bonds, cash equivalents and investments in non-public companies. We and our subsidiaries will not be restricted from making investments in the securities of certain companies in which Mr. Icahn or companies he controlled had an interest in as of the date of the initial launch of the Private Funds, and companies in which we had an interest as of the date of acquisition on August 8, 2007. We and our subsidiaries, either alone or acting together with a group, will not be restricted from (i) acquiring all or any portion of the assets of any public company in connection with a negotiated transaction or series of related negotiated transactions or (ii) engaging in a negotiated merger transaction with a public company and, pursuant thereto, conducting and completing a tender offer for securities of the company.

## **Our investments may be subject to significant uncertainties.**

Our investments may not be successful for many reasons including, but not limited to:

fluctuation of interest rates;  
lack of control in minority investments;  
worsening of general economic and market conditions;  
lack of diversification;  
fluctuation of U.S. dollar exchange rates; and  
adverse legal and regulatory developments that may affect particular businesses.

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## **USE OF PROCEEDS**

We will not receive any proceeds from the exchange of the new notes for the private notes pursuant to the exchange offer. On January 17, 2007, we issued and sold the private notes in a private offering, receiving net proceeds of approximately \$492.1 million, after deducting selling and offering expenses.

We intend to use the net proceeds of the private offering for general business purposes, including to pursue our primary business strategy of acquiring undervalued assets in either our existing lines of business or other businesses and to provide additional capital to grow our existing business.

We will use the net proceeds of the private offering and conduct our activities in a manner so as not to be deemed an investment company under the Investment Company Act. Generally, this means that we do not intend to enter the business of investing in securities and that no more than 40% of our total assets will be invested in securities. The portion of our assets invested in each type of security or any single issuer or industry will not be limited.

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## **THE EXCHANGE OFFER**

### **Purpose of the Exchange Offer**

In connection with the sale of the private notes, we and the initial purchaser entered into a registration rights agreement in which we and IEH agreed to:

file a registration statement with the SEC with respect to the exchange of the private notes for new notes, or the exchange offer registration statement, no later than July 16, 2007; use all commercially reasonable efforts to have the exchange offer registration statement declared effective by the SEC on or prior to November 13, 2007; and commence the offer to exchange new notes for the private notes and use all commercially reasonable efforts to issue on or prior to 30 business days, or longer if required by the federal securities laws, after the date on which the exchange offer registration statement was declared effective by the SEC, new notes in exchange for all private notes tendered prior to that date in the exchange offer.

We are making the exchange offer to satisfy certain of our obligations under the registration rights agreement. We filed a copy of the registration rights agreement as an exhibit to the exchange offer registration statement that includes this prospectus.

Pursuant to the registration rights agreement, we agreed to register the new notes under the Securities Act. A preliminary registration statement on Form S-4 with respect thereto was filed on June 21, 2007. Pursuant to the registration rights agreement, the registration statement must be declared effective by the SEC on or before November 13, 2007. Since the registration statement was not declared effective in a timely manner, we are required to pay to the holders of the private notes liquidated damages in an amount equal to \$0.05 per week per \$1,000 in principal amount of the private notes for each week or portion thereof that the registration statement has not been declared effective for the first 90-day period following November 13, 2007, with such liquidated damages increasing by an additional \$0.05 per week per \$1,000 in principal amount of the private notes with respect to each subsequent 90-day period until the registration statement has been declared effective, up to a maximum amount of liquidated damages of \$0.50 per week per \$1,000 in principal amount of the private notes. All such accrued liquidated damages shall be paid by us on each February 15th and August 15th until the registration statement has been declared effective.

## Resale of Exchange Notes

Under existing interpretations of the Securities Act by the staff of the SEC contained in several no-action letters to third parties, we believe that the new notes will generally be freely transferable by holders who have validly participated in the exchange offer without further registration under the Securities Act (assuming the truth of certain representations required to be made by each holder of notes, as set forth below). For additional information on the staff's position, we refer you to the following no-action letters: Exxon Capital Holdings Corporation, available April 13, 1988; Morgan Stanley & Co. Incorporated, available June 5, 1991; and Shearman & Sterling, available July 2, 1993. However, any purchaser of private notes who is one of our affiliates or who intends to participate in the exchange offer for the purpose of distributing the new notes or who is a broker-dealer who purchased private notes from us to resell pursuant to Rule 144A or any other available exemption under the Securities Act:

will not be able to tender its private notes in the exchange offer;  
will not be able to rely on the interpretations of the staff of the SEC; and  
must comply with the registration and prospectus delivery requirements of the Securities Act in connection with any sale or transfer of the private notes unless such sale or transfer is made pursuant to an exemption from these requirements.

If you wish to exchange private notes for new notes in the exchange offer, you will be required to make representations in a letter of transmittal which accompanies this prospectus, including that:

you are not our affiliate (as defined in Rule 405 promulgated under the Securities Act);  
any new notes to be received by you will be acquired in the ordinary course of your business;

you have no arrangement or understanding with any person to participate in the distribution of the new notes in violation of the provisions of the Securities Act;

if you are not a broker-dealer, you are not engaged in, and do not intend to engage in, a distribution of new notes; and if you are a broker-dealer, you acquired the private notes for your own account as a result of market-making or other trading activities (and as such, you are a participating broker-dealer), you have not entered into any arrangement or understanding with Icahn Enterprises or an affiliate of Icahn Enterprises to distribute the new notes and you will deliver a prospectus meeting the requirements of the Securities Act in connection with any resale of the new notes.

Rule 405 promulgated under the Securities Act provides that an affiliate of, or person affiliated with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

The SEC has taken the position that participating broker-dealers may be deemed to be underwriters within the meaning of the Securities Act, and accordingly may fulfill their prospectus delivery requirements with respect to the new notes, other than a resale of an unsold allotment from the original sale of the notes, with the prospectus contained in the exchange offer registration statement. Under the registration rights agreement, we have agreed to use commercially reasonable efforts to allow participating broker-dealers and other persons, if any, subject to similar prospectus delivery requirements, to use the prospectus contained in the exchange offer registration statement in connection with the resale of the new notes for a period of 270 days from the issuance of the new notes.

## Terms of the Exchange Offer

This prospectus and the accompanying letter of transmittal contain the terms and conditions of the exchange offer. Upon the terms and subject to the conditions set forth in this prospectus and in the accompanying letter of transmittal, we will accept for exchange all private notes which are properly tendered and not withdrawn on or prior to 5:00 p.m., New York City time, on the expiration date. After authentication of the new notes by the trustee or an authentication agent, we will issue and deliver \$1,000 principal amount of new notes in exchange for each \$1,000 principal amount of outstanding private notes accepted in the exchange offer. Holders may tender some or all of their private notes in the exchange offer in denominations of \$1,000 and integral multiples thereof.

The form and terms of the new notes are identical in all material respects to the form and terms of the private notes, except that:

1. the offering of the new notes has been registered under the Securities Act;
2. the new notes generally will not be subject to transfer restrictions or have registration rights; and certain provisions relating to liquidated damages on the private notes provided for under certain circumstances will be eliminated.

The new notes will evidence the same debt as the private notes. The new notes will be issued under and entitled to the benefits of the indenture.

As of the date of this prospectus, \$500 million in aggregate principal amount of the additional private notes issued on January 17, 2007 is outstanding. In connection with the issuance of the private notes, we made arrangements for the private notes to be issued and transferable in book-entry form through the facilities of DTC, acting as a depository.

The new notes will also be issuable and transferable in book-entry form through the DTC.

The exchange offer is not conditioned upon any minimum aggregate principal amount of private notes being tendered.

However, our obligation to accept private notes for exchange pursuant to the exchange offer is subject to certain customary conditions that we describe under Conditions below.

Holders who tender private notes in the exchange offer will not be required to pay brokerage commissions or fees or, subject to the instructions in the letter of transmittal, transfer taxes with respect to the



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exchange of private notes pursuant to the exchange offer. We will pay all charges and expenses, other than certain applicable taxes, in connection with the exchange offer. See Solicitation of Tenders; Fees and Expenses for more detailed information regarding the expenses of the exchange offer.

By executing or otherwise becoming bound by the letter of transmittal, you will be making the representations described under Procedures for Tendering below.

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

The term expiration date will mean 5:00 p.m., New York City time, on , 200\_, unless we, in our sole discretion, extend the exchange offer, in which case the term expiration date will mean the latest date and time to which we extend the exchange offer.

To extend the exchange offer, we will:

notify the exchange agent of any extension orally or in writing; and  
notify the registered holders of the private notes by means of a press release or other public announcement, each before 9:00 a.m., New York City time, on the next business day after the previously scheduled expiration date.

We reserve the right, in our reasonable discretion:

to delay accepting any private notes;  
to extend the exchange offer; or

if any conditions listed below under Conditions are not satisfied, to terminate the exchange offer by giving oral or written notice of the delay, extension or termination to the exchange agent.

We will follow any delay in acceptance, extension or termination as promptly as practicable by oral or written notice to the registered holders. If we amend the exchange offer in a manner we determine constitutes a material change, we will promptly disclose the amendment in a prospectus supplement that we will distribute to the registered holders.

