

GMAC LLC
Form S-3ASR
June 02, 2009

As filed with the Securities and Exchange Commission on June 1, 2009

Registration No. 333-

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
Form S-3

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

GMAC LLC

(Exact name of registrant as specified in its charter)

Delaware

*(State or other jurisdiction of
incorporation or organization)*

38-0572512

*(IRS Employer
Identification Number)*

**200 Renaissance Center
P.O. Box 200
Detroit, Michigan 48265-2000
(313) 556-5000**

*(Address, including zip code, and telephone number, including area code, of each of the registrants' principal
executive offices)*

**David J. DeBrunner
200 Renaissance Center
Detroit, Michigan 48265-2000
(313) 556-5000**

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

Copy to:

**David E. Shapiro
Benjamin M. Roth
Wachtell, Lipton, Rosen & Katz
51 W. 52nd Street
New York, NY 10019
(212) 403-1000**

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

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

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

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

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

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

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

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

..

..

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(1) In accordance with Rules 456(b) and 457(r) under the Securities Act of 1933, as amended, the registrant is deferring payment of the registration fee.

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5,000,000 Units of Fixed Rate Cumulative Perpetual Preferred Membership Interests, Series D-1, Capital Amount \$1,000 Per Unit

250,000 Units of Fixed Rate Cumulative Perpetual Preferred Membership Interests, Series D-2, Capital Amount \$1,000 Per Unit

This prospectus relates to (i) 5,000,000 units of our Fixed Rate Cumulative Perpetual Preferred Membership Interests, Series D-1, capital amount \$1,000 per unit (the Series D-1 Preferred); and (ii) 250,000 units of our Fixed Rate Cumulative Perpetual Preferred Membership Interests, Series D-2, capital amount \$1,000 per unit (the Series D-2 Preferred and together with the Series D-1 Preferred, the Series D Preferred). All of the Series D Preferred were issued by us on December 29, 2008 to the United States Department of the Treasury (the Treasury) as part of the Treasury 's Automotive Industry Financing Program under the Troubled Asset Relief Program (TARP) created under the Emergency Economic Stabilization Act of 2008 (the EESA), in a private placement exempt from the registration requirements of the Securities Act of 1933, as amended (the Securities Act).

The selling securityholders who may sell or otherwise dispose of the securities offered by this prospectus include the Treasury and any other holders of the securities covered by this prospectus to whom the Treasury has transferred its registration rights in accordance with the terms of the securities purchase agreement between us and the Treasury (the Securities Purchase Agreement). The selling securityholders may offer the securities from time to time directly or through underwriters, broker-dealers or agents, and in one or more public or private transactions and at fixed prices, at prevailing market prices, at prices related to prevailing market prices, or at negotiated prices. If these securities are sold through underwriters, broker-dealers or agents, the selling securityholders will be responsible for underwriting discounts or commissions or agents commissions, if any. We will not receive any proceeds from the sale of securities by the selling securityholders.

The Series D Preferred are not currently listed on any established securities exchange or quotation system, and we do not intend to seek such a listing for the Series D Preferred unless we are requested to do so by the Treasury.

This prospectus may not be used to sell securities unless accompanied by a prospectus supplement which will describe the method of sale and terms of the related offering.

The securities offered by this prospectus are not savings accounts, deposits or other obligations of any bank and are not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency.

Investing in the securities offered by this prospectus involves risks. See Risk Factors beginning on page 3 of this prospectus and contained in our periodic reports filed with the Securities and Exchange Commission, as well as the other information contained or incorporated by reference in this prospectus.

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

The date of this prospectus is June 1, 2009.

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ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission (the SEC), using a shelf registration process. Under this shelf registration process, the selling securityholders may from time to time sell or otherwise dispose of the securities described in this prospectus in one or more offerings.

This prospectus provides you with a general description of the securities the selling securityholders may offer. Each time the selling securityholders sell securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may also add to, update or change information contained in this prospectus and, accordingly, to the extent inconsistent, information in this prospectus is superseded by the information in the prospectus supplement.

The prospectus supplement to be attached to the front of this prospectus may describe, as applicable: the terms of the securities offered, the initial public offering price, the price paid for the securities, net proceeds and the other specific terms related to the offering of these securities, and the federal income tax consequences of investing in the securities.

You should only rely on the information contained or specifically incorporated by reference in this prospectus and any 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. We are not making an offer or soliciting a purchase of these securities in any jurisdiction in which the offer or solicitation is not authorized or in which the person making the offer or solicitation is not qualified to do so or to anyone to whom it is unlawful to make the offer or solicitation. You should not assume that the information in this prospectus or any prospectus supplement is accurate as of any date other than the date on the cover of the applicable document. Our business, financial condition, results of operations and prospects may have changed since that date.

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INFORMATION INCORPORATED BY REFERENCE; WHERE YOU CAN FIND MORE INFORMATION

The SEC allows us to incorporate by reference into this prospectus the information in other documents that we file with it, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be a part of this prospectus, and information in documents that we file later with the SEC will automatically update and supersede information contained in documents filed earlier with the SEC or contained in this prospectus or a prospectus supplement. We incorporate by reference in this prospectus the documents listed below and any future filings that we may make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act), other than any information furnished pursuant to Item 2.02 or Item 7.01 of any Current Report on Form 8-K unless we specifically state in such Current Report that such information is to be considered filed under the Exchange Act, or we incorporate it by reference into a filing under the Securities Act or the Exchange Act, until the offering is completed:

- Annual Report on Form 10-K and Form 10-K/A for the fiscal year ended December 31, 2008;
- Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2009; and
- Current Reports on Form 8-K filed on January 2, 2009, January 8, 2009, January 9, 2009, January 21, 2009, February 3, 2009, March 25, 2009, April 17, 2009, April 30, 2009, May 5, 2009, May 7, 2009, May 22, 2009, and May 29, 2009.

We are also incorporating by reference any future filings we make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, after the date of this prospectus and prior to the date of any supplement to this prospectus, except that, unless otherwise indicated, we are not incorporating any information furnished under Item 2.02 or Item 7.01 of any Current Report on Form 8-K. Notwithstanding the foregoing, we are not incorporating any document or information deemed to have been furnished and not filed in accordance with SEC rules.

GMAC is subject to the informational requirements of the Exchange Act and, in accordance therewith, files reports and information statements and other information with the SEC. You may read and copy any document GMAC files with the SEC at the SEC's public reference room at 100 F Street, N.E., Room 1580, Washington, DC 20549. You may also obtain copies of the same documents from the public reference room of the SEC in Washington by paying a fee. Please call the SEC at 1-800-SEC-0330 or visit the SEC's website at www.sec.gov for further information on the public reference room. GMAC's filings are also electronically available from the SEC's Interactive Data Electronic Applications system, which is commonly known by the acronym IDEA, and which may be accessed at www.sec.gov, as well as from commercial document retrieval services.

You may also obtain a copy of any or all of the documents referred to above which may have been or may be incorporated by reference into this prospectus (excluding certain exhibits to the documents) at no cost to you by writing or telephoning us at the following address and telephone number:

GMAC LLC
Attention: Investor Relations
200 Renaissance Center
Mail Code: 482-B08-A36
Detroit, Michigan 48265
Tel: (866) 710-4623

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains or incorporates by reference documents containing various forward-looking statements within the meaning of applicable federal securities laws, including the Private Securities Litigation Reform Act of 1995, that are based upon our current expectations and assumptions concerning future events, which are subject to a number of risks and uncertainties that could cause actual results to differ materially from those anticipated.

The words expect, anticipate, estimate, forecast, initiative, objective, plan, goal, project, outlook, priorities, target, seek, may, would, could, should, believe, potential, continue, or the negative of any of those words or similar expressions is intended to identify forward-looking statements. All statements contained in or incorporated by reference into this prospectus, other than statements of historical fact, including, without limitation, statements about our plans, strategies, prospects and expectations regarding future events and our financial performance, are forward-looking statements that involve certain risks and uncertainties.

While these statements represent our current judgment on what the future may hold, and we believe these judgments are reasonable as of the date made, these statements are not guarantees of any events or financial results, and our actual results may differ materially due to numerous important factors that are described in Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2008, as updated by our subsequent Quarterly Reports on Form 10-Q, our Current Reports on Form 8-K and the other documents specifically incorporated by reference herein. Many of these risks, uncertainties and assumptions are beyond our control, and may cause our actual results and performance to differ materially from our expectations. Factors that could cause our actual results to be materially different from our expectations include, among others, the risk factors set forth herein (see Risk Factors), and the following:

- securing funding required to maintain our operations and the operations of our subsidiary Residential Capital, LLC (ResCap);
- maintaining the mutually beneficial relationship between us and General Motors Corporation (GM);
- establishing and maintaining a mutually beneficial relationship between us and Chrysler LLC (Chrysler);
- the profitability and financial condition of GM, including the uncertainty related to GM's bankruptcy process;
- our ability, or inability, to recover payments owed to us by GM during GM's bankruptcy process;
- the impact on our operations and relationship with GM following the recent modifications to our Financing Services Agreement with GM and any future modifications;
- the profitability and financial condition of Chrysler;
- uncertainty related to Chrysler's bankruptcy process and its proposed industrial alliance with Fiat SpA;
- the additional risk exposure relating to providing wholesale and retail financing to Chrysler dealers and customers and the resulting impact to our financial stability;
- our ability, or inability, to recover reimbursements owed to us by Chrysler for certain losses incurred with respect to providing wholesale financing to certain dealers prior to GMAC completing its full underwriting processes, or any other payments or obligations owed to us by Chrysler during Chrysler's bankruptcy process;
- the Treasury's large investment in our equity securities;

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- our ability, or inability, to maintain an appropriate level of debt;
- ResCap's ability, or inability, to pay dividends to us;
- further adverse developments in the residential mortgage and capital markets;
- continued deterioration in the residual value of off-lease vehicles;
- the success, or lack thereof, of GMAC's conversion to a corporation when GMAC decides to pursue such conversion;
- our ability to realize the anticipated benefits associated with our recent conversion to a bank holding company under the Bank Holding Company Act of 1956, as amended (the BHC Act);
- the increased regulation and restrictions to which we are subject as a result of our becoming a bank holding company under the BHC Act;
- changes in our ownership structure as a result of us becoming a bank holding company under the BHC Act;
- the impact on ResCap of the continuing decline in the U.S. housing market;
- changes in U.S. government-sponsored mortgage programs, or restrictions on our access to such programs, or disruptions in the markets in which our mortgage subsidiaries operate;
- the restrictions on executive compensation and benefits to which we are subject as a condition of our participation in the Automotive Industry Financing Program, and any resulting potential difficulty in retaining our existing management or hiring qualified candidates in the future;
- continued disruption in the markets in which we fund our and ResCap's operations, with resulting negative impact on our liquidity;
- uncertainty concerning our ability to access additional federal liquidity programs;
- continued reduction in certain portions of GMAC's and ResCap's businesses;
- changes in our contractual servicing rights;
- changes in our accounting assumptions that may require or that result from changes in the accounting rules or their application, which could result in an impact on earnings;
- changes in our, ResCap's or GM's credit ratings;
- the effect of market conditions, including in the global equity and credit markets and with respect to corporate, commercial and residential lending and interest rates;
- uncertainty regarding our ultimate ability to raise the additional capital required as a result of the recently completed Supervisory Capital Assessment Program and uncertainty around the ultimate form, amount and terms of such capital;
- uncertainty regarding our ability to successfully originate retail and wholesale assets in Ally Bank and to realize the anticipated benefits of our expanded exemption from certain requirements of Section 23A of the Federal Reserve Act;

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- our ability to successfully manage Ally Bank's funding and deposit costs, diversify funding sources and successfully reduce the Bank's overall cost of deposit funding, broaden the Bank's customer base and expand retail deposits;
- our ability to successfully implement the rebranding of Ally Bank and to realize the anticipated benefits thereof;
- the availability and cost of capital; and
- changes in economic conditions, currency exchange rates or political stability in the markets in which we operate.