## **Interest on the New Notes**

Interest on the new notes will accrue from the last interest payment date on which interest was paid on the private notes surrendered in exchange for new notes or, if no interest has been paid on the private notes, from the issue date of the private notes, January 17, 2007. Interest on the new notes will be payable semi-annually on February 15 and August 15 of each year, commencing on February 15, 2007.

## **Procedures for Tendering**

You may tender your private notes in the exchange offer only if you are a registered holder of private notes. To tender in the exchange offer, you must:

complete, sign and date the letter of transmittal or a facsimile of the letter of transmittal;  
have the signatures thereof guaranteed if required by the letter of transmittal; and  
mail or otherwise deliver the letter of transmittal or such facsimile to the exchange agent, at the address listed below under Exchange Agent for receipt prior to the expiration date.

In addition, either:

the exchange agent must receive certificates for the private notes along with the letter of transmittal into its account at DTC pursuant to the procedure described under Book-Entry Transfer before the expiration date; the exchange agent must receive a timely confirmation of a book-entry transfer, if the procedure is available, into its account at DTC pursuant to the procedure described under Book-Entry Transfer before the expiration date; or you must comply with the procedures described under Guaranteed Delivery Procedures.

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Your tender, if not withdrawn before the expiration date, will constitute an agreement between you and us in accordance with the terms and subject to the conditions described in this prospectus and in the letter of transmittal.

The method of delivery of private notes and the letter of transmittal and all other required documents to the exchange agent is at your election and risk. We recommend that, instead of delivery by mail, you use an overnight or hand delivery service. In all cases, you should allow sufficient time to ensure delivery to the exchange agent prior to the expiration date. You should not send letters of transmittal or private notes to us. You may request that your respective brokers, dealers, commercial banks, trust companies or nominees effect the transactions described above for you.

If you are a beneficial owner whose private notes are registered in the name of a broker, dealer, commercial bank, trust company or other nominee and you wish to tender your private notes, you should contact such registered holder promptly and instruct such registered holder to tender on your behalf. If you wish to tender on your own behalf, prior to completing and executing the letter of transmittal and delivering your private notes, you must either:

make appropriate arrangements to register ownership of your private notes in your name; or  
obtain a properly completed bond power from the registered holder.

The transfer of record ownership may take considerable time unless private notes are tendered:

by a registered holder who has not completed the box entitled Special Registration Instructions or Special Delivery Instruction on the letter of transmittal; or

for the account of an Eligible Institution which is either:

a member firm of a registered national securities exchange or of the National Association of Securities Dealers, Inc.;  
a commercial bank or trust company located or having an office or correspondent in the United States; or  
otherwise an eligible guarantor institution within meaning of Rule 17Ad-15 under the Exchange Act.

An Eligible Institution must guarantee the signatures on a letter of transmittal or a notice of withdrawal described below under Withdrawal of Tenders.

If the letter of transmittal is signed by a person other than the registered holder, such private notes must be endorsed or accompanied by appropriate bond powers which authorize such person to tender the private notes on behalf of the registered holder, in either case signed as the name of the registered holder or holders appears on the private notes.

If the letter of transmittal or any private notes or bond powers are signed or endorsed by trustees, executors, administrators, guardians, attorneys-in-fact, officers of corporations or others acting in a fiduciary or representative capacity, such persons should so indicate when signing, and unless waived by us, they must submit evidence satisfactory to us of their authority to so act with the letter of transmittal.

The letter of transmittal will include representations to us as set forth under Resale of Exchange Notes.

You should note that:

all questions as to the validity, form, eligibility, including time of receipt, acceptance and withdrawal of the tendered private notes will be determined by us in our sole discretion, which determination will be final and binding;

we reserve the absolute right to reject any and all private notes not properly tendered or any private notes the acceptance of which would, in our judgment or the judgment of our counsel, be unlawful;

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we also reserve the absolute right to waive any irregularities or conditions of tender as to particular private notes. Our interpretation of the terms and conditions of the exchange offer, including the instructions in the letter of transmittal, will be final and binding on all parties. Unless waived, any defects or irregularities in connection with tenders of private notes must be cured within such time as we shall determine;

although we intend to notify holders of defects or irregularities with respect to any tender of private notes, neither we, the exchange agent nor any other person shall be under any duty to give notification of any defect or irregularity with respect to tenders of private notes, nor shall any of them incur any liability for failure to give such notification; and tenders of private notes will not be deemed to have been made until such irregularities have been cured or waived. Any private notes received by the exchange agent that we determine are not properly tendered or the tender of which is otherwise rejected by us and as to which the defects or irregularities have not been cured or waived by us will be returned by the exchange agent to the tendering holder unless otherwise provided in the letter of transmittal, as soon as practicable following the expiration date.

### **Book-Entry Transfer**

The exchange agent will make a request promptly after the date of this prospectus to establish accounts with respect to the private notes at DTC for the purpose of facilitating the exchange offer. Any financial institution that is a participant in DTC's system may make book-entry delivery of private notes by causing DTC to transfer such private notes into the exchange agent's account with respect to the private notes in accordance with DTC's Automated Tender Offer Program procedures for such transfer. However, the exchange for the private notes so tendered will only be made after timely confirmation of such book-entry transfer of private notes into the exchange agent's account, and timely receipt by the exchange agent of an agent's message and any other documents required by the letter of transmittal. The term "agent's message" means a message, transmitted by DTC and received by the exchange agent and forming a part of the confirmation of a book-entry transfer, which states that DTC has received an express acknowledgment from a participant that is tendering private notes that such participant has received the letter of transmittal and agrees to be bound by the terms of the letter of transmittal, and that we may enforce such agreement against the participant.

Although delivery of private notes may be effected through book-entry transfer into the exchange agent's account at DTC, you must transmit and the exchange agent must receive, the letter of transmittal (or facsimile thereof) properly completed and duly executed with any required signature guarantee and all other required documents prior to the expiration date, or you must comply with the guaranteed delivery procedures described below. Delivery of documents to DTC does not constitute delivery to the exchange agent.

### **Guaranteed Delivery Procedures**

If you wish to tender your private notes but your private notes are not immediately available, or time will not permit your private notes or other required documents to reach the exchange agent before the expiration date, or the procedure for book-entry transfer cannot be completed on a timely basis, you may affect a tender if:

1. the tender is made through an Eligible Institution;
2. prior to the expiration date, the exchange agent receives from such Eligible Institution a properly completed and duly executed notice of guaranteed delivery, by facsimile transmittal, mail or hand delivery: stating the name and address of the holder, the certificate number or numbers of such holder's private notes and the

principal amount of such private notes tendered;

stating that the tender is being made thereby; and

guaranteeing that, within three New York Stock Exchange trading days after the expiration date, the letter of transmittal, or a facsimile thereof, together with the certificate(s) representing the private notes to be tendered in proper form for transfer, or confirmation of a book-entry transfer

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into the exchange agent's account at DTC of private notes delivered electronically, and any other documents required by the letter of transmittal, will be deposited by the Eligible Institution with the exchange agent; and

such properly completed and executed letter of transmittal, or a facsimile thereof, together with the certificate(s) representing all tendered private notes in proper form for transfer, or confirmation of a book-entry transfer into the exchange agent's account at DTC of private notes delivered electronically and all other documents required by the letter of transmittal are received by the exchange agent within three New York Stock Exchange trading days after the expiration date.

Upon request, the exchange agent will send to you a notice of guaranteed delivery if you wish to tender your private notes according to the guaranteed delivery procedures described above.

## **Withdrawal of Tenders**

Except as otherwise provided in this prospectus, you may withdraw tenders of private notes at any time prior to the expiration date.

For a withdrawal to be effective, the exchange agent must receive a written or facsimile transmission notice of withdrawal at its address set forth in this prospectus prior to the expiration date. Any such notice of withdrawal must:

specify the name of the person who deposited the private notes to be withdrawn; identify the private notes to be withdrawn, including the certificate number or number and principal amount of such private notes or, in the case of private notes transferred by book-entry transfer, the name and number of the account at DTC to be credited; and be signed in the same manner as the original signature on the letter of transmittal by which such private notes were tendered, including any required signature guarantee.

We will determine in our sole discretion all questions as to the validity, form and eligibility, including time of receipt, of such withdrawal notices, and our determination shall be final and binding on all parties. We will not deem any properly withdrawn private notes to have been validly tendered for purposes of the exchange offer, and we will not issue new notes with respect to those private notes unless you validly retender the withdrawn private notes. You may retender properly withdrawn private notes following one of the procedures described above under "Procedures for Tendering" at any time prior to the expiration date.

## **Conditions**

Notwithstanding any other term of the exchange offer, we will not be required to accept for exchange, or exchange the new notes for, any private notes, and may terminate the exchange offer as provided in this prospectus before the acceptance of the private notes, if:

the exchange offer violates applicable law, rules or regulations or an applicable interpretation of the staff of the SEC; an action or proceeding has been instituted or threatened in any court or by any governmental agency which might materially impair our ability to proceed with the exchange offer;

there has been proposed, adopted or enacted any law, rule or regulation that, in our reasonable judgment would impair materially our ability to consummate the exchange offer; or  
all governmental approvals which we deem necessary for the completion of the exchange offer have not been obtained.

If we determine in our reasonable discretion that any of these conditions are not satisfied, we may:

refuse to accept any private notes and return all tendered private notes to you;  
extend the exchange offer and retain all private notes tendered before the exchange offer expires, subject, however, to your rights to withdraw the private notes; or

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waive the unsatisfied conditions with respect to the exchange offer and accept all properly tendered private notes that have not been withdrawn.

If the waiver constitutes a material change to the exchange offer, we will promptly disclose the waiver by means of a prospectus supplement that we will distribute to the registered holders of the private notes.

## **Exchange Agent**

We have appointed Wilmington Trust Company, the trustee under the indenture, as exchange agent for the exchange offer. You should send all executed letters of transmittal to the exchange agent at one of the addresses set forth below. In such capacity, the exchange agent has no fiduciary duties and will be acting solely on the basis of directions of our company. You should direct questions, requests for assistance and requests for additional copies of this prospectus or of the letter of transmittal and requests for a notice of guaranteed delivery to the exchange agent addressed as follows:

***By Certified or Registered Mail:***

Wilmington Trust Company  
Rodney Square North  
1100 North Market Street  
Wilmington, DE 19890-1626  
Attention: Alisha Clendaniel

***By Overnight Courier or Hand Delivery:***

Wilmington Trust Company  
Rodney Square North  
1100 North Market Street  
Wilmington, DE 19890-1626  
Attention: Alisha Clendaniel

***By Facsimile:***

(302) 636-4139  
Attention: Exchanges

***Confirm By Telephone:***

(302) 636-6470  
For Information Call  
(302) 636-6470

Delivery to an address or facsimile number other than those listed above will not constitute a valid delivery.

The trustee does not assume any responsibility for and makes no representation as to the validity or adequacy of this prospectus or the notes.

## **Solicitation of Tenders; Fees and Expenses**

We will pay all expenses of soliciting tenders pursuant to the exchange offer. We are making the principal solicitation by mail. Our officers and regular employees may make additional solicitations in person or by telephone or telecopier.

We have not retained any dealer-manager in connection with the exchange offer and will not make any payments to brokers, dealers or other persons soliciting acceptances of the exchange offer. We will, however, pay the exchange agent reasonable and customary fees for its services and will reimburse the exchange agent for its reasonable out-of-pocket costs and expenses in connection therewith.

We also may pay brokerage houses and other custodians, nominees and fiduciaries the reasonable out-of-pocket expenses incurred by them in forwarding copies of this prospectus, letters of transmittal and related documents to the beneficial owners of the private notes and in handling or forwarding tenders for exchange.

We will pay the expenses to be incurred in connection with the exchange offer, including fees and expenses of the exchange agent and trustee and accounting and legal fees and printing costs.

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We will pay all transfer taxes, if any, applicable to the exchange of private notes for new notes pursuant to the exchange offer. If, however, certificates representing new notes or private notes for principal amounts not tendered or accepted for exchange are to be delivered to, or are to be registered or issued in the name of, any person other than the registered holder of the private notes tendered, or if tendered private notes are registered in the name of any person other than the person signing the letter of transmittal, or if a transfer tax is imposed for any reason other than the exchange of private notes pursuant to the exchange offer, then the amount of any such transfer taxes, whether imposed on the registered holder or any other persons, will be payable by the tendering holder. If satisfactory evidence of payment of such taxes or exemption therefrom is not submitted with the letter of transmittal, the amount of such transfer taxes will be billed by us directly to such tendering holder.

## **Consequences of Failure to Exchange**

Participation in the exchange offer is voluntary. We urge you to consult your financial and tax advisors in making your decisions on what action to take. Private notes that are not exchanged for new notes pursuant to the exchange offer will remain restricted securities. Accordingly, those private notes may be resold only:

to a person whom the seller reasonably believes is a qualified institutional buyer in a transaction meeting the requirements of Rule 144A promulgated under the Securities Act;

in a transaction meeting the requirements of Rule 144 promulgated under the Securities Act; outside the United States to a foreign person in a transaction meeting the requirements of Rule 903 or 904 of Regulation S promulgated under the Securities Act;

in accordance with another exemption from the registration requirements of the Securities Act and based upon an opinion of counsel if we so request;

to us; or  
pursuant to an effective registration statement.

In each case, the private notes may be resold only in accordance with any applicable securities laws of any state of the United States or any other applicable jurisdiction.

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## RATIO OF EARNINGS TO FIXED CHARGES

	Nine Months Ended September 30, 2007	2006	2005	2004	2003	2002
Ratio of earnings to fixed charges <sup>(1)</sup>	6.9	11.5	4.8	6.7		1.1

Represents our ratio of earnings to fixed charges for the periods indicated. For purposes of computing the ratio of earnings to fixed charges, earnings represent earnings from continuing operations before income taxes, equity in earnings (loss) of investees and minority interest plus fixed charges. Fixed charges include (a) interest on indebtedness (whether expensed or capitalized), (b) amortization premiums, discounts and capitalized expenses related to indebtedness and (c) the portion of rent expense we believe to be representative of interest. For fiscal year 2003, fixed charges exceeded earnings by \$23.9 million.

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## BUSINESS

We are a master limited partnership formed in Delaware on February 17, 1987. On September 17, 2007, we changed our name from American Real Estate Partners, L.P. to Icahn Enterprises L.P. We own a 99% limited partnership interest in Icahn Enterprises Holdings L.P., or IEH, formerly known as American Real Estate Holdings Limited Partnership. Substantially all of our assets and liabilities are owned through IEH and substantially all of our operations are conducted through IEH and its subsidiaries. Icahn Enterprises G.P. Inc., or IEGP, which was formerly known as American Property Investors, Inc., owns a 1% general partnership interest in both us and IEH, representing an aggregate 1.99% general partnership interest in us and IEH. IEGP is owned and controlled by Mr. Carl C. Icahn. As of September 30, 2007, affiliates of Mr. Icahn owned 64,288,061 of our depositary units and 10,304,013 of our preferred units, which represented approximately 91.2% and 86.5% of our outstanding depositary units and preferred units, respectively. We are a diversified holding company owning subsidiaries engaged in the following continuing operating businesses: Investment Management, Metals, Real Estate and Home Fashion. We also operate discontinued operations as discussed below.

In November 2006, we divested our Oil and Gas business and our Atlantic City gaming properties. On April 22, 2007, we entered into an agreement to sell all of the issued and outstanding membership interests of ACEP, our indirect wholly owned subsidiary, which comprises all of our remaining gaming properties. Accordingly, in the second and third quarters of the fiscal year ending December 31, 2007, the financial position and the results of ACEP's operations were presented as assets and liabilities of discontinued operations held for sale in the consolidated balance sheets and discontinued operations in the consolidated statements of operations for all periods. For the nine months ended September 30, 2007, five properties of our Real Estate segment were reclassified to held for sale as they were subject

to a contract or letter of intent. The operations of these properties were classified as discontinued operations. In addition, on October 18, 2007, WPI, our indirect majority owned subsidiary, entered into an agreement to sell the inventory at substantially all of its 30 retail outlet stores. Therefore, the portion of the business related to the stores retail operations has been classified as discontinued operations. For further discussion, see our Quarterly Reports on Form 10-Q for the quarters ended June 30 and September 30, 2007, filed with the SEC on August 9, 2007 and November 9, 2007, respectively, and our Current Reports on Form 8-K filed with the SEC on October 24, 2007 and December 5, 2007, which Reports are incorporated herein by reference.

## Investment Management

### Acquisition

On August 8, 2007, we acquired the general partnership interests in the General Partners (as defined herein) and Icahn Capital Management L.P., or New Icahn Management. The Investment Management and GP Entities provide investment advisory and certain management services to the Private Funds (as such terms as defined herein) but do not provide such services to any other entities, individuals or accounts. We entered into a Contribution and Exchange Agreement, or the Contribution Agreement, with CCI Offshore Corp., or CCI Offshore, CCI Onshore Corp., or CCI Onshore, Icahn Management LP, or Icahn Management, and Carl C. Icahn. CCI Onshore, CCI Offshore and Icahn Management are collectively referred to herein as the Contributors. Pursuant to the Contribution Agreement, we acquired general partnership interests in the General Partners, acting as general partners of Icahn Partners L.P., or the Onshore Fund, and the Offshore Master Funds (as defined herein) managed and controlled by Mr. Icahn. As referred to herein, the General Partners consist of Icahn Onshore LP, or the Onshore GP, and Icahn Offshore LP, or the Offshore GP. As referred to herein, the Offshore Master Funds consist of (i) Icahn Partners Master Fund LP, or Offshore Master Fund I, (ii) Icahn Partners Master Fund II L.P., or Offshore Master Fund II, and (iii) Icahn Partners Master Fund III, L.P., or Offshore Master Fund III. The Onshore Fund and the Offshore Master Funds are collectively referred to herein as the Investment Funds.

The General Partners also act as general partners of certain funds formed as Cayman Islands exempted limited partnerships that invest in the Offshore Master Funds. These funds, together with other funds that also invest in the Offshore Master Funds, are collectively referred to herein as the Feeder Funds. The Feeder Funds and the Investment Funds are collectively referred to herein as the Private Funds. As referred to and discussed below, the Feeder Funds include, but are not limited to, Icahn Fund Ltd., Icahn Fund II Ltd. and Icahn Fund III Ltd.