Accordingly, you should not place undue reliance on the forward-looking statements contained or incorporated by reference in this prospectus. These forward-looking statements speak only as of the date on which the statements were made. We undertake no obligation to update publicly or otherwise revise any forward-looking statements, except where expressly required by law.

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SUMMARY

This summary highlights some of the information contained, or incorporated by reference, in this prospectus to help you understand our business. It does not contain all of the information that may be important to you. You should carefully read this prospectus, including the information incorporated by reference into this prospectus, to understand fully the considerations that are important to you in making your investment decision. You should pay special attention to the Risk Factors beginning on page 3 and the section entitled Cautionary Statement Regarding Forward-Looking Statements beginning on page iv.

Unless otherwise indicated or the context otherwise requires, in this section the term GMAC, the Company, we, us and our refer to GMAC LLC and its subsidiaries as a consolidated entity, except where it is clear that the terms mean only GMAC LLC.

Our Company

Founded in 1919 as a wholly owned subsidiary of GM, GMAC was originally established to provide GM dealers with the automotive financing necessary to acquire and maintain vehicle inventories and to provide retail customers the means by which to finance vehicle purchases through GM dealers. On November 30, 2006, GM sold a 51% interest in us for approximately \$7.4 billion to FIM Holdings LLC (FIM), an investment consortium led by Cerberus FIM Investors, LLC, the sole managing member of FIM. The consortium also includes Citigroup Inc., Aozora Bank Ltd. and a subsidiary of The PNC Financial Services Group, Inc. On December 24, 2008, our application to convert to a bank holding company under the BHC Act was approved by the Board of Governors of the Federal Reserve System (the Federal Reserve) and we became a bank holding company on that date. On January 16, 2009, we issued additional common membership interests (the Common Interests) to GM and FIM. Following this issuance, GM (through an affiliate) owned 59.86% of our outstanding Common Interests and FIM owned the remaining 40.14% . In connection with our conversion to a bank holding company, both GM and FIM were required to substantially reduce their ownership stakes. On May 22, 2009, to achieve these reductions, GM transferred 78,828 Common Interests to a trust administered by an independent trustee (the GM Trust) and FIM distributed approximately 109,919 Common Interests to FIM CB Holdings LLC (FIM CB), Aozora GMAC Investments LLC (Aozora), and a group of Cerberus Capital Management, L.P.'s ("Cerberus") affiliates and investors (the Third Party Investors). On May 29, 2009, GM transferred 190,921 Common Interests to the Treasury upon the exercise of an exchange option held by the Treasury in connection with the \$884 million loan it made to GM for Common Interests. As of the date of this prospectus, the Treasury holds approximately 35.36% of our Common Interests, FIM, FIM CB and Aozora collectively hold approximately 22.02% of our Common Interests, the Third Party Investors hold approximately 18.12% of our Common Interests, the GM Trust holds approximately 14.60% of our Common Interests and GM (through an affiliate) holds approximately 9.90% of our Common Interests.

Our principal executive office is located at 200 Renaissance Center, Detroit, Michigan, 48265. Our telephone number is (313) 556-5000.

Our Business

GMAC is a leading, independent, globally diversified, financial services firm. Our products and services have expanded beyond automotive financing and we currently operate in the following lines of business: global automotive finance, mortgage, and insurance.

Securities Being Offered

In October 2008, Congress passed the EESA, under which TARP and the Automotive Industry Financing Program established thereunder have been created. On December 29, 2008, the Treasury approved our application to participate in TARP and we issued and sold to the Treasury 5,000,000 units of the Series D-1 Preferred and 250,000 units of the Series D-2 Preferred (issued upon exercise of the warrant issued to the Treasury the same day), for a total purchase price of \$5 billion.

This prospectus relates to the offer and sale by the selling securityholders named herein of up to 5,000,000 units of the Series D-1 Preferred and 250,000 units of the Series D-2 Preferred, from time to time, directly or through one or more underwriters, broker-dealers or agents. If securities are sold through underwriters or broker-

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dealers, the selling securityholders will be responsible for underwriting discounts or commissions or agent's commissions. The securities may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of the sale, at varying prices determined at the time of sale, or at negotiated prices. We will not receive any proceeds from the sale of securities by the selling securityholders. See Plan of Distribution.

For a description of the terms of the Series D Preferred, see Description of the Series D Preferred below.

On May 21, 2009, we issued and sold to the Treasury additional equity securities in the form of our Fixed Rate Cumulatively Convertible Preferred Membership Interests, Series F (the Series F Preferred) with an aggregate capital amount of \$7,875,000,000. The Series F Preferred are convertible into Common Interests, either (i) subject to the approval of the Federal Reserve, at GMAC's option, provided that GMAC shall not convert any units of the Series F Preferred to the extent such conversion would result in the Treasury owning in excess of 49% of the Common Interests, except (a) with the Treasury's prior written consent, (b) pursuant to GMAC's capital plan, as agreed upon by the Federal Reserve, or (c) pursuant to an order of the Federal Reserve compelling such a conversion; or (ii) at the option of the Treasury, upon the occurrence of a public offering of the Common Interests or certain sales, mergers or changes of control of GMAC. Any units of the Series F Preferred which remain outstanding on May 21, 2016 will convert into Common Interests on such date. The conversion of all outstanding units of the Series F Preferred as of the date of this prospectus would result in the issuance of 680,400 Common Interests. Neither the Series F Preferred nor the Common Interests are being offered pursuant to this prospectus.

RATIOS OF EARNINGS TO FIXED CHARGES

Our consolidated ratios of earnings to combined fixed charges and preferred interest dividends were as follows for the periods presented:

	Three Months Ended March 31,		Year Ended December 31,				
	2009	2008	2008	2007	2006	2005	2004
Ratio of earnings to fixed charges and preferred interest dividends ⁽¹⁾	0.62(2)	0.84(2)	1.21	0.86(2)	1.15	1.28	1.45

(1) Preferred interest dividends represent pre-tax earnings necessary to cover any preferred interest dividend requirements computed using our effective tax rate for periods when the effective tax rate was positive.

(2) The ratio indicates a less than one-to-one coverage ratio for certain periods as noted. Earnings available for fixed charges and preferred interest dividends for the respective periods were inadequate to cover total fixed charges and preferred interest dividends. The deficiencies were \$928 million for the three months ended March 31, 2009; \$534 million for the three months ended March 31, 2008; and \$2.062 billion for the year ended December 31, 2007.

RISK FACTORS

An investment in our securities is subject to certain risks. In consultation with your own financial, tax and legal advisors, you should carefully consider, among other matters, the following discussions of risk before deciding whether an investment in the Series D Preferred is suitable for you. The risks described below are intended to highlight risks that are specific to the Series D Preferred, but are not the only risks we face. Additional risks, including those generally affecting the industry in which we operate, risks that we currently deem immaterial and risks generally applicable to companies that have recently undertaken similar transactions may also impair our business, the value of your investment and our ability to make distributions on the Series D Preferred. For a more complete description of the risks that may affect our business, see our Annual Report on Form 10-K for the year ended December 31, 2008 and our Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2009 (as amended or supplemented in subsequent reports on Form 10-K, Form 10-Q or Form 8-K). In addition to the risks described below, we face other risks that are described from time to time in periodic reports that we file with the SEC. If any of the following risks actually occur, the value of the Series D Preferred could decline, and you may lose all or part of your investment. The risks discussed below also include forward-looking statements, and our actual results may differ materially from those discussed in these forward-looking statements.

Risks Relating to the Series D Preferred

The Series D Preferred are equity securities and are subordinate to all of our existing and future indebtedness; regulatory restrictions may limit or prevent us from declaring distributions on the Series D Preferred; and the Series D Preferred place no limitations on the amount of indebtedness we and our subsidiaries may incur in the future.

The Series D Preferred are equity interests in GMAC and do not constitute indebtedness. As such, the Series D Preferred, like the Common Interests and other series of preferred membership interests, rank junior to all indebtedness and other non-equity claims on GMAC with respect to assets available to satisfy claims on GMAC, including in a liquidation. Additionally, unlike indebtedness, where principal and interest would customarily be payable on specified due dates, in the case of the Series D Preferred, as with the Common Interests and other series of preferred membership interests, (i) distributions are payable only when, as and if authorized and declared by our Board of Managers and depend on, among other things, our results of operations, financial condition, debt service requirements, other cash needs and any other factors our Board of Managers deems relevant, and (ii) as a Delaware limited liability company, under Delaware law we are subject to restrictions on payments of distributions that would render us insolvent. See [Description of the Series D Preferred Distributions](#).

In addition, the Series D Preferred do not limit the amount of debt or other obligations we or our subsidiaries may incur in the future. Accordingly, we and our subsidiaries may incur substantial amounts of additional debt and other obligations that will rank senior to the Series D Preferred or to which the Series D Preferred will be structurally subordinated.

The prices of the Series D Preferred may fluctuate significantly, and this may make it difficult for you to resell the Series D Preferred when you want or at prices you find attractive.

There currently is no market for the Series D Preferred, or for any class of our equity securities, and we cannot predict how the Series D Preferred will trade in the future. The market value of the Series D Preferred is likely to fluctuate in response to a number of factors including the following, most of which are beyond our control, as well as the other factors described in this [Risk Factors](#) section:

- actual or anticipated quarterly fluctuations in our operating and financial results;
- developments related to investigations, proceedings or litigation that involve us;
- changes in financial estimates and recommendations by financial analysts;
- dispositions, acquisitions and financings;

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- actions of our Common Interest holders, including sales of such Common Interests by existing holders;
- fluctuations in the stock price and operating results of our competitors;
- regulatory developments;
- developments related to the U.S. automotive industry;
- developments related to the U.S. housing market; and
- developments related to the financial services industry.

The market value of the Series D Preferred may also be affected by conditions affecting the financial markets in general, including price and trading fluctuations. These conditions may result in (i) volatility in the level of, and fluctuations in, the market prices of equity securities generally and, in turn, the Series D Preferred, and (ii) sales of substantial amounts of the Series D Preferred in the market, in each case that could be unrelated or disproportionate to changes in our operating performance. These broad market fluctuations may adversely affect the market value of the Series D Preferred.

An active trading market for the Series D Preferred may not develop.

The Series D Preferred are not currently listed on any securities exchange and we do not anticipate listing them on an exchange unless we are requested to do so by the Treasury pursuant to the Securities Purchase Agreement. There can be no assurance that an active trading market for the Series D Preferred will develop, or, if developed, that an active trading market will be maintained. If an active market is not developed or sustained, the market value and liquidity of the Series D Preferred may be adversely affected.

There may be future sales of additional common membership interests or preferred membership interests or other dilution of our equity, which may adversely affect the market price of the Series D Preferred.

We are not restricted from issuing additional common membership interests or preferred membership interests ranking junior to or of equal priority with the Series D Preferred with respect to distribution rights and rights upon any liquidation of GMAC, including any securities that are convertible into or exchangeable for, or that represent the right to receive, common membership interests or preferred membership interests or any substantially similar securities. On May 21, 2009, we issued and sold to the Treasury 157,500,000 units of the Series F Preferred with an aggregate capital amount of \$7,875,000,000. Each unit of the Series F Preferred is of equal priority with the Series D Preferred with respect to distribution rights and rights upon any liquidation of GMAC, and is convertible into Common Interests either (i) subject to the approval of the Federal Reserve, at GMAC's option, provided that GMAC shall not convert any units of the Series F Preferred to the extent such conversion would result in the Treasury owning in excess of 49% of the Common Interests, except (a) with the Treasury's prior written consent, (b) pursuant to GMAC's capital plan, as agreed upon by the Federal Reserve, or (c) pursuant to an order of the Federal Reserve compelling such a conversion; or (ii) at the option of the Treasury, upon the occurrence of a public offering of the Common Interests or certain sales, mergers or changes of control of GMAC. Any units of the Series F Preferred which remain outstanding on May 21, 2016 will convert into Common Interests on such date. The conversion of all outstanding units of the Series F Preferred as of the date of this prospectus would result in the issuance of 680,400 Common Interests. We may also issue preferred membership interests which by their terms rank expressly senior to the Series D Preferred, provided that we obtain the prior approval of the holders of 66 2/3% of the units of each of the Series D-1 Preferred and Series D-2 Preferred. The market value of the Series D Preferred could decline as a result of sales by us of a large number of units of Common Interests or preferred membership interests or similar securities in the market or the perception that such sales could occur.

The Series D Preferred may be junior in rights and preferences to our future preferred membership interests.

Subject to approval by the holders of at least 66 2/3% of the units of each of the Series D-1 Preferred and Series D-2 Preferred then outstanding, the holders of each such series voting together as a separate class, we may

issue preferred membership interests in the future the terms of which are expressly senior to the Series D Preferred. The terms of any such future preferred membership interests expressly senior to the Series D Preferred may restrict distributions to the Series D Preferred. For example, the terms of any such senior preferred membership interests may provide that, unless full distributions for all of our outstanding preferred membership interests senior to the Series D Preferred have been paid for the relevant periods, no distributions will be paid to the Series D Preferred, and no units of Series D Preferred may be repurchased, redeemed or otherwise acquired by us. This could result in distributions on the Series D Preferred not being paid when contemplated. In addition, in the event of our liquidation, dissolution or winding-up, the terms of the senior preferred membership interests may prohibit us from making payments on the Series D Preferred until all amounts due to holders of the senior preferred membership interests in such circumstances are paid in full.

Holders of the Series D Preferred have limited voting rights.

Until and unless we are in arrears on our distributions on the Series D-1 Preferred or Series D-2 Preferred for six distribution periods, whether or not consecutive, the holders of the Series D Preferred will have no voting rights except with respect to certain fundamental changes in the terms of the Series D Preferred and certain other matters, and except as may be required by Delaware law. If distributions on the Series D-1 Preferred or Series D-2 Preferred are not made in full for six distribution periods, whether or not consecutive, the total number of members of the GMAC Board of Managers will automatically increase by two for each applicable series of the Series D Preferred. The holders of the applicable series will each have the right to appoint two individuals to serve in the new positions. This right and the terms of such managers will end when we have paid in full all accrued and unpaid distributions for all past distribution periods. Directors elected by the holders of the Series D-1 Preferred and Series D-2 Preferred would lack a controlling majority of the Board of Managers, both based on the current size of the Board and following any agreed-upon changes in size of the Board of Managers pursuant to the Amended and Restated Governance Agreement executed May 21, 2009 by and between GMAC, the Treasury, FIM and GM Finance Co. Holdings LLC (the Governance Agreement), and may not be able to effect any action without the cooperation of other members. For a full description of the voting rights of the Series D Preferred, see Description of the Series D Preferred Voting Rights. For a full description of the Governance Agreement, see Description of the Series D Preferred Change of Control.

The Series D Preferred are subject to additional transfer restrictions which may inhibit the development of a market for Series D Preferred, making it more difficult for you to sell your securities when you wish and at prices you find attractive.

The Series D Preferred may only be transferred in accordance with certain restrictions set forth in our LLC Agreement (as defined herein). For a detailed description of the transfer restrictions, see Description of the Series D Preferred Restrictions on Transfer. These restrictions may prevent the development of a market for the securities, which may adversely affect the market value and liquidity of the Series D Preferred.

Risks Relating to GM Bankruptcy Filing

GM has recently filed for bankruptcy protection.

On June 1, 2009, GM filed for bankruptcy protection under chapter 11 of the United States Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District of New York. It is unclear at this time how GM's bankruptcy filing will impact our business and operations. The uncertainty created by GM's bankruptcy filing and planned corporate restructuring may negatively impact the market value and liquidity of our securities, including the Series D Preferred. For a description of our exposure to GM and the possible risks we face as a result of GM's bankruptcy filing, see "Risk Factors" in our filings on Form 10-K and Form 10-Q.

DESCRIPTION OF THE SERIES D PREFERRED

This section summarizes specific terms and provisions of the Series D Preferred. The description is qualified in its entirety by the actual terms of the Series D Preferred, set forth in GMAC's Sixth Amended and Restated Limited Liability Company Operating Agreement, as amended, dated May 22, 2009 (the "LLC Agreement"), which is included as Exhibit 3.1 hereto, and incorporated by reference into this prospectus. See "Information Incorporated by Reference."

General

The Series D-1 Preferred constitute a single series of our preferred membership interests, totaling 5,000,000 units, capital amount \$1,000 per unit. The Series D-1 Preferred have no maturity date. We issued the units to the Treasury on December 29, 2008 in connection with the Automotive Industry Financing Program established under TARP.

The Series D-2 Preferred constitute a single series of our preferred membership interests, totaling 250,000 units, capital amount \$1,000 per unit. The Series D-2 Preferred have no maturity date. We issued the units to the Treasury on December 29, 2008, in connection with the Automotive Industry Financing Program established under TARP, upon the exercise of the warrant issued the same day.

GMAC is currently treated as a partnership for federal income tax purposes. Accordingly, the Series D Preferred represent partnership interests for federal income tax purposes. Pursuant to the LLC Agreement, GMAC shall convert into a Delaware corporation upon the earliest to occur of: (i) at any time, upon the approval of the Board of Managers; (ii) at any time, upon the approval of the holders of the majority of the Common Interests (including at least two such holders) and a majority of the independent members of the Board of Managers; (iii) at any time after December 31, 2010, if at such time tax distributions on the junior membership interests have not been, and are not reasonably expected to be, approved for 2011, upon the approval of the holders of the majority of the Common Interests (including at least two such holders); (iv) at any time after December 31, 2009, upon the request of the Treasury and with the approval of a majority of the independent members of the Board of Managers (*provided* that certain tax distributions on the junior membership interests shall have been approved); and (v) if for any reason, GMAC is or otherwise becomes treated as a C corporation for U.S. Federal income tax purposes, *provided, however*, that in connection with any conversion under the preceding clauses (i), (ii), (iii) or (iv), GMAC shall have an amount of equity capital immediately following such conversion (as determined by the Board of Managers in good faith) equal to at least a required minimum amount, and such conversion shall otherwise be in compliance with the BHC Act. After any such conversion of GMAC into a corporation, the Series D Preferred shall be treated as stock for federal income tax purposes.

Each transferee of units of the Series D Preferred must agree in writing to be bound by the provisions of the LLC Agreement by executing a joinder agreement substantially in the form of Exhibit 10.3 (a "Joinder") to the registration statement of which this prospectus forms a part. No transfer will be effective unless and until a properly completed Joinder is executed by the transferee and received by GMAC. All Joinders must be sent to GMAC at the following address:

GMAC LLC
Attention: Investor Relations
200 Renaissance Center
Mail Code: 482-B08-A36
Detroit, Michigan 48265
Tel: (866) 710-4623

This prospectus summarizes and describes only selected important provisions of the LLC Agreement, and is qualified in its entirety by reference to the full text of the LLC Agreement, which is included as Exhibit 3.1 herein. We strongly advise that you read the LLC Agreement in its entirety prior to any investment in the Series D Preferred.

Distributions

Rate. Distributions on the Series D Preferred are payable quarterly in arrears, when, as and if declared by GMAC's Board of Managers, but only out of assets legally available therefor. Distributions, if any, will be made on February 15, May 15, August 15 and November 15 of each year (each a Distribution Payment Date, and each period from and including each Distribution Payment Date to, but excluding, the next Distribution Payment Date, a Distribution Period). Distributions will be cumulative.

Distributions will accrue on the Series D-1 Preferred with respect to each Distribution Period at 8% per annum on (i) the capital amount per unit of Series D-1 Preferred, and (ii) the amount of accrued and unpaid distributions for any prior Distribution Periods on such unit of Series D-1 Preferred, if any.

Distributions will accrue on the Series D-2 Preferred with respect to each Distribution Period at 9% per annum on (i) the capital amount per unit of Series D-2 Preferred, and (ii) the amount of accrued and unpaid distributions for any prior Distribution Periods on each unit of Series D-2 Preferred, if any.

Such distributions began to accrue and be cumulative from December 29, 2008, shall compound on each subsequent Distribution Payment Date (*i.e.*, no distributions shall accrue on other distributions unless and until the first Distribution Payment Date for such other distributions has passed without such other distributions having been paid on such date), and shall be payable quarterly in arrears on each Distribution Payment Date, commencing with February 15, 2009. If a Distribution Payment Date falls on a day that is not a business day, the distribution payment due on that date will be postponed to the next day that is a business day and no additional distributions will accrue as a result of that postponement. The term *business day* means any day except Saturday, Sunday and any day on which banking institutions in the State of New York generally are authorized or required by law or other governmental actions to close.

Distributions on the Series D Preferred will be cumulative. If for any reason our Board of Managers does not declare a distribution on the Series D-1 Preferred or Series D-2 Preferred for a particular distribution period, or if the Board of Managers declares less than a full distribution, we will remain obligated to pay the unpaid portion of the distribution for that period and the unpaid distribution will compound on each Distribution Payment Date.