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We also acquired the general partnership interest in New Icahn Management, a newly formed management company. As referred to herein, the term Investment Management and GP Entities includes Icahn Management (for the period prior to the acquisition on August 8, 2007) or New Icahn Management (for the period subsequent to the acquisition on August 8, 2007) and, in either case, the General Partners. The Investment Management and GP Entities provide investment advisory and certain management services to the Private Funds. The Investment Management and GP Entities do not provide investment advisory or other management services to any other entities individuals or accounts. Interests in the Private Funds are offered only to certain sophisticated and accredited investors on the basis of exemptions from the registration requirements of the federal securities laws and are not publicly available.

The total initial consideration paid for the acquisition was \$810 million of our depositary units based on the volume-weighted average price of our depositary units on the New York Stock Exchange for the 20-trading-day period ending on August 7, 2007 (the day before the closing). In addition, we have agreed to make certain earn-out payments to the Contributors over a five-year period payable in additional depositary units based on our after-tax



earnings from the General Partners and New Icahn Management subsequent to the acquisition, which includes both management fees and performance-based or incentive allocations paid by the Private Funds to New Icahn Management and the General Partners. There is a potential maximum aggregate earn-out (including any catch-up) of \$1.121 billion which is subject to achieving total after-tax earnings during the five-year period of at least \$3.906 billion.

## Overview

In 2004, the Onshore Fund, Offshore Master Fund I (a Cayman Island exempted limited partnership) and Icahn Fund Ltd (a Cayman Islands exempted limited liability company) were launched. In 2006, Icahn Sterling Fund Ltd. was established and on October 1, 2006 its assets were subsequently contributed to Icahn Fund Ltd. Offshore Master Fund II, a Cayman Islands exempted limited partnership, was formed on January 18, 2007 and commenced operations on February 1, 2007. Icahn Fund II Ltd., a Cayman Islands exempted limited liability company, was formed in 2007 and invests substantially all of its assets in Offshore Master Fund II. In addition, Offshore Master Fund III, a Cayman Islands exempted limited partnership, was formed on March 7, 2007 and commenced operations on April 1, 2007.

Icahn Fund III Ltd., a Cayman Island exempted limited liability company, was formed in 2007 and invests substantially all of its assets in Offshore Master Fund III.

As noted above, on August 8, 2007 we acquired the general partnership interests in the General Partners and New Icahn Management. In connection with the acquisition, we have entered into an employment agreement with Mr. Icahn pursuant to which, over a five-year term, Mr. Icahn will serve as Chairman and Chief Executive Officer of New Icahn Management, in addition to his current role as Chairman of Icahn Enterprises. Mr. Icahn also serves as the Chief Executive Officer of the General Partners.

## Strategy

The Private Funds pursue a value-oriented activist investment philosophy that seeks to acquire securities in companies that trade at a discount to inherent value as determined by various metrics (cash flow and earnings power, break-up value, replacement cost and liquidation value), and then be a catalyst for change. The Investment Management and GP Entities view is that management of companies are frequently not properly incentivised to increase shareholder value and encourage management to take appropriate actions that they believe will increase value.

The Investment Management and GP Entities utilize a process-oriented, research-intensive value-based investment approach. This approach generally involves three critical steps: (i) fundamental credit, valuation and capital structure analysis; (ii) intense legal and tax analysis of fulcrum issues such as litigation and regulation which often affect valuation and (iii) combination of the business valuation analysis and legal and tax review to establish a strategy for gaining an attractive risk-adjusted investment position within a specific credit, industry or litigation segment. This strategy focuses on exploiting market dislocations or misjudgments that may result from market euphoria, litigation, complex contingent liabilities, corporate malfeasance and weak corporate governance, general economic conditions or market cycles and complex and inappropriate capital structures.

The Private Funds may employ a number of strategies and are permitted to invest across a variety of industries and types of securities, including long and short equities, long and short bonds, bank debt and other

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corporate obligations, risk arbitrage and capital structure arbitrage and other special situations. The Private Funds invest a material portion of their capital in publicly traded equity and debt securities of companies that the Investment

Management and GP Entities believe to be undervalued by the marketplace. The Private Funds may take a significant position in the companies in which they invest.

## **Fees**

Results of our Investment Management segment are primarily driven by the amount and performance of the Private Funds. The Investment Management and GP Entities generally receive management fees and incentive allocations from the Private Funds. As described below, management fees are generally 2.5% of the net asset value of certain Private Funds. Incentive allocations are generally 25% of the net profits generated by the Private Funds that we manage. Therefore, Investment Management revenues are affected by the combination of fee-paying AUM and the investment performance of the Private Funds.

The Investment Management and GP Entities generate income from amounts earned pursuant to contractual arrangements with the Private Funds. Such amounts typically include an annual management fee of 2.5% of the net asset value before a performance-based or incentive allocation of 25% of capital appreciation (both realized and unrealized) earned by the Investment Funds subject to a high water mark (whereby the General Partners do not earn incentive allocations during a particular year even though the fund had a positive return in such year until losses in prior periods are recovered). Such amounts have been (and may in the future be) modified or waived in certain circumstances. The Investment Management and GP Entities and their affiliates may also earn income through their principal investments in the Private Funds.

Management fees are generally paid to the Investment Management and GP Entities on a quarterly basis, in advance, based on the applicable fund's net asset value at the beginning of the quarter. Incentive allocations are calculated and distributed to the Investment Management and GP Entities annually based on the Private Fund's performance during the period, other than incentive allocations earned as a result of investor redemption events during interim periods.

The Investment Management and GP Entities will waive the management fees and incentive allocations for Mr. Icahn's direct and indirect holdings and may, in their sole discretion, elect to reduce or waive such fees with respect to any shareholder that is an affiliate, employee or relative of Mr. Icahn or his affiliates, or for any other investor.

## **Lock-up**

Investors in the Private Funds are typically initially subject to a one-year absolute lock-up and may redeem in the second and third years with an exit fee of 8% and 4%, respectively. After the lock-up, investors may redeem on June 30<sup>th</sup> and December 31<sup>st</sup> with 90 days' written notice. Certain investors with reduced fees are subject to a three-year absolute lock-up.

## **Mr. Icahn and Affiliate Investments**

The acquisition of the general partnership interests in the General Partners and New Icahn Management is accounted for as a combination of entities under common control and recorded at the historical basis of the entities as of the date acquired by us.

## **Employees**

Our Investment Management business currently employs an experienced team of 28 professionals, including an investment, legal and operations group, which consists of the same individuals supporting the Private Funds operations prior to the acquisition. In many cases, team members have worked together successfully and have provided business, investing and legal acumen for a number of years with respect to the Private Funds operations.

## Metals Services

### Acquisition of PSC Metals, Inc.

On November 5, 2007, we acquired, through a subsidiary, all of the issued and outstanding capital stock of PSC Metals from Philip. PSC Metals is engaged in transporting, recycling and processing metals. The consideration for the transaction was \$335 million in cash. For the 12 months ended September 30, 2007, PSC Metals achieved revenue of approximately \$776 million and net income of approximately \$45 million.

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As part of the transaction, our wholly owned subsidiary purchased 100% of the issued and outstanding capital stock of PSC Metals, whereby PSC Metals became our indirect wholly owned subsidiary. Prior to the acquisition, PSC Metals was a co-borrower with Philip and other Philip subsidiaries under a credit agreement, or the Credit Agreement, with UBS Securities LLC, as lead arranger, and had granted a security interest in substantially all of its assets to secure its obligations thereunder. Approximately \$34.6 million of the proceeds from the transaction was paid to release PSC Metals from all claims, guarantees and future obligations under the Credit Agreement. In addition, Philip used a portion of the proceeds to collateralize PSC Metals' letters of credit of approximately \$6.3 million. PSC Metals is currently under negotiations to enter into a \$100 million asset-based borrowing agreement. Subsequent to the closing of the borrowing agreement, PSC Metals will fund its letters of credit from its borrowing base and funds used to collateralize the letters of credit by Philip will be released.

Mr. Icahn indirectly owns a 95.6% interest and we indirectly own the remaining 4.4% interest in Philip Services Corporation. The transaction was approved by a special committee of independent members of our board of directors. The special committee was advised by its own legal counsel and independent financial adviser with respect to the transaction. The special committee received an opinion from its financial adviser as to the fairness to us, from a financial point of view, of the consideration paid by us.

### Overview

PSC Metals collects industrial and obsolete scrap metal, processes it into reusable forms, and supplies the recycled metals to its customers including electric-arc furnace mills, integrated steel mills, foundries, secondary smelters and metals brokers. These services are provided through PSC Metals' recycling facilities located in eight states. PSC Metals' ferrous products include shredded, sheared and bundled scrap metal and other purchased scrap metal such as turnings (steel machining fragments), cast furnace iron and broken furnace iron. PSC Metals also processes non-ferrous metals including aluminum, copper, brass, stainless steel and nickel-bearing metals. Non-ferrous products are a significant raw material in the production of aluminum and copper alloys used in manufacturing. PSC Metals also operates a secondary products business that includes the supply of secondary plate and structural grade pipe that is sold into niche markets for counterweights, piling and foundations, construction materials and infrastructure end-markets.