Distributions on the Series D Preferred will be computed on the basis of a 360-day year consisting of twelve 30-day months. The amount of distributions payable on the Series D Preferred on any date prior to the end of a Distribution Period, and for the initial Distribution Period, will be computed on the basis of a 360-day year consisting of twelve 30-day months, and actual days elapsed over a 30-day month.

Distributions will be paid to the holders of record as they appear on the Schedule of Members maintained by GMAC pursuant to our LLC Agreement on the applicable record date, which will be the 15th calendar day immediately preceding such Distribution Payment Date or such other record date fixed by the Board of Managers, which shall not be more than 60 nor less than 10 days prior to such Distribution Payment Date. Holders of the Series D Preferred, as members of GMAC, agree to be bound by the provisions of the LLC Agreement in reporting their shares of GMAC's income, gain, loss, deduction and credit for federal, state and local income tax purposes (except as otherwise may be required by law).

Priority of Distributions. So long as any unit of Series D Preferred remains outstanding, no distribution shall be declared or paid on any Junior Membership Interests (as defined below) (other than distributions payable solely in such Junior Membership Interests) or Parity Membership Interests (as defined below), other than pursuant to the immediately following paragraph in the case of Parity Membership Interests, and no Junior Membership Interests or Parity Membership Interests shall be, directly or indirectly, purchased, redeemed or otherwise acquired for consideration by GMAC or any of its subsidiaries unless all accrued and unpaid distributions for all past Distribution Periods, including the latest completed Distribution Period (including, if applicable, distributions on such amount), on all outstanding units of Series D Preferred have been or are contemporaneously declared and paid in full (or have been declared and a sum sufficient for the payment thereof has been set aside for the benefit of the holders of units of Series D Preferred on the applicable record date). The foregoing limitation shall not apply to (i) redemptions, purchases or other acquisitions of Junior Membership Interests in connection with the administration of any employee benefit plan in the ordinary course of business and consistent with past practice; (ii) the acquisition by the Issuer or any of its subsidiaries of record ownership in Junior Membership Interests or Parity Membership Interests for the beneficial ownership of any other persons (other than GMAC or any of its subsidiaries), including as trustees or custodians; (iii) the exchange or conversion of Junior Membership Interests for or into other Junior Membership Interests or of Parity Membership Interests for or into other Parity Membership Interests (with the same

or lesser aggregate liquidation amount) or Junior Membership Interests, in each case, solely to the extent required pursuant to binding contractual agreements entered into prior to December 29, 2008 or any subsequent agreement for the accelerated exercise, settlement or exchange thereof for common membership interests; and (iv) tax distributions on Junior Membership Interests to the extent determined to be reasonably necessary by the Board of Managers (subject to the consent of an independent official designated by the President in connection with the Automotive Industry Financing Program).

When distributions are not paid (or declared and a sum sufficient for payment thereof set aside for the benefit of the holders thereof on the applicable record date) on any Distribution Payment Date (or, in the case of Parity Membership Interests having distribution payment dates different from the Distribution Payment Dates, on a distribution payment date falling within a Distribution Period related to such Distribution Payment Date) in full upon the Series D Preferred and any Parity Membership Interests, all distributions declared on the Series D Preferred and all such Parity Membership Interests and payable on such Distribution Payment Date (or, in the case of Parity Membership Interests having distribution payment dates different from the Distribution Payment Dates, on a distribution payment date falling within the Distribution Period related to such Distribution Payment Date) shall be declared pro rata so that the respective amounts of such distributions declared shall bear the same ratio to each other as all accrued and unpaid distributions per unit on the units of Series D Preferred (including, if applicable, distributions on such amount) and all Parity Membership Interests payable on such Distribution Payment Date (or, in the case of Parity Membership Interests having distribution payment dates different from the Distribution Payment Dates, on a distribution payment date falling within the Distribution Period related to such Distribution Payment Date) (subject to their having been declared by the Board of Managers or a duly authorized committee of the Board of Managers out of legally available funds and including, in the case of Parity Membership Interests that bear cumulative distributions, all accrued but unpaid distributions) bear to each other. If the Board of Managers or a duly authorized committee of the Board of Managers determines not to pay any distribution or a full distribution on a Distribution Payment Date, GMAC will provide written notice to the holders of Series D Preferred prior to such Distribution Payment Date. Subject to the foregoing, and not otherwise, such distributions (payable in cash, securities or other property) as may be determined by the Board of Managers or any duly authorized committee of the Board of Managers may be declared and paid on any securities, including Junior Membership Interests, from time to time out of any funds legally available for such payment, and holders of Series D Preferred shall not be entitled to participate in any such distributions.

Junior Membership Interests means any class or series of GMAC's common membership interests, including Common Interests and Class C Membership Interests, and any other class or series of membership interest the terms of which expressly provide that it ranks junior to the Series D Preferred as to distribution rights and/or as to rights on liquidation, dissolution or winding up of GMAC.

Parity Membership Interests means any class or series of GMAC's membership interests (other than the Series D-1 Preferred and Series D-2 Preferred) the terms of which do not expressly provide that such class or series will rank senior or junior to the Series D-1 Preferred and Series D-2 Preferred as to distribution rights and/or as to rights on liquidation, dissolution or winding up of GMAC. As of the date of this prospectus, Parity Membership Interests include the GM Preferred Membership Interests, the Series E Preferred Membership Interests and the Series F Preferred Interests.

Liquidation Rights

In the event of any liquidation, dissolution or winding up of the affairs of GMAC, whether voluntary or involuntary, holders of the Series D Preferred shall be entitled to receive for each unit of Series D Preferred held by them, out of the assets of GMAC or proceeds thereof (whether capital or surplus) available for distribution to members of GMAC, subject to the rights of any creditors of GMAC, before any distribution of such assets or proceeds is made to or set aside for the holders of Junior Membership Interests or any other membership interest of GMAC ranking junior to the Series D Preferred as to such distribution, payment in full in an amount equal to the sum of (i) the capital amount per unit of Series D Preferred and (ii) the amount of any accrued and unpaid distributions (including, if applicable, distributions on such amount), whether or not declared, to the date of payment. To the extent the assets or proceeds available for distributions on membership interests are not sufficient to fully pay the liquidation payments owing to the holders of the Series D Preferred and the holders of any Parity Membership Interests or any other membership interest of GMAC ranking equally with the Series D Preferred as to

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such distribution, the holders of the Series D Preferred and the Parity Membership Interests will share ratably in the distribution in proportion to the full respective distribution to which they are entitled.

For purposes of the liquidation rights of the Series D Preferred, neither a merger or consolidation of GMAC with another entity, nor a sale, lease or exchange of substantially all of GMAC's assets, will constitute a liquidation, dissolution or winding up of the affairs of GMAC.

Redemption and Repurchases

Subject to the prior approval of the Federal Reserve, the restrictions imposed by the terms of our other preferred membership interests and, while the Treasury holds any units of the Series F Preferred, the consent of the Treasury, the Series D-1 Preferred may be redeemed, in whole or in part, at any time or from time to time (subject to the restrictions below), at a redemption price equal to 100% of the capital amount per unit plus any accrued and unpaid distributions to, but not including, the redemption date (including distributions accrued on any unpaid distributions), provided that any declared but unpaid distribution payable on a redemption date that occurs subsequent to the record date for the distribution will be payable to the holder of record of the redeemed units on the distribution record date, and provided further that the Series D-1 Preferred may be redeemed prior to February 15, 2012 only if (i) we have, or our successor following a business combination with another entity has, received aggregate gross proceeds of not less than \$1,250,000,000 (the Series D-1 Minimum Amount), plus the Minimum Amount for each other outstanding series of preferred membership interests of such successor that was originally issued to the Treasury in connection with TARP from one or more Qualified Equity Offerings (as defined below), including Qualified Equity Offerings of such successor, and (ii) the aggregate redemption price of the Series D-1 Preferred (and any applicable preferred interests of such successor) redeemed pursuant to this paragraph does not exceed the aggregate net cash proceeds received by GMAC (or its successor) from such Qualified Equity Offerings.

The Series D-2 Preferred may be redeemed on the same terms and conditions as the Series D-1 Preferred, with the added restriction that the Series D-2 Preferred may not be redeemed until all of the Series D-1 Preferred have been redeemed. The minimum aggregate gross proceeds we (or our successor) must have raised in one or more Qualified Equity Offerings in order to redeem the Series D-2 Preferred prior to February 15, 2012 (the Series D-2 Minimum Amount), is equal to \$62,500,625.

Qualified Equity Offering means the sale and issuance for cash by GMAC, to persons other than GMAC or any of our subsidiaries, after December 29, 2008, of perpetual preferred membership interests or common membership interests, all of which qualify as and may be included in Tier 1 capital of GMAC at the time of issuance under the applicable risk-based capital guidelines of our appropriate federal banking agency (other than any sales or issuances made pursuant to agreements or arrangements entered into, or pursuant to financing plans which were publicly announced, on or prior to November 17, 2008).

To exercise the redemption right described above, we must give notice of the redemption to the holders of record of the Series D Preferred to be redeemed by first class mail, not less than 30 days and not more than 60 days before the date of redemption. Each notice of redemption given to a holder of Series D-1 Preferred or Series D-2 Preferred must state: (i) the redemption date; (ii) the number of units of Series D-1 Preferred or Series D-2 Preferred to be redeemed, and, if less than all the units held by such holder are to be redeemed, the number of such units to be redeemed from such holder; (iii) the redemption price; and (iv) the place or places where certificates for such units are to be surrendered for payment of the redemption price. In the case of a partial redemption of the Series D-1 Preferred or the Series D-2 Preferred, the units to be redeemed will be selected either on a pro rata basis or in such other manner as our Board of Managers determines to be fair and equitable.

The Securities Purchase Agreement for the Series D Preferred provides that so long as the Treasury continues to own any units of Series D Preferred, we may not repurchase any units of Series D-1 Preferred or Series D-2 Preferred from any other holder of such units unless we offer to repurchase a ratable portion of the units of Series D-1 Preferred or Series D-2 Preferred then held by the Treasury on the same terms and conditions.

We may not redeem or repurchase any units of our equity securities, including the Series D Preferred, without the consent of the Treasury at any time while the Treasury holds any units of the Series F Preferred, subject to certain limited exceptions.

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We may not redeem any units of the Series D-1 Preferred or Series D-2 Preferred without also redeeming units of the Class E Preferred Membership Interests on a pro rata basis, based on the aggregate reference amount of each such series. No unit of the Class E Preferred Membership Interests may be redeemed until such time as the capital account attributable to the Class E Preferred Membership Interests is equal to at least a certain minimum amount, as described in the LLC Agreement. All units of the Class E Preferred Membership Interests were issued to Preferred Blocker Inc., a Delaware corporation and subsidiary of GMAC (Blocker Sub) to fund the payment of dividends on Blocker Sub s 9% cumulative perpetual preferred stock. Unless all accrued and unpaid dividends on the 9% perpetual preferred stock of Blocker Sub have been paid in full for all past dividend periods, we may not redeem any units of the Series D Preferred.