### Strategy

PSC Metals' business strategy consists of growing its core scrap yard business through expansion; ensuring a consistent supply to its customers through vertical integration by working closely with supply sources and owning distribution and transportation systems; and investing in PSC Metals' infrastructure and operating equipment.

## Home Fashion

We conduct our Home Fashion operations through our majority ownership in WPI, a manufacturer and distributor of home fashion consumer products based in New York, New York. On October 18, 2007, WPI entered into an agreement to sell the inventory at substantially all of its 30 retail outlet stores. For a further discussion of our Home Fashion business operations, see Item 1 of Part I, Business Home Fashion contained in our Annual Report on Form 10-K for the fiscal year ended December 31, 2006, or the 2006 Annual Report on Form 10-K, which is incorporated herein by reference.

## Real Estate

Our rental real estate operations consist primarily of retail, office and industrial properties leased to single corporate tenants. Historically, our reportable segments with respect to our real estate operations included Rental Real Estate, Property Development and Associated Resort Activities. As of the quarter ended September 30, 2007, the three related operating lines of our Real Estate segment are all individually immaterial and have been aggregated. For a further discussion of our Real Estate business operations, see Item 1 of Part I, Business Real Estate contained in our 2006 Annual Report on Form 10-K, which is incorporated herein by reference.

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## Other Transactions

### Atlantic Coast Entertainment Holdings, Inc. Merger

On November 15, 2007, ACE HI Merger Corp., or Merger Corp, our wholly owned subsidiary and the owner of approximately 94.2% of the outstanding shares of common stock of Atlantic Coast Entertainment Holdings, Inc., or Atlantic Coast, completed a short-form merger transaction, or the Merger, under Section 253 of the Delaware General Corporation Law, or Delaware Law, pursuant to which Merger Corp merged with and into Atlantic Coast and Atlantic Coast became our wholly owned subsidiary. Prior to the Merger, Atlantic Coast was our indirect majority owned subsidiary. Pursuant to the Merger, the holders of Atlantic Coast common stock (other than Merger Corp) are entitled to receive \$21.19 per share in cash in exchange for their shares. Alternatively, by following the procedures set forth under Delaware Law, any of these stockholders who do not wish to accept the \$21.19 per share cash consideration are entitled to receive payment in cash of the fair value of these shares as determined by an appraisal proceeding by the Delaware Court of Chancery.

Merger Corp will mail Notices of Merger and Appraisal Rights, Letters of Transmittal and other documents necessary for the exchange of stock certificates to stockholders within the time provided by Delaware Law. The Notice of Merger and Appraisal Rights will also provide information for stockholders who choose to exercise their appraisal rights under Delaware Law.

On November 16, 2007, Atlantic Coast filed a Form 15 with the SEC, thereby terminating its reporting obligations under the Securities Exchange Act of 1934, as amended, or the '34 Act, and its status as a public company.

### Liquidation of National Energy Group, Inc.

On November 12, 2007, the board of directors of National Energy Group, Inc., or NEGI, our indirect majority owned

subsidiary, determined that it is in the best interests of NEGI's shareholders to liquidate all of NEGI's assets and approved the dissolution of NEGI and a plan of dissolution and liquidation, or the Plan, subject to required shareholder approval. NEGI will announce the timing of the shareholder meeting at which approval will be requested and set a record date for the shares entitled to vote at such meeting after the SEC has completed its review of the related proxy materials that NEGI intends to file.

Following shareholder approval of NEGI's dissolution pursuant to the Plan, NEGI expects to carry out an orderly disposition of NEGI's assets and liabilities and then declare a cash distribution to its shareholders. NEGI will then file a Form 15 with the SEC, terminating its reporting obligations under the '34 Act and its status as a public company.

## DESCRIPTION OF NOTES

### General

You can find the definitions of certain terms used in this description under the subheading "Certain Definitions." In this description, the term "Icahn Enterprises" refers only to Icahn Enterprises L.P., the term "IEF" refers only to Icahn Enterprises Finance Corp., the term "IEH" refers only to Icahn Enterprises Holdings L.P. and the term "IEGP" refers only to Icahn Enterprises G.P. Inc., and, in each case, not to any of their respective Subsidiaries. In addition, the word "notes" refers to the notes issued on January 17, 2007 together with the Existing Notes. For the avoidance of doubt, IEH will be deemed to be a Subsidiary of Icahn Enterprises for so long as IEH remains a Guarantor. The term "Issuers" refers to Icahn Enterprises and IEF, collectively.

The Issuers issued the private notes, and will issue the new notes, under the indenture dated February 7, 2005 among the Issuers, IEH, as guarantor, and Wilmington Trust Company, as trustee. The terms of the notes include those stated in the indenture and those made part of the indenture by reference to the Trust Indenture Act of 1939. The notes issued on January 17, 2007 were additional notes issued under the indenture described above. On February 1, 2005, the Issuers issued and sold \$480.0 million of the Existing Notes. The notes issued on January 17, 2007 are pari passu with, of the same series as, and vote on any matter submitted to the noteholders with, the Existing Notes. Subsequent to the consummation of the exchange offer, the publicly registered exchange notes will be identical to, and will trade as a single class with, the Existing Notes.

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The following description is a summary of the material provisions of the indenture. It does not restate the indenture in entirety. We urge you to read the indenture because it and not this description, defines your rights as holders of the notes. Copies of the indenture are available as set forth below under "Additional Information." Certain defined terms used in this description but not defined below under "Certain Definitions" have the meanings assigned to them in the indenture and the registration rights agreement.

For the avoidance of doubt, the inclusion of exceptions to the provisions (including covenants and definitions) set forth herein will not be interpreted to imply that the matters permitted by the exception would be limited by the terms of such provisions but for such exceptions.

The registered holder of a note will be treated as the owner of it for all purposes. Only registered holders will have rights under the indenture.

## Brief Description of the Notes and the Note Guarantee

### The Notes

The notes are:

the general unsecured obligation of each of the Issuers;  
pari passu in right of payment to all existing and future senior Indebtedness of each of the Issuers;  
senior in right of payment to any future subordinated Indebtedness of each of the Issuers; and  
effectively subordinated to the secured Indebtedness of the Issuers to the extent of the value of the collateral securing such Indebtedness. As of September 30, 2007, the Issuers did not have any secured Indebtedness.

### The Note Guarantee

The Guarantee of the notes is:

the general unsecured obligation of IEH;  
pari passu in right of payment to all existing and future senior Indebtedness of IEH;  
senior in right of payment to any future subordinated Indebtedness of IEH; and  
effectively subordinated to the secured Indebtedness of IEH to the extent of the value of the collateral securing such Indebtedness. As of September 30, 2007, IEH had \$105.4 million of secured Indebtedness.

The operations of Icahn Enterprises are conducted through its Subsidiaries (including IEH) and, therefore, Icahn Enterprises depends on the cash flow of Icahn Enterprises Subsidiaries and IEH to meet its obligations, including its obligations under the notes. The notes will not be guaranteed by any of Icahn Enterprises Subsidiaries other than IEH.

The notes and the guarantee will be effectively subordinated in right of payment to all Indebtedness and other liabilities and commitments (including trade payables and lease obligations) of Icahn Enterprises Subsidiaries (other than IEH). Any right of the Issuers or IEH to receive assets of any of their Subsidiaries (other than IEH) upon that Subsidiary's liquidation or reorganization (and the consequent right of the holders of the notes to participate in those assets) will be effectively subordinated to the claims of that Subsidiary's creditors, except to the extent that any of the

Issuers or IEH is itself recognized as a creditor of that Subsidiary, in which case the claims of the Issuers and IEH would still be subordinate in right of payment to any security in the assets of the Subsidiary and any Indebtedness of the Subsidiary senior to that held by the Issuers or IEH. The covenants of the notes do not restrict the ability of Icahn

Enterprises Subsidiaries, other than IEH, from incurring additional Indebtedness or creating liens, nor do the covenants of the notes restrict the ability of IEH, Icahn Enterprises or its Subsidiaries from making investments or entering into sale and leaseback transactions. See Risk Factors The notes will be effectively subordinated to any secured indebtedness, and the indebtedness and liabilities of our subsidiaries other than IEH and Risk Factors Our subsidiaries, other than IEH, will not be subject to any of the covenants in the indenture for the notes and only IEH will guarantee the notes. We may not be able to rely on the cash flow or assets of our subsidiaries to pay our indebtedness.

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## Principal, Maturity and Interest

The Issuers issued \$500.0 million in aggregate principal amount of private notes and will issue \$500.0 million in aggregate principal amount of new notes. The Issuers may issue additional notes ( Additional Notes ) from time to time.

Any offering of Additional Notes is subject to the covenant Certain Covenants Incurrence of Indebtedness and Issuance of Preferred Stock. In the case of each series, the notes and any Additional Notes subsequently issued under

the indenture will be treated as a single class for all purposes under the indenture, including, without limitation, waivers, amendments, redemption and offers to purchase. The Issuers will issue notes in denominations of \$1,000 and integral multiples of \$1,000. The notes will mature on February 15, 2013.