If accrued distributions on the GM Preferred Membership Interests have not been paid, we may not redeem any units of the Series D-1 Preferred or Series D-2 Preferred without the prior written consent of the holders of a majority of the GM Preferred Membership Interests then outstanding.

No Conversion Rights

Holders of the Series D Preferred have no right to exchange or convert their units into common membership interests or any other securities.

Voting Rights

The holders of the Series D Preferred do not have voting rights other than those described below, except to the extent specifically required by Delaware law.

Whenever distributions have not been paid on the Series D-1 Preferred or the Series D-2 Preferred for six or more quarterly distribution periods, whether or not consecutive, the authorized number of managers constituting GMAC s Board of Managers will automatically increase by two (or by four, if distributions on neither series of the Series D Preferred have been paid) and the holders of each series with respect to which such distributions have not been paid will have the right to elect two managers (the Preferred Managers) to fill such newly created positions until all accrued and unpaid distributions for all past distribution periods on all outstanding units of Series D-1 Preferred or Series D-2 Preferred, as applicable, have been paid in full, at which time this right will terminate (subject to vesting in the event of each subsequent default by us in the payment of distributions on the Series D-1 Preferred or Series D-2 Preferred, as applicable).

No person may be elected as a Preferred Manager who would cause us to violate any corporate governance requirements of any securities exchange or other trading facility on which our securities may then be listed or traded that listed or traded companies must have a majority of independent directors. Upon any termination of the right of the holders of the Series D-1 Preferred or Series D-2 Preferred to vote for directors as described above, the Preferred Managers appointed by such holders will cease to be qualified as managers, the terms of office of all such Preferred Managers then in office will terminate immediately, and the authorized number of managers will be reduced by the number of Preferred Managers which had been elected by the holders of the Series D-1 Preferred and/or Series D-2 Preferred, as applicable. Any Preferred Manager may be removed at any time, with or without cause, and any vacancy created by such a removal may be filled, only by the affirmative vote of the holders of a majority of the outstanding units of the Series D-1 Preferred or Series D-2 Preferred, as applicable, to the extent the voting rights of such holders described above are then exercisable. If the office of any Preferred Manager becomes vacant for any reason other than removal from office, the remaining Preferred Manager appointed by holders of the applicable series may choose a successor who will hold office for the unexpired term of the office in which the vacancy occurred.

In addition to any other vote or consent required by Delaware law or our LLC Agreement, the vote or consent of the holders of at least 66 2/3% of each of the Series D-1 Preferred and Series D-2 Preferred, holders of each such series voting as a separate class, is required in order to do the following:

amend or alter the LLC Agreement to authorize or create or increase the authorized amount of, or any issuance of, any membership interests of,

membership interests of, any class or series of membership interests of GMAC ranking senior to the Series D Preferred with respect to either or both any liquidation, dissolution or winding up of GMAC; or

amend, alter or repeal of any provision of the LLC Agreement (including, unless no vote on such merger or consolidation is required as described in the LLC Agreement, consolidation or otherwise) so as to adversely affect the rights, preferences, privileges or voting powers of the Series D Preferred; or

consummate any binding exchange or reclassification involving the Series D-1 Preferred or Series D-2 Preferred, or of a merger or consolidation in which the units of the Series D-1 Preferred and Series D-2 Preferred remain outstanding or, in the case of any such merger or consolidation with respect to which the units are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (y) such units remaining outstanding or converted into or exchanged for preference securities, and their respective rights, preferences, privileges and voting powers, and limitations and restrictions thereof, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers, and limitations and restrictions thereof, of the Series D-1 Preferred and Series D-2 Preferred immediately prior to such consummation, taken as a whole;

provided, however, that any increase in the amount of the authorized Series D-1 Preferred or Series D-2 Preferred, including any increase in the authorized amount of the Series D-1 Preferred or Series D-2 Preferred necessary to satisfy preemptive or similar rights granted by GMAC to other persons prior to December 29, 2008, or the creation and issuance, or an increase in the authorized or issued amount, whether pursuant to preemptive or similar rights or otherwise, of any other series of preferred interests, or any securities convertible into or exchangeable or exercisable for any other series of preferred interests, ranking equally with and/or junior to the Series D Preferred with respect to the payment of distributions (whether such distributions are cumulative or non-cumulative) and the distribution of assets upon liquidation, dissolution or winding up of GMAC will not be deemed to adversely affect the rights, preferences, privileges or voting powers, and shall not require the affirmative vote or consent of, the holders of outstanding units of the Series D Preferred; *provided, further, however*, that (i) a GMAC Conversion (as defined below), and (ii) any amendments to the LLC Agreement entered into in connection with compliance by GMAC, GMAC and/or FIM with their respective commitments to the Federal Reserve for purposes of the Federal Reserve's approval of GMAC's bank holding company application and/or the Treasury for purposes of the Company's participation in TARP, or any similar or successor program, will not be deemed to adversely affect the rights, preferences, privileges or voting powers, and shall not require the affirmative vote or consent of, the holders of outstanding units of the Series D Preferred, *provided that*, in the case of a GMAC Conversion, (x) each of the Series D-1 Preferred and Series D-2 Preferred are converted into or exchanged for preferred stock of the resulting corporation having terms substantially the same as the terms of the Series D-1 Preferred or Series D-2 Preferred, respectively, and (y) the holders of the Series D-1 Preferred and Series D-2 Preferred will maintain a substantially equivalent economic interest, based on the capital amounts of their respective interests, in GMAC after the GMAC Conversion as they held prior to the GMAC Conversion.

Liability of Members

The Delaware Limited Liability Company Act imposes certain restrictions on distributions by a limited liability company to its members. A member (including any holder of units of the Series D Preferred) who receives a distribution from us (including distributions upon liquidation) and who knew at the time that the distribution was in violation of these restrictions shall be liable to GMAC for the amount of the distribution for three years, subject to extension in certain circumstances. Under the Delaware Limited Liability Company Act, a limited liability company may not in general make a distribution to any of its members if, after the distribution, all liabilities of the limited liability company, other than liabilities to its members on account of their limited liability company interests and liabilities for which the recourse of creditors is limited to specific property of the limited liability company, would exceed the fair value of the assets of the limited liability company. For the purpose of determining the fair value of property subject to liability for which recourse of creditors is limited shall be included in the assets of the limited liability company only to the extent that the fair value of that property exceeds the nonrecourse liability.

Restrictions on Transfer

Section 9.5 of the LLC Agreement generally precludes transfers of membership interests if, as a result of such transfer, our membership interests would be owned by more than ninety-nine persons as determined by GMAC in accordance with Treasury Regulation Section 1.7704-1(h) or if, as a result of such transfer, GMAC would otherwise be treated as a publicly traded partnership for United States federal tax purposes. In connection with any transfer, Section 9.5 requires an opinion of counsel reasonably satisfactory to the Board of Managers and counsel for GMAC in both form and substance, stating that such transfer will not cause GMAC to be treated as a publicly traded partnership.

Pursuant to the Securities Purchase Agreement, prior to a GMAC Conversion (as defined below) or the listing of our membership interests on a national securities exchange, and on or prior to December 29, 2009, the Treasury has agreed not to transfer any of the Series D Preferred if such transfer would violate Section 9.5 of the LLC Agreement.

GMAC Conversion means, together with related transactions, any conversion of GMAC into a corporation through a statutory conversion, the creation of a holding company above GMAC and the exchange of all or substantially all of GMAC's outstanding equity interests for equity interests of such holding company, the direct or indirect acquisition by Blocker Sub of all or substantially all of GMAC's outstanding equity interests in exchange for stock of Blocker Sub, the merger of GMAC with and into Blocker Sub, or any other direct or indirect incorporation of the assets and liabilities of GMAC, including, without limitation, by merger, consolidation or recapitalization; statutory conversion; direct or indirect, sale, transfer, exchange, pledge or other disposal of economic, voting or other rights; sale, exchange or other acquisition of shares, equity interests or assets; contribution of assets and/or liabilities; liquidation; exchange of securities; conversion of entity, migration of entity or formation of new entity; or other transaction or group of related transactions.

Indemnification of GMAC

If GMAC is required by law to make any payment to a governmental entity that is specifically attributable to a member (including any holder of units of the Series D Preferred) or a member's status as such (including federal withholding taxes, state or local personal property taxes and state or local unincorporated business taxes), then such member (other than Blocker Sub) shall indemnify GMAC in full for the entire amount paid (including interest, penalties, and related expenses).

Change of Control

Our LLC Agreement and associated agreements place restrictions both on our ability to engage in certain transactions that would result in a change of control and on the ability of holders of our common membership interests to transfer those interests.

The holders of all of our outstanding Common Interests as of the date of this prospectus are parties to the Governance Agreement, which sets forth the requirements for the size and composition of our Board of Managers for so long as the parties to the Governance Agreement continue to own certain minimum percentages of our Common Interests, subject to the right of holders of the Series D Preferred to designate Preferred Managers.

Until the date on which units of the Series F Preferred are first converted into Common Interests, the Board of Managers will be comprised of nine Managers. During this period, the Board of Managers will include (i) one Manager designated by FIM, Cerberus, or its affiliates (the Cerberus Parties, and the Manager designated by the Cerberus Parties a Cerberus Designated Manager); (ii) for so long as the Treasury holds or has rights in at least 95,460 Common Interests, two Managers designated by the Treasury, and, following such time, one Manager designated by the Treasury (each a Treasury Designated Manager); (iii) the Chief Executive Officer of GMAC; and (iv) the remaining members of the Board of Managers to be appointed by (1) for so long as the Treasury is entitled to designate two Managers pursuant to clause (ii) hereof, a majority vote of the Managers designated pursuant to clauses (i), (ii) and (iii) hereof (which majority must include at least one Treasury Designated Manager); or (2) for so long as the Treasury is entitled to designate only one Manager pursuant

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to clause (ii) hereof, a majority vote of the full Board of Managers (which majority must include at least one Treasury Designated Manager).

Following the date on which units of the Series F Preferred are first converted into Common Interests, the number of Managers and the composition of the Board of Managers shall be determined pursuant to the following table:

The Cerberus Parties will lose the right to designate a Manager when such parties collectively cease to own at least 5% of the then outstanding Common Interests. The Cerberus Parties and GM Finance Co. Holdings LLC and its affiliates shall each have the right to appoint a non-voting observer to the Board if they maintain certain minimum ownership percentages.

The Governance Agreement will terminate upon the earlier of (i) the date that the Treasury ceases to hold at least 9.9% of the Common Interests and (ii) with respect to any party to the Governance Agreement, the date such party and its affiliates cease to own any Common Interests.

The Governance Agreement will remain in full force and effect following a GMAC Conversion. The Governance Agreement provides that in connection with an initial public offering of GMAC, the parties will revisit the terms of the agreement and work together in good faith to make such modifications as may be reasonably necessary to facilitate such public offering and the future governance of GMAC.

The Governance Agreement is included as Exhibit 10.2 hereto, and is incorporated by reference into this prospectus. See Information Incorporated by Reference.