Interest on the notes will accrue at the rate of 7 1/8% per annum and is payable semi-annually in arrears on February 15 and August 15, commencing on February 15, 2007. Interest on overdue principal and interest and Liquidated Damages, if any, will accrue at a rate that is 1% higher than the then applicable interest rate on the notes. The Issuers will make each interest payment to the holders of record on the immediately preceding February 1 and August 1.

Interest on the notes will accrue from the date of original issuance or, if interest has already been paid, from the date it was most recently paid. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months.

## **Methods of Receiving Payments on the Notes**

If a noteholder holds at least \$2.0 million aggregate principal amount of notes, such holder may give wire transfer instructions to Icahn Enterprises and the Issuers will instruct the trustee to pay all principal, interest and premium and Liquidated Damages, if any, on that holder's notes in accordance with those instructions. All other payments on the notes will be made at the office or agency of the paying agent and registrar within the City and State of New York unless the Issuers elect to make interest payments by check mailed to the noteholders at their address set forth in the register of holders. In addition, all payments will be subject to the applicable rules and procedures of the settlement systems (including, if applicable, those of Euroclear and Clearstream), which may change from time to time.

## **Paying Agent and Registrar for the Notes**

The trustee will initially act as paying agent and registrar. The Issuers may change the paying agent or registrar without prior notice to the holders of the notes, and the Issuers or any of their Subsidiaries (including IEH) may act as paying agent or registrar.

## **Transfer and Exchange**

A holder may transfer or exchange notes in accordance with the provisions of the indenture. The registrar and the trustee may require a holder, among other things, to furnish appropriate endorsements and transfer documents in connection with a transfer of notes. Holders will be required to pay all taxes due on transfer. The Issuers will not be required to transfer or exchange any note selected for redemption. Also, the Issuers will not be required to transfer or exchange any note for a period of 15 days before a selection of notes to be redeemed.

## **Note Guarantee**

The notes will be guaranteed by IEH. Icahn Enterprises may, at its option, add subsidiary Guarantors to the notes. Each Guarantor's obligations under its Note Guarantee will be limited as necessary to prevent the Note Guarantee from constituting a fraudulent conveyance under applicable law. See Risk Factors Federal and state statutes allow courts, under specific circumstances, to void guarantees and require noteholders to return payments received from the guarantor.

Any Guarantor's Note Guarantee will be released:

- (1) upon the substitution of a successor to IEH or other release as described under the heading Certain Covenants Merger, Consolidation or Sale of Assets ; and
- (2)

upon legal defeasance or satisfaction and discharge of the indenture as provided below under the captions  
Covenant Defeasance and Satisfaction and Discharge.

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**Optional Redemption**

At any time prior to February 15, 2008, the Issuers may on one or more occasions redeem up to 35% of the aggregate principal amount of notes (including Additional Notes) issued under the indenture at a redemption price of 107 1/8% of the principal amount thereof, plus accrued and unpaid interest and Liquidated Damages, if any, to the redemption date, with the net cash proceeds of one or more Equity Offerings; provided, however, that:

- at least 65% of the aggregate principal amount of notes issued under the indenture remains outstanding
  - (1) immediately after the occurrence of such redemption (excluding notes held by Icahn Enterprises and its Subsidiaries (including any Guarantor)); and
  - (2) the redemption occurs within 60 days of the date of the closing of such Equity Offering.
- Except pursuant to the preceding paragraph, the notes will not be redeemable at the Issuers' option prior to February 15, 2009.

On or after February 15, 2009, the Issuers may redeem all or a part of the notes upon not less than 15 nor more than 60 days' notice, at the redemption prices (expressed as percentages of principal amount) set forth below plus accrued and unpaid interest and Liquidated Damages, if any, on the notes redeemed, to the applicable redemption date, if redeemed during the twelve-month period beginning on one of the years indicated below:

Year	Percentage
2009	103.563 %
2010	101.781 %
2011 and thereafter	100.000 %

**Mandatory Disposition Pursuant to Gaming Laws**

If any Gaming Authority requires that a holder or Beneficial Owner of notes be licensed, qualified or found suitable under any applicable Gaming Law and such holder or Beneficial Owner:

- (1) fails to apply for a license, qualification or a finding of suitability within 30 days (or such shorter period as may be required by the applicable Gaming Authority) after being requested to do so by the Gaming Authority; or
- (2) is denied such license or qualification or not found suitable; Icahn Enterprises shall then have the right, at its option:
  - (a) to require each such holder or Beneficial Owner to dispose of its notes within 30 days (or such earlier date as may be required by the applicable Gaming Authority) of the occurrence of the event described in clause (1) or (2) above, or
  - (b) to redeem the notes of each such holder or Beneficial Owner, in accordance with Rule 14e-1 of the Exchange Act, if applicable, at a redemption price equal to the lowest of:
    - (i) the principal amount thereof, together with accrued and unpaid interest and Liquidated Damages, if any, to the earlier of the date of redemption, the date 30 days after such holder or Beneficial Owner is required to apply for a license, qualification or finding of suitability (or such shorter period that may be required by any applicable Gaming Authority) if such holder or Beneficial Owner fails to do so ( Application Date ) or of the date of denial of license or qualification or of the finding of unsuitability by such Gaming Authority;



- the price at which such holder or Beneficial Owner acquired the notes, together with accrued and unpaid interest (ii) and Liquidated Damages, if any, to the earlier of the date of redemption, the Application Date or the date of the denial of license or qualification or of the finding of unsuitability by such Gaming Authority; and
- (iii) such other lesser amount as may be required by any Gaming Authority.

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Immediately upon a determination by a Gaming Authority that a holder or Beneficial Owner of the notes will not be licensed, qualified or found suitable and must dispose of the notes, the holder or Beneficial Owner will, to the extent required by applicable Gaming Laws, have no further right:

- (1) to exercise, directly or indirectly, through any trustee or nominee or any other person or entity, any right conferred by the notes, the Note Guarantee or the indenture; or
- (2) to receive any interest, Liquidated Damages, dividend, economic interests or any other distributions or payments with respect to the notes and the Note Guarantee or any remuneration in any form with respect to the notes and the Note Guarantee from the Issuers, any Note Guarantor or the trustee, except the redemption price referred to above.

Icahn Enterprises shall notify the trustee in writing of any such redemption as soon as practicable. Any holder or Beneficial Owner that is required to apply for a license, qualification or a finding of suitability will be responsible for all fees and costs of applying for and obtaining the license, qualification or finding of suitability and of any investigation by the applicable Gaming Authorities and the Issuers and any Note Guarantor will not reimburse any holder or Beneficial Owner for such expense.

## **Mandatory Redemption**

The Issuers are not required to make mandatory redemption or sinking fund payments with respect to the notes.

## **Repurchase at the Option of Holders**

### **Change of Control**

If a Change of Control occurs, each holder of notes will have the right to require the Issuers to repurchase all or any part (equal to \$1,000 or an integral multiple of \$1,000) of that holder's notes pursuant to a Change of Control offer on the terms set forth in the indenture. In the Change of Control offer, the Issuers will offer a Change of Control payment in cash equal to 101% of the aggregate principal amount of notes repurchased plus accrued and unpaid interest and Liquidated Damages, if any, on the notes repurchased, to the date of purchase. Within 30 days following any Change of Control, the Issuers will mail a notice to each holder describing the transaction or transactions that constitute the Change of Control and offering to repurchase notes on the Change of Control payment date specified in the notice, which date will be no earlier than 30 days and no later than 60 days from the date such notice is mailed, pursuant to the procedures required by the indenture and described in such notice.

On the Change of Control payment date, the Issuers will, to the extent lawful:

- (1) accept for payment all notes or portions of notes properly tendered and not withdrawn pursuant to the Change of Control offer;
- (2) deposit with the paying agent an amount equal to the Change of Control payment in respect of all notes or portions of notes properly tendered; and
- (3)

deliver or cause to be delivered to the trustee the notes properly accepted together with an Officers Certificate stating the aggregate principal amount of notes or portions of notes being purchased by the Issuers.

The paying agent will promptly mail to each holder of notes properly tendered the Change of Control payment for such notes, and the trustee will promptly authenticate and mail (or cause to be transferred by book entry) to each holder a new note equal in principal amount to any unpurchased portion of the notes surrendered, if any; provided that each new note will be in a principal amount of \$1,000 or an integral multiple of \$1,000. The Issuers will publicly announce the results of the Change of Control offer on or as soon as practicable after the Change of Control payment date.

The provisions described above that require the Issuers to make a Change of Control offer following a Change of Control will be applicable whether or not any other provisions of the indenture are applicable. Except as described above with respect to a Change of Control, the indenture does not contain provisions that permit the holders of the notes to require that the Issuers repurchase or redeem the notes in the event of a takeover, recapitalization or similar transaction.

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The Issuers will not be required to make a Change of Control offer upon a Change of Control if a third party makes the Change of Control offer in the manner, at the times and otherwise in compliance with the requirements set forth in the indenture applicable to a Change of Control offer made by the Issuers and purchases all notes properly tendered and not withdrawn under the Change of Control offer.