USE OF PROCEEDS

We will not receive any proceeds from the sale of the securities. All proceeds of any sale will go to the selling securityholders.

SELLING SECURITYHOLDERS

The selling securityholders may include (i) the Treasury, which acquired all of the Series D Preferred from us on December 29, 2008 in a private placement exempt from the registration requirements of the Securities Act, and (ii) any other person or persons holding Series D Preferred to whom the Treasury has transferred its registration rights under the terms of the Securities Purchase Agreement. The Treasury is required to notify us in writing of any such transfer of its registration rights within ten days after the transfer, including the name and address of the transferee and the number and type of securities with respect to which the registration rights have been assigned. As of the date of this prospectus, the Treasury has not notified us of any such transfer. Accordingly, we believe that the

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Treasury currently holds record and beneficial ownership of 100% of the outstanding units of the Series D Preferred offered by this prospectus.

The securities to be offered under this prospectus for the account of the selling securityholders may include:

- 5,000,000 units of Series D-1 Preferred, representing 100% of the units of Series D-1 Preferred outstanding on the date of this prospectus; and
- 250,000 units of Series D-2 Preferred, representing 100% of the units of Series D-2 Preferred outstanding on the date of this prospectus.

For purposes of this prospectus, we have assumed that, after completion of the offering, none of the securities offered by this prospectus will be held by the selling securityholders.

We do not know when or in what amounts the selling securityholders may offer the securities for sale. The selling securityholders might not sell any or all of the securities offered by this prospectus. Because the selling securityholders may offer all or some of the securities pursuant to this offering, and because, to our knowledge, no sale of any of the securities is currently subject to any agreements, arrangements or understandings, we cannot estimate the number of the securities that will be held by the selling securityholders after completion of the offering.

The only potential selling securityholder whose identity we are currently aware of is the Treasury. Our relationship with the Treasury includes (i) the transactions and arrangements entered into in connection with the Treasury's acquisition of the Series D Preferred and the Series F Preferred (along with warrants underlying the Series D-2 Preferred and certain units of the Series F Preferred) from us; (ii) the arrangements established by the Governance Agreement; (iii) the Master Transaction Agreement entered into between us, the Treasury, Chrysler and U.S. Dealer Automotive Receivables Transition LLC on May 21, 2009, in connection with the Master Automotive Financing Agreement between us and Chrysler; and (iv) the Treasury's ownership of our Common Interests, resulting from the transaction between the Treasury and GM on May 29, 2009, pursuant to which GM transferred 190,921 Common Interests (which had been pledged to the Treasury as collateral for certain loans made by the Treasury to GM) to the Treasury.

Information about the selling securityholders may change over time and changed information will be set forth in supplements to this prospectus if and when necessary.

PLAN OF DISTRIBUTION

The selling securityholders may sell all or a portion of the securities beneficially owned by them and offered by this prospectus from time to time directly or through one or more underwriters, broker-dealers or agents. If securities are sold through underwriters or broker-dealers, the selling securityholders will be responsible for underwriting discounts or commissions or agent's commissions. The securities may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of the sale, at varying prices determined at the time of sale, or at negotiated prices. These sales may be effected in transactions, which may involve crosses or block transactions. The selling securityholders may use any one or more of the following methods when selling units of the Series D Preferred:

- on any national securities exchange or quotation service on which the securities may be listed or quoted at the time of sale;
- in the over-the-counter market;
- in transactions otherwise than on these exchanges or systems or in the over-the-counter market;
- through the writing of options, whether such options are listed on an options exchange or otherwise;
- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the units as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- broker-dealers may agree with the selling securityholders to sell a specified number of such units at a stipulated price per unit;
- a combination of any such methods of sale; or
- any other method permitted pursuant to applicable law.

Gross profit

666,818

656,000

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Selling, general and administrative expenses

524,514

537,181

Operating profit

142,304

118,819

Interest income

1,767

4,530

Earnings before provision for income taxes

144,071

123,349

Provision for income taxes

56,899

46,572

Net earnings

\$

87,172

\$

76,777

Net earnings per share - Basic

\$

0.34

\$

0.30

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Net earnings per share - Diluted

\$

0.34

\$

0.30

Weighted average shares outstanding - Basic

256,942

256,634

Weighted average shares outstanding - Diluted

258,764

259,263

See accompanying Notes to Consolidated Financial Statements.

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	Three Months Ended	
	May 30,	May 31,
	2009	2008
Cash Flows from Operating Activities:		
Net earnings	\$ 87,172	\$ 76,777
Adjustments to reconcile net earnings to net cash provided by operating activities:		
Depreciation	44,779	43,619
Stock-based compensation	11,010	10,377
Tax benefit from stock-based compensation	(55)	2,672
Deferred income taxes	(5,081)	(6,736)
Other	54	
(Increase) decrease in assets:		
Merchandise inventories	(61,480)	(109,167)
Trading investment securities	(2,439)	(1,555)
Other current assets	(16,998)	(17,803)
Other assets	170	(626)
Increase (decrease) in liabilities:		
Accounts payable	98,819	44,545
Accrued expenses and other current liabilities	2,220	(2,868)
Merchandise credit and gift card liabilities	(4,992)	1,564
Income taxes payable	34,856	19,347
Deferred rent and other liabilities	6,274	5,654
Net cash provided by operating activities	194,309	65,800
Cash Flows from Investing Activities:		
Redemption of available-for-sale investment securities	7,600	4,825
Capital expenditures	(26,588)	(51,673)
Investment in unconsolidated joint venture, including fees		(4,659)
Net cash used in investing activities	(18,988)	(51,507)
Cash Flows from Financing Activities:		
Proceeds from exercise of stock options	23,303	11,214
Excess tax benefit from stock-based compensation	1,712	4,315
Repurchase of common stock, including fees	(13,111)	(13,651)
Net cash provided by financing activities	11,904	1,878
Net increase in cash and cash equivalents	187,225	16,171
Cash and cash equivalents:		
Beginning of period	668,209	224,084
End of period	\$ 855,434	\$ 240,255

See accompanying Notes to Consolidated Financial Statements.

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BED BATH & BEYOND INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(unaudited)

1) Basis of Presentation

The accompanying consolidated financial statements have been prepared without audit. In the opinion of management, the accompanying consolidated financial statements contain all adjustments (consisting of only normal recurring accruals and elimination of intercompany balances and transactions) necessary to present fairly the financial position of Bed Bath & Beyond Inc. and subsidiaries (the Company) as of May 30, 2009 and February 28, 2009 and the results of its operations and its cash flows for the three months ended May 30, 2009 and May 31, 2008, respectively.

The accompanying unaudited consolidated financial statements are presented in accordance with the requirements for Form 10-Q and consequently do not include all the disclosures normally required by U.S. generally accepted accounting principles. Reference should be made to Bed Bath & Beyond Inc.'s Annual Report on Form 10-K for the fiscal year ended February 28, 2009 for additional disclosures, including a summary of the Company's significant accounting policies, and to subsequently filed Forms 8-K.

The Company exhibits less seasonality than many other retail businesses, although sales levels are generally higher in August, November and December, and generally lower in February and October.

2) Recent Accounting Pronouncements

In December 2008, the Financial Accounting Standards Board (FASB) issued FASB Staff Position (FSP) SFAS 132(R)-1, Employers Disclosures about Postretirement Benefit Plan Assets. FSP SFAS 132(R)-1 amends SFAS No. 132 (revised 2003), Employers Disclosures about Pensions and Other Postretirement Benefits an Amendment of FASB Statements No. 87, 88 and 106. FSP SFAS 132(R)-1 requires more detailed disclosures about the assets of a defined benefit pension or other postretirement plan. FSP SFAS 132(R)-1 is effective for fiscal years ending after December 15, 2009. The Company does not believe FSP SFAS 132(R)-1 will have a material impact on its consolidated financial statements.

In April 2009, the FASB issued FSP SFAS 107-1 and APB 28-1, Interim Disclosures about Fair Value of Financial Instruments, which amends SFAS No. 107, Disclosures about Fair Value of Financial Instruments and Accounting Principles Board (APB) Opinion No. 28, Interim Financial Reporting. This FSP requires the annual disclosures about the fair value of financial instruments required by SFAS No. 107 to be presented in interim financial statements. The FSP is effective for interim reporting periods ending after June 15, 2009. The Company does not believe FSP SFAS 107-1 and APB 28-1 will have a material impact on its consolidated financial statements.

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In April 2009, the FASB issued FSP SFAS 115-2 and SFAS 124-2, *Recognition and Presentation of Other-Than-Temporary Impairments*, which modifies the recognition requirements for other-than-temporary impairments of debt securities and enhances existing disclosures with respect to other-than-temporary impairments of debt and equity securities. FSP SFAS 115-2 and SFAS 124-2 is effective for interim and annual reporting periods ending after June 15, 2009. The Company does not believe FSP SFAS 115-2 and SFAS 124-2 will have a material impact on its consolidated financial statements.

In April 2009, the FASB issued FSP SFAS 157-4, *Determining Fair Value When the Volume and Level of Activity for the Asset or Liability Have Significantly Decreased and Identifying Transactions That Are Not Orderly*, which provides guidance on determining fair value when there is no active market or where the price inputs being used represent distressed sales. FSP SFAS 157-4 is effective for interim and annual reporting periods ending after June 15, 2009. The Company does not believe FSP SFAS 157-4 will have a material impact on its consolidated financial statements.

In May 2009, the FASB issued SFAS No. 165, *Subsequent Events*. SFAS No. 165 was issued in order to establish principles and requirements for reviewing and reporting subsequent events and requires disclosure of the date through which subsequent events are evaluated and whether the date corresponds with the time at which the financial statements were available for issue (as defined) or were issued. SFAS No. 165 is effective for interim reporting periods ending after June 15, 2009. The Company does not believe SFAS No. 165 will have a material impact on its consolidated financial statements.

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3) Fair Value Measurements

The Company adopted SFAS No. 157, Fair Value Measurements, for financial assets and liabilities on March 2, 2008 and for non-financial assets and liabilities on March 1, 2009. SFAS No. 157 defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles and expands disclosures about fair value measurements. The adoption of SFAS No. 157 for financial and non-financial assets and liabilities did not have a material impact on the Company's consolidated financial statements.

Under SFAS No. 157, fair value is defined as the price that would be received to sell an asset or paid to transfer a liability (i.e. the exit price) in an orderly transaction between market participants at the measurement date. In determining fair value, the Company uses various valuation approaches, including quoted market prices and discounted cash flows. SFAS No. 157 also establishes a hierarchy for inputs used in measuring fair value that maximizes the use of observable inputs and minimizes the use of unobservable inputs by requiring that the most observable inputs be used when available. Observable inputs are inputs that market participants would use in pricing the asset or liability developed based on market data obtained from independent sources. Unobservable inputs are inputs that reflect a company's judgment concerning the assumptions that market participants would use in pricing the asset or liability developed based on the best information available under the circumstances. The fair value hierarchy is broken down into three levels based on the reliability of inputs as follows:

- Level 1 Valuations based on quoted prices in active markets for identical instruments that the Company is able to access. Since valuations are based on quoted prices that are readily and regularly available in an active market, valuation of these products does not entail a significant degree of judgment.

- Level 2 Valuations based on quoted prices in active markets for instruments that are similar, or quoted prices in markets that are not active for identical or similar instruments, and model-derived valuations in which all significant inputs and significant value drivers are observable in active markets.

- Level 3 Valuations based on inputs that are unobservable and significant to the overall fair value measurement.

As of May 30, 2009, the Company's financial assets utilizing Level 1 inputs include short term and long term investment securities traded on active securities exchanges. The Company did not have any financial assets utilizing Level 2 inputs. Financial assets utilizing Level 3 inputs included long term investments in auction rate securities consisting of preferred shares of closed end municipal bond funds and securities collateralized by student loans, and a related put option (See Investment Securities, Note 5).

To the extent that valuation is based on models or inputs that are less observable or unobservable in the market, the determination of fair value requires more judgment. Accordingly, the Company's degree of judgment exercised in determining fair value is greatest for instruments categorized in Level 3. In certain cases, the inputs used to measure fair value may fall into different levels of the fair value hierarchy. In such cases, SFAS No. 157 requires that an asset or liability be classified in its entirety based on the lowest level of input that is significant to the measurement of fair value.

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SFAS No. 157 requires that the valuation techniques used by the Company must be consistent with at least one of the three possible approaches: the market approach, income approach and/or cost approach. The Company's Level 1 valuations are based on the market approach and consist primarily of quoted prices for identical items on active securities exchanges. The Company's Level 3 valuations of auction rate securities are based on the income approach, specifically, discounted cash flow analyses which utilize significant inputs based on the Company's estimates and assumptions. Inputs include current coupon rates and expected maturity dates.

The following table presents the valuation of the Company's financial assets as of May 30, 2009 measured at fair value on a recurring basis by the input levels prescribed by SFAS No. 157:

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(in millions)	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Unobservable Inputs (Level 3)	Total
Short term - available-for-sale securities	\$ 2.0	\$	\$ 2.0
Long term - available-for-sale securities		164.0	164.0
Long term - trading securities	8.9	41.3	50.2
Long term - put option		1.9	1.9
Total	\$ 10.9	\$ 207.2	\$ 218.1

The following table presents the changes in the Company's financial assets that are measured at fair value on a recurring basis using significant unobservable inputs (Level 3):

(in millions)	Significant Unobservable Inputs (Level 3)
Balance on February 28, 2009, net of temporary valuation adjustment	\$ 214.6
Change in temporary valuation adjustment included in accumulated other comprehensive loss	0.2
Unrealized loss included in earnings (1)	(0.1)
Change in valuation of Put Option	0.1
Redemptions at par	(7.6)
Balance on May 30, 2009, net of temporary valuation adjustment	\$ 207.2

(1) Represents the amount of total losses for the period included in earnings relating to assets still held on May 30, 2009.

Subsequent to the end of the first quarter of fiscal 2009 through June 29, 2009, the Company additionally redeemed approximately \$1.4 million of short term available-for-sale securities at par.

4) Cash and Cash Equivalents

Included in cash and cash equivalents are credit and debit card receivables from banks, which typically settle within 5 business days, of \$55.1 million and \$51.8 million as of May 30, 2009 and February 28, 2009, respectively.

5) Investment Securities

The Company's investment securities as of May 30, 2009 and February 28, 2009 are as follows:

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(in millions)	May 30, 2009	February 28, 2009
Available-for-sale securities:		
Short term	\$ 2.0	\$ 2.0
Long term	164.0	171.4
Trading securities:		
Long term	50.2	47.8
Held-to-maturity securities:		
Long term	0.1	0.1
Put option - Long term	1.9	1.8
Total investment securities	\$ 218.2	\$ 223.1

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Auction Rate Securities

As of May 30, 2009, the Company's available-for-sale investment securities represented approximately \$168.4 million par value of auction rate securities, less a temporary valuation adjustment of approximately \$2.4 million to reflect their current lack of liquidity. Since this valuation adjustment is deemed to be temporary, it was recorded in accumulated other comprehensive loss, net of a related tax benefit of approximately \$0.9 million, and did not affect the Company's earnings in the first quarter of fiscal 2009. These securities at par are invested in preferred shares of closed end municipal bond funds, which are required, pursuant to the Investment Company Act of 1940, to maintain minimum asset coverage ratios of 200%. Due to their lack of liquidity, the Company classified \$164.0 million and \$171.4 million of these investments as long term investment securities at May 30, 2009 and February 28, 2009, respectively.

As of May 30, 2009, the Company's trading investment securities include approximately \$41.3 million at fair value, (\$43.2 million at par), of auction rate securities which are invested in securities collateralized by student loans, and which are currently more than 100% collateralized and with approximately 90% of such collateral in the aggregate being guaranteed by the United States government. During the first quarter of fiscal 2009, the Company recognized a pre-tax unrealized loss of approximately \$0.1 million in the consolidated statement of earnings to reflect the decrease in the fair value of these securities. In the third quarter of fiscal 2008, the Company entered into an agreement (the Agreement) with the investment firm that sold the Company these securities. By entering into the Agreement, the Company (1) received the right (Put Option) to sell these auction rate securities back to the investment firm at par, at its sole discretion, anytime during the period from June 30, 2010 through July 2, 2012, and (2) gave the investment firm the right to purchase these auction rate securities or sell them on the Company's behalf at par anytime after the execution of the Agreement through July 2, 2012. The Company elected to measure the Put Option under the fair value option of SFAS No. 159 and recorded it as a long term investment. As of May 30, 2009, the fair value of the Put Option was approximately \$1.9 million and during the first quarter of fiscal 2009, the Company recorded pre-tax income of approximately \$0.1 million to reflect the increase in its fair value. The recording of the change in fair value of the Put Option and these securities resulted in no net impact to the consolidated statement of earnings for the first quarter of fiscal 2009. The Company anticipates that any future changes in the fair value of the Put Option will be offset by the changes in the fair value of the related auction rate securities with no material impact to the consolidated statement of earnings. As of May 30, 2009 and February 28, 2009, the Company classified \$41.3 million and \$41.4 million, respectively, of these auction rate securities as long term investment securities as a result of the Agreement entered into in the prior fiscal year.

None of the auction rate securities held by the Company are mortgage-backed debt obligations, and all of these investments carry triple-A credit ratings from one or more of the major credit rating agencies as of May 30, 2009. During the first quarter of fiscal 2009, approximately \$7.6 million of auction rate securities were redeemed at par. Subsequent to the end of the first quarter of fiscal 2009 through June 29, 2009, the Company additionally redeemed approximately \$1.4 million at par.

Other trading investment securities

The Company's other trading investment securities, which are provided as investment options to the participants of the nonqualified deferred compensation plan, are stated at fair market value. The values of these trading investment securities included in the table above are approximately \$8.9 million and \$6.4 million as of May 30, 2009 and February 28, 2009, respectively.

6) Property and Equipment

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As of May 30, 2009 and February 28, 2009, included in property and equipment, net is accumulated depreciation and amortization of \$1.1 billion.

7) Stock-Based Compensation

The Company records stock-based compensation under the provisions of SFAS No. 123 (revised 2004), Share-Based Payment (SFAS No. 123R), which requires companies to measure all employee stock-based compensation awards using a fair value method and record such expense in its consolidated financial statements. Currently, the Company stock-based compensation relates to restricted stock awards and stock options. The Company restricted stock awards are considered nonvested share awards as defined under SFAS No. 123R.

Stock-based compensation expense for the three months ended May 30, 2009 and May 31, 2008 was approximately \$11.0 million (\$6.7 million after tax or \$0.03 per diluted share) and approximately \$10.4 million (\$6.5 million after tax or \$0.02 per diluted share), respectively.

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In addition, the amount of stock-based compensation cost capitalized for the three months ended May 30, 2009 and May 31, 2008 was approximately \$0.3 million.

Incentive Compensation Plans

The Company currently grants awards under the Bed Bath & Beyond 2004 Incentive Compensation Plan (the 2004 Plan). The 2004 Plan is a flexible compensation plan that enables the Company to offer incentive compensation through stock options, restricted stock awards, stock appreciation rights and performance awards, including cash awards. Under the 2004 Plan, grants are determined by the Compensation Committee for those awards granted to executive officers and by an appropriate committee for all other awards granted. Awards of stock options and restricted stock generally vest in five equal annual installments beginning one to three years from the date of grant. The Company generally issues new shares for stock option exercises and restricted stock awards.

As of May 30, 2009, unrecognized compensation expense related to the unvested portion of the Company's stock options and restricted stock awards was \$38.9 million and \$117.5 million, respectively, which is expected to be recognized over a weighted average period of 3.2 years and 5.0 years, respectively.

Stock Options

Stock option grants are issued at fair market value on the date of grant and generally become exercisable in five equal annual installments beginning one to three years from the date of grant. Option grants for stock options issued prior to May 10, 2004 expire ten years after the date of grant. Option grants for stock options issued since May 10, 2004 expire eight years after the date of grant. All option grants are nonqualified.

The fair value of the stock options granted was estimated on the date of the grant using a Black-Scholes option-pricing model that uses the assumptions noted in the following table.

Black-Scholes Valuation Assumptions (1)	Three Months Ended	
	May 30, 2009	May 31, 2008
Weighted Average Expected Life (in years) (2)	6.3	6.1
Weighted Average Expected Volatility (3)	40.39%	34.13%
Weighted Average Risk Free Interest Rates (4)	2.45%	3.17%
Expected Dividend Yield		

(1) Forfeitures are estimated based on historical experience.

(2) The expected life of stock options is estimated based on historical experience.

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(3) Expected volatility is based on the average of historical and implied volatility. The historical volatility is determined by observing actual prices of the Company's stock over a period commensurate with the expected life of the awards. The implied volatility represents the implied volatility of the Company's call options, which are actively traded on multiple exchanges, had remaining maturities in excess of twelve months, had market prices close to the exercise prices of the employee stock options and were measured on the stock option grant date.

(4) Based on the U.S. Treasury constant maturity interest rate whose term is consistent with the expected life of the stock options.

Changes in the Company's stock options for the three months ended May 30, 2009 were as follows:

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(Shares in thousands)	Number of Stock Options	Weighted Average Exercise Price
Options outstanding, beginning of period	17,482	\$ 32.41
Granted	733	28.33
Exercised	(1,404)	16.60
Forfeited or expired	(40)	36.84
Options outstanding, end of period	16,771	\$ 33.54
Options exercisable, end of period	13,317	\$ 33.14

The weighted average fair value for the stock options granted during the first three months of fiscal 2009 and 2008 was \$12.33 and \$12.95, respectively. The weighted average remaining contractual term and the aggregate intrinsic value for options outstanding as of May 30, 2009 was 3.6 years and \$26.5 million, respectively. The weighted average remaining contractual term and the aggregate intrinsic value for options exercisable as of May 30, 2009 was 3.1 years and \$26.5 million, respectively. The total intrinsic value for stock options exercised during the first three months of fiscal 2009 and 2008 was \$19.8 million and \$17.1 million, respectively.