The definition of Change of Control includes a phrase relating to the sale, lease, transfer, conveyance or other disposition by Icahn Enterprises or IEH of all or substantially all of its properties or assets. Although there is a limited body of case law interpreting the phrase substantially all, there is no precise established definition of the phrase under applicable law. Accordingly, the ability of a holder of notes to require the Issuers to repurchase its notes as a result of a sale, lease, transfer, conveyance or other disposition of less than all of the assets of Icahn Enterprises or IEH to another Person or group may be uncertain. In addition, under certain circumstances the definition of Change of Control excludes certain sales, leases transfers, conveyances or other dispositions even if they constitute all or substantially all of the properties or assets of Icahn Enterprises or IEH.

## **Certain Covenants**

### **Restricted Payments**

Icahn Enterprises will not, and will not permit any of its Subsidiaries (including any Guarantor) to:

- declare or pay any dividend or make any other distribution on account of Icahn Enterprises or any of its Subsidiaries (including any Guarantor's) Equity Interests or to the holders of Icahn Enterprises or any of its Subsidiaries (including IEH's) Equity Interests in their capacity as such (other than dividends or distributions payable in Equity Interests (other than Disqualified Stock) of Icahn Enterprises or to Icahn Enterprises or a Subsidiary of Icahn Enterprises (including IEH));
- (2) purchase, redeem or otherwise acquire or retire for value (including, without limitation, in connection with any merger or consolidation involving Icahn Enterprises) any Equity Interests of Icahn Enterprises; or
  - (3) make any payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value any Indebtedness of Icahn Enterprises or any Guarantor that is contractually subordinated to the notes or to any Note Guarantee (excluding any intercompany Indebtedness between or among Icahn Enterprises and any of its Subsidiaries (including any Guarantor)), except a payment of interest, Other Liquidated Damages or principal at

the Stated Maturity on such subordinated Indebtedness (all such payments and other actions set forth in these clauses (1) through (3) (except as excluded therein) above being collectively referred to as Restricted Payments ), unless, at the time of and after giving effect to such Restricted Payment:

- (1) no Default or Event of Default has occurred and is continuing or would occur as a consequence of such Restricted Payment;  
Icahn Enterprises or any Guarantor would, at the time of such Restricted Payment and after giving pro forma effect thereto as if such Restricted Payment had been made at the beginning of the most recently ended four-quarter
- (2) period for which financial statements are available, have been permitted to incur at least \$1.00 of additional Indebtedness pursuant to the first paragraph of the covenant described below under the caption Incurrence of Indebtedness and Issuance of Preferred Stock ; and  
such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by Icahn Enterprises and its Subsidiaries (including any Guarantor) after May 12, 2004 (excluding Restricted Payments
- (3) permitted by clauses (2), (3), (4), (6) and (8) of the next succeeding paragraph) is less than the sum, without duplication, of:  
50% of the Consolidated Net Income of Icahn Enterprises for the period (taken as one accounting period) from July 1, 2006 to the end of Icahn Enterprises most recently ended fiscal quarter for which financial statements are
- (a) available at the time of such Restricted Payment (or, if such Consolidated Net Income for such period is a deficit, less 100% of such deficit); provided, however, that to the extent any payments of Tax Amounts were not deducted in the

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calculation of Consolidated Net Income during the applicable period, for purposes of this clause (a), such payments of Tax Amounts will be deducted from Consolidated Net Income, plus

- (b) 100% of the aggregate net cash proceeds received by Icahn Enterprises since May 12, 2004 as a contribution to its equity capital or from the issue or sale of Equity Interests of Icahn Enterprises (excluding Disqualified Stock) or from the issue or sale of convertible or exchangeable Disqualified Stock or convertible or exchangeable debt securities of Icahn Enterprises that have been converted into or exchanged for such Equity Interests (other than Equity Interests or Disqualified Stock or debt securities sold to a Subsidiary of Icahn Enterprises (including IEH)).

So long as no Default or Event of Default has occurred and is continuing or would be caused thereby (except with respect to clauses (6) and (8), which payments will be permitted notwithstanding an Event of Default), the preceding provisions will not prohibit:

- (1) the payment of any dividend or the consummation of any irrevocable redemption or payment within 60 days after the date of declaration of the dividend or giving of the redemption notice or becoming irrevocably obligated to make such payment, as the case may be, if at the date of declaration or notice or becoming irrevocably obligated to make such payment, the dividend or payment would have complied with the provisions of the indenture;  
the making of any Restricted Payment in exchange for, or out of the net cash proceeds of the substantially concurrent sale (other than to a Subsidiary of Icahn Enterprises (including any Guarantor)) of, Equity Interests
- (2) (other than Disqualified Stock) or from the substantially concurrent contribution of equity capital to Icahn Enterprises; provided, however, that the amount of any such net cash proceeds that are utilized for any such redemption, repurchase, retirement, defeasance or other acquisition will be excluded from clause (3)(b) of the preceding paragraph;  
the repurchase, redemption, defeasance or other acquisition or retirement for value of Indebtedness of Icahn
- (3) Enterprises or any Guarantor that is contractually subordinated to the notes with the net cash proceeds from a substantially concurrent incurrence of Permitted Refinancing Indebtedness;
- (4) the declaration or payment of any dividend or distribution by a Subsidiary of Icahn Enterprises (including any Guarantor) to the holders of its Equity Interests; provided, that if any such dividend or distribution is paid to an

Affiliate of the Principal (other than Icahn Enterprises or any of its Subsidiaries (including any Guarantor)), that any such dividend or distribution is paid on a pro rata basis to all holders (including Icahn Enterprises or any of its Subsidiaries (including any Guarantor)) that hold securities whose terms (either contractually or by law) entitle them to the same distribution upon which such dividend or distribution is paid;

the repurchase, redemption or other acquisition or retirement for value of any Equity Interests of Icahn Enterprises or any Subsidiary of Icahn Enterprises (including any Guarantor) held by any member of Icahn Enterprises (or any (5) of its Subsidiaries (including any Guarantors)) management pursuant to any management equity subscription agreement, stock option agreement or similar agreement; provided that the aggregate price paid for all such repurchased, redeemed, acquired or retired Equity Interests shall not exceed \$2.0 million;

for so long as Icahn Enterprises is a partnership or otherwise a pass-through entity for federal income tax purposes for any period, Icahn Enterprises may make cash distributions to its equity holders or partners in an amount not to (6) exceed the Tax Amount for such period; provided that a distribution of the Tax Amount shall be made no earlier than 20 days prior to the due date for such tax (or the date that quarterly estimated taxes are required to be paid) that would be payable by Icahn Enterprises if it were a Delaware corporation;

the purchase, redemption or retirement for value of Capital Stock of Icahn Enterprises not owned by the Principal or any Affiliate of the Principal, provided that (a) Icahn Enterprises would, at the time of such Restricted Payment (7) and after giving pro forma effect thereto as if such Restricted Payment had been made at the beginning of the most recently ended four-quarter period for which financial statements are available, have been permitted to incur at least \$1.00 of additional Indebtedness

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pursuant to the first paragraph of the covenant described below under the caption Incurrence of Indebtedness and Issuance of Preferred Stock and (b) after giving effect to such purchase, redemption or retirement, the Partners Equity is at least \$1.0 billion;

the payment of dividends on the Preferred Units in the form of additional Preferred Units or other Capital Stock of Icahn Enterprises (that is not Disqualified Stock) or the payment of cash dividends on the Preferred Units in lieu of (8) fractional Preferred Units; provided that the aggregate amount of cash under this clause (8) does not exceed \$100,000 in any calendar year;

the purchase, redemption or retirement for value of the Preferred Units on or before March 31, 2010, provided that (a) Icahn Enterprises would, at the time of such Restricted Payment and after giving pro forma effect thereto as if such Restricted Payment had been made at the beginning of the most recently ended four-quarter period for which (9) financial statements are available, have been permitted to incur at least \$1.00 of additional Indebtedness pursuant to the first paragraph of the covenant described below under the caption Incurrence of Indebtedness and Issuance of Preferred Stock and (b) after giving effect to such purchase, redemption or retirement, the Partners Equity is at least \$1.0 billion; and

(10) other Restricted Payments in an aggregate amount not to exceed \$50.0 million since the date of the indenture. For purposes of determining compliance with this covenant, in the event that a proposed Restricted Payment meets the criteria of more than one of the categories of Restricted Payments described in clauses (1) through (10) above, or is permitted to be made pursuant to the first paragraph of this covenant, Icahn Enterprises shall, in its sole discretion, classify (or later reclassify, in whole or in part, in its sole discretion) such Restricted Payment in any manner that complies with this covenant.

The amount of all Restricted Payments (other than cash) will be the Fair Market Value on the date of the Restricted Payment of the assets, property or securities proposed to be transferred or issued by Icahn Enterprises or such Subsidiary (including IEH), as the case may be, pursuant to the Restricted Payment.

## Incurrence of Indebtedness and Issuance of Preferred Stock

Neither Icahn Enterprises nor any Guarantor will create, incur, issue, assume, guarantee or otherwise become liable, contingently or otherwise, with respect to (collectively, "Incur") any Indebtedness (including Acquired Debt), and neither Icahn Enterprises nor any Guarantor will issue any Disqualified Stock; provided, however, that Icahn Enterprises or any Guarantor may incur Indebtedness (including Acquired Debt) or issue Disqualified Stock, if immediately after giving effect to the incurrence of additional Indebtedness (including Acquired Debt) or issuance of Disqualified Stock (including a pro forma application of the net proceeds therefrom), the ratio of the aggregate principal amount of all outstanding Indebtedness (excluding Indebtedness incurred pursuant to clauses (4), (7) and (8) of the following paragraph and any Hedging Obligations of Icahn Enterprises Subsidiaries that are not Guarantors) of Icahn Enterprises and its Subsidiaries (including any Guarantor) on a consolidated basis determined in accordance with GAAP (including an amount of Indebtedness equal to the principal amount of any Guarantees by Icahn Enterprises or its Subsidiaries (including any Guarantor) of any Indebtedness of a Person (that is not Icahn Enterprises or a Subsidiary) to the extent such Guarantees were not included in computing Icahn Enterprises or its Subsidiaries (including any Guarantor's) outstanding Indebtedness) to the Tangible Net Worth of Icahn Enterprises and its Subsidiaries (including any Guarantor) on a consolidated basis, would have been less than 1.75 to 1.

The preceding paragraph of this covenant will not prohibit the incurrence of any of the following items of Indebtedness (collectively, "Permitted Debt"):

- (1) the incurrence by Icahn Enterprises or any Guarantor of Indebtedness represented by the notes to be issued on the date of the indenture and the exchange notes to be issued pursuant to the registration rights agreement;
- (2) the incurrence by Icahn Enterprises or any Guarantor of Permitted Refinancing Indebtedness in exchange for, or the net proceeds of which are used to refund, refinance or replace Indebtedness

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(other than intercompany Indebtedness) that was incurred under the first paragraph of this covenant or clauses (1), (2) or (9) of this paragraph or any Existing Indebtedness;

- (3) the incurrence by Icahn Enterprises or any Guarantor of intercompany Indebtedness between or among Icahn Enterprises and any of its Subsidiaries (including IEH) or the issuance of Disqualified Stock by any Guarantor to Icahn Enterprises;
- (4) the incurrence by Icahn Enterprises or any Guarantor of Hedging Obligations that are incurred in the normal course of business;
- (5) the incurrence by Icahn Enterprises or any Guarantor of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds, so long as such Indebtedness is covered within five business days;
- (6) the incurrence by Icahn Enterprises or any Guarantor of the Existing Indebtedness; Indebtedness arising from any agreement entered into by Icahn Enterprises or IEH providing for indemnification,
- (7) purchase price adjustment or similar obligations, in each case, incurred or assumed in connection with an asset sale;
- (8) Indebtedness of Icahn Enterprises or any Guarantor attributable to Bad Boy Guarantees; and
- (9) the incurrence by Icahn Enterprises or any Guarantor of additional Indebtedness in an aggregate principal amount at any time outstanding, including all Permitted Refinancing Indebtedness incurred to refund, refinance or replace any Indebtedness incurred pursuant to this clause (9), not to exceed \$10.0 million at any one time outstanding.

Neither Icahn Enterprises nor any Guarantor will incur any Indebtedness (including Permitted Debt) that is contractually subordinated in right of payment to any other Indebtedness of Icahn Enterprises or any Guarantor unless such Indebtedness is also contractually subordinated in right of payment to the notes and the Note Guarantee, as

applicable, on substantially identical terms; provided, however, that no Indebtedness of Icahn Enterprises or any Guarantor shall be deemed to be contractually subordinated in right of payment to any other Indebtedness of Icahn Enterprises or any Guarantor for purposes of this paragraph solely by virtue of being unsecured or secured to a lesser extent or on a junior Lien basis.

To the extent Icahn Enterprises or any Guarantor incurs any intercompany Indebtedness, (a) if Icahn Enterprises or any Guarantor is the obligor on such Indebtedness, such Indebtedness (other than intercompany Indebtedness of any Guarantor to or from Icahn Enterprises or another Guarantor) must be expressly subordinated to the prior payment in full in cash of all Obligations with respect to the notes and (b)(i) any subsequent issuance or transfer of Equity Interests that results in any such Indebtedness being held by a Person other than Icahn Enterprises or a Subsidiary of Icahn Enterprises (including any Guarantor) and (ii) any sale or other transfer of any such Indebtedness to a Person that is not either Icahn Enterprises or a Subsidiary of Icahn Enterprises (including any Guarantor) shall be deemed, in each case, to constitute an incurrence of such Indebtedness by Icahn Enterprises or any Guarantor, that is not intercompany Indebtedness; provided that in the case of clause (a), that no restriction on the payment of principal, interest or other obligations in connection with such intercompany Indebtedness shall be required by such subordinated terms except during the occurrence and continuation of a Default or Event of Default.

For purposes of determining compliance with this covenant, in the event that an item of Indebtedness meets the criteria of more than one of the categories of Permitted Debt described in clauses (1) through (9) above or is entitled to be incurred pursuant to the first paragraph of this covenant, in each case, as of the date of incurrence thereof, Icahn Enterprises shall, in its sole discretion, classify (or later reclassify in whole or in part, in its sole discretion) such item of Indebtedness in any manner that complies with this covenant and such Indebtedness will be treated as having been incurred pursuant to such clauses or the first paragraph hereof, as the case may be, designated by Icahn Enterprises.

The accrual of interest, the accretion or amortization of original issue discount, the payment of interest or Other Liquidated Damages on any Indebtedness in the form of additional Indebtedness with the same terms,

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the reclassification of preferred stock as Indebtedness due to a change in accounting principles, and the payment of dividends on Disqualified Stock in the form of additional shares of the same class of Disqualified Stock will not be deemed to be an incurrence of Indebtedness or an issuance of Disqualified Stock for purposes of this covenant. Notwithstanding any other provision of this covenant, the maximum amount of Indebtedness that Icahn Enterprises or any Guarantor may incur pursuant to this covenant shall not be deemed to be exceeded solely as a result of fluctuations in exchange rates or currency values.

The amount of any Indebtedness outstanding as of any date will be:

- (1) the accreted value of the Indebtedness, in the case of any Indebtedness issued with original issue discount;
- (2) the principal amount of the Indebtedness, in the case of any other Indebtedness; and
- (3) in respect of Indebtedness of another Person secured by a Lien on the assets of the specified Person, the lesser of:
  - (a) the Fair Market Value of such assets at the date of determination; and
  - (b) the amount of the Indebtedness of the other Person.

## **Limitation on Liens**

Neither Icahn Enterprises nor any Guarantor will, (a) issue, assume or guarantee any Indebtedness if such Indebtedness is secured by a Lien upon, or (b) secure any then outstanding Indebtedness by granting a Lien upon, any Principal Property of Icahn Enterprises or any Guarantor, now owned or hereafter acquired by IE or any Guarantor,

without effectively providing that the notes and the Note Guarantee shall be secured equally and ratably with such Indebtedness, except that the foregoing restrictions shall not apply to:

- (1) Liens on any Principal Property acquired after the Issuance Date to secure or provide for the payment of the purchase price or acquisition cost thereof;
- (2) Liens on Principal Property acquired after the Issuance Date existing at the time such Principal Property is acquired;
- (3) Liens on any Principal Property acquired from a corporation merged with or into Icahn Enterprises or any Guarantor;
  - (4) Liens in favor of Icahn Enterprises or any Guarantor;
  - (5) Liens in existence on any Principal Property on the Issuance Date;
- (6) Liens on any Principal Property constituting unimproved real property constructed or improved after the Issuance Date to secure or provide for the payment or cost of such construction or improvement;
  - (7) Liens in favor of, or required by, governmental authorities;
- (8) pledges or deposits in connection with workers compensation, unemployment insurance and other social security legislation and deposits securing liability to insure carriers under insurance arrangements;
- (9) Liens for taxes, assessments or governmental charges or statutory liens of landlords, carriers, warehousemen, mechanics, suppliers, materialmen, repairmen or other similar Liens arising in the ordinary course of business or in the improvement or repair of any Principal Property not yet due or which are being contested in good faith by appropriate proceedings;
  - (10) any judgment attachment or judgment Lien not constituting an Event of Default;
- (11) Liens to secure the performance of statutory obligations, surety or appeal bonds, performance bonds or other obligations of a like nature incurred in the ordinary course of business and in the improvement or repair of any Principal Property and which obligations are not expressly prohibited by the indenture;

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- (12) Liens to secure Indebtedness of Icahn Enterprises or any Guarantor attributable to Bad Boy Guarantees;
- (13) Liens in favor of the trustee and required by the covenant Maintenance of Interest Coverage ;
- (14) Liens to secure margin Indebtedness; provided that such Liens are secured solely by the applicable margin securities; or
- (15) any extension, renewal, substitution or replacement (or successive extensions, renewals, substitutions or replacements), in whole or in part, of any Lien referred to in the foregoing clauses (i) through (xiv), inclusive; provided that in the case of clauses (1), (2) and (3) such Liens shall only extend to the Principal Property so acquired (including through any merger or consolidation) and not to any other Principal Property of Icahn Enterprises or any Guarantor.

### **Maintenance of Interest Coverage**