Net cash proceeds from the exercise of stock options for the first quarter of fiscal 2009 were \$23.3 million and the associated income tax benefits were \$1.7 million.

Restricted Stock

Restricted stock awards are issued and measured at fair market value on the date of grant and generally become exercisable in five equal annual installments beginning one to three years from the date of grant.

Vesting of restricted stock awarded to certain of the Company's executives is dependent on the Company's achievement of a performance-based test for the fiscal year of grant, and assuming achievement of the performance-based test, time vesting, subject, in general, to the executive remaining in the Company's employ on specified vesting dates. The Company recognizes compensation expense related to these awards based on the assumption that the performance-based test will be achieved. Vesting of restricted stock awarded to the Company's other employees is based solely on time vesting.

Changes in the Company's restricted stock for the three months ended May 30, 2009 were as follows:

(Shares in thousands)	Number of Restricted Shares	Weighted Average Grant-Date Fair Value
Unvested restricted stock, beginning of period	3,624	\$ 35.79
Granted	1,270	28.28
Vested	(439)	36.64
Forfeited	(23)	34.11
Unvested restricted stock, end of period	4,432	\$ 33.56

8) Shareholders Equity

Between December 2004 and September 2007, the Company's Board of Directors authorized, through several share repurchase programs, the repurchase of \$2.950 billion of its shares of common stock. The Company was authorized to make repurchases from time to time in the open market or through other parameters approved by the Board of Directors pursuant to existing rules and regulations. The Company also purchases shares of its common stock to cover employee related taxes withheld on vested restricted stock awards. In the first three months of fiscal 2009, the Company repurchased approximately 0.5 million shares of its common stock for a total cost of approximately \$13.1 million, bringing the aggregate total of common stock repurchased to approximately 55.4 million shares for a total cost of approximately \$2.0 billion since the initial authorization in December 2004.

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9) Earnings Per Share

The Company presents earnings per share on a basic and diluted basis. Basic earnings per share is computed by dividing net earnings by the weighted average number of shares outstanding. Diluted earnings per share is computed by dividing net earnings by the weighted average number of shares outstanding including the dilutive effect of stock-based awards as calculated under the treasury stock method.

Stock-based awards of approximately 15.3 million and 15.1 million were excluded from the computation of diluted earnings per share as the effect would be anti-dilutive for the three months ended May 30, 2009 and May 31, 2008, respectively.

10) Lines of Credit

At May 30, 2009, the Company maintained two uncommitted lines of credit of \$100 million each, with expiration dates of September 3, 2009 and February 26, 2010, respectively. These uncommitted lines of credit are currently and are expected to be used for letters of credit in the ordinary course of business. As of May 30, 2009, the Company did not have any direct borrowings under the uncommitted lines of credit. Although no assurances can be provided, the Company intends to renew both uncommitted lines of credit before the respective expiration dates.

11) Supplemental Cash Flow Information

The Company paid income taxes of \$27.3 million and \$32.3 million in the first three months of fiscal 2009 and 2008, respectively.

The Company recorded an accrual for capital expenditures of \$11.4 million and \$18.5 million as of May 30, 2009 and May 31, 2008, respectively.

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ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Overview

Bed Bath & Beyond Inc. and subsidiaries (the Company) is a chain of retail stores, operating under the names Bed Bath & Beyond (BBB), Christmas Tree Shops (CTS), Harmon and Harmon Face Values (Harmon) and buybuy BABY. Through a joint venture, the Company also operates two stores in Mexico under the name Home & More. The Company sells a wide assortment of merchandise principally including domestics merchandise and home furnishings as well as food, giftware, health and beauty care items and infant and toddler merchandise. The Company's objective is to be a customer's first choice for products and services in the categories offered, in the markets in which the Company operates.

The Company's strategy is to achieve this objective through excellent customer service, an extensive breadth and depth of assortment, everyday low prices, introduction of new merchandising offerings and development of its infrastructure.

Operating in the highly competitive retail industry, the Company, along with other retail companies, is influenced by a number of factors including, but not limited to, general economic conditions including the housing market, fuel costs, and the overall macroeconomic environment, unusual weather patterns, consumer preferences and spending habits, competition from existing and potential competitors, and the ability to find suitable locations at acceptable occupancy costs to support the Company's expansion program.

The difficult conditions affecting the overall macroeconomic environment continued to impact the retail sector in general and the Company. The Company believes factors such as the increase in the unemployment rate and issues specific to the housing industry, including a decline in home values in conjunction with a downward trend in home sales, have negatively impacted consumer confidence and the level of discretionary spending by consumers, resulting in an adverse impact on the Company's net sales, net earnings and operating cash flows. The Company cannot predict whether, when or the manner in which these economic conditions will change.

In addition, a number of businesses in the retail industry have liquidated or announced their liquidations. The Company's results have been impacted and may continue to be impacted by these liquidations, including those within its sector of retailing. The Company believes this continued industry consolidation will provide an opportunity to gain market share and to improve its competitive position over the long term; however, the Company cannot, with any level of certainty, estimate the impact these liquidations will have on its future results of operations.

In light of the risks posed by the current macroeconomic environment, the Company continues to work to systematically review all expenditures with the goal of prudently managing its business. At the same time, the Company remains committed to making the required investments in its infrastructure to help position the Company for continued success. The Company continues to scrutinize and prioritize its capital needs while continuing to make investments, principally for new stores, existing store improvements, and other projects whose impact is considered as important to its future.

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The following represents an overview of the Company's financial performance for the periods indicated:

- For the three months ended May 30, 2009, the Company's net sales were \$1.694 billion, an increase of approximately 2.8% as compared to the three months ended May 31, 2008.
- Comparable store sales for the fiscal first quarter of 2009 decreased by approximately 1.6%, as compared with an increase of approximately 0.8% for the corresponding period last year.

A store is considered a comparable store when it has been open for twelve full months following its grand opening period (typically four to six weeks). Stores relocated or expanded are excluded from comparable store sales if the change in square footage would cause meaningful disparity in sales over the prior period. In the case of a store to be closed, such store's sales are not considered comparable once the store closing process has commenced.

- Gross profit for the three months ended May 30, 2009 was \$666.8 million or 39.4% of net sales compared with \$656.0 million or 39.8% of net sales for the three months ended May 31, 2008.

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- Selling, general and administrative expenses (SG&A) for the three months ended May 30, 2009 were \$524.5 million or 31.0% of net sales compared with \$537.2 million or 32.6% of net sales for the three months ended May 31, 2008.
- The effective tax rate was 39.5% and 37.8% for the three months ended May 30, 2009 and May 31, 2008, respectively.
- For the three months ended May 30, 2009, the Company's net earnings per diluted share were \$0.34 (\$87.2 million) compared to net earnings per diluted share of \$0.30 (\$76.8 million) for the three months ended May 31, 2008. Net earnings per diluted share include the impact of the Company's repurchases of its common stock.

Capital expenditures for the three months ended May 30, 2009 and May 31, 2008 were \$26.6 million and \$51.7 million, respectively.

Results of Operations

Net Sales

Net sales for the three months ended May 30, 2009 were \$1.694 billion, an increase of \$45.8 million or approximately 2.8% over net sales of \$1.648 billion for the corresponding quarter last year. For the three months ended May 30, 2009, the increase in net sales was generated by the Company's new store sales increase of 4.3% partially offset by the decrease in comparable store sales.

For the three months ended May 30, 2009, comparable store sales for 944 stores represented \$1.597 billion of net sales and for the three months ended May 31, 2008, comparable store sales for 877 stores represented \$1.526 billion of net sales. The number of stores includes only those which constituted a comparable store for the entire respective fiscal period. The decrease in comparable store sales for the three months ended May 30, 2009 was approximately 1.6%, as compared with an increase of approximately 0.8% for the comparable period last year. Net sales and comparable store sales continued to be negatively affected by the economic slowdown, including issues specific to the housing industry.

Sales of domestics merchandise and home furnishings for the Company accounted for approximately 42% and 58% of net sales, respectively, for the three months ended May 30, 2009 and approximately 44% and 56% of net sales, respectively, for the three months ended May 31, 2008.

Gross Profit

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Gross profit for the three months ended May 30, 2009 was \$666.8 million or 39.4% of net sales compared with \$656.0 million or 39.8% of net sales for the three months ended May 31, 2008. The decrease in gross profit as a percentage of net sales for the three months ended May 30, 2009 was primarily due to an increase in inventory acquisition costs, an increase in coupon redemptions and a shift in the mix of merchandise sold to lower margin categories.

Selling, General and Administrative Expenses

SG&A for the three months ended May 30, 2009 was \$524.5 million or 31.0% of net sales compared with \$537.2 million or 32.6% of net sales for the three months ended May 31, 2008. SG&A as a percentage of net sales decreased for the three months ended May 30, 2009 compared to May 31, 2008 primarily due to a relative decrease in payroll expense, a relative decrease in advertising expenses due to a decrease in distribution of advertising pieces and a relative decrease in other controllable expenses.

Operating Profit

Operating profit for the three months ended May 30, 2009 was \$142.3 million or 8.4% of net sales compared to \$118.8 million or 7.2% of net sales during the comparable period in 2008. The increase in operating profit as a percentage of net sales in the comparable periods reflects the relative decrease in SG&A as a percentage of net sales, partially offset by the deleverage in the gross profit margin.

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Interest Income

Interest income was \$1.8 million for the three months ended May 30, 2009 compared to \$4.5 million for the three months ended May 31, 2008. The decrease in interest income was primarily due to lower interest rates.

Income Taxes

The effective tax rate for the three months ended May 30, 2009 was 39.5% compared to 37.8% for the three months ended May 31, 2008. The tax rate for the three months ended May 30, 2009 included an approximate \$0.9 million expense as compared to an approximate \$0.6 million benefit for the three months ended May 31, 2008 due to the recognition of certain discrete tax items. The remaining increase in the 2009 effective tax rate was primarily due to slightly higher state taxes.

The Company expects that Financial Accounting Standards Board (FASB) Interpretation No. 48, Accounting for Uncertainty in Income Taxes-an Interpretation of FASB Statement No. 109 will continue to create volatility in the effective tax rate from quarter to quarter because the Company is required each quarter to determine whether new information changes the assessment of both the probability that a tax position will effectively be sustained and the appropriateness of the amount of recognized benefit.

Net Earnings

As a result of the factors described above, net earnings were \$87.2 million for the first quarter of fiscal 2009 compared to \$76.8 million for the first quarter of fiscal 2008.

Expansion Program

The Company is engaged in an ongoing expansion program involving the opening of new stores in both new and existing markets, the expansion or relocation of existing stores and the continuous review of strategic acquisitions.

As a result of this program, the Company operated 935 BBB stores, 53 CTS stores, 40 Harmon stores and 16 buybuy BABY stores at the end of the fiscal first quarter of 2009, compared with 890 BBB stores, 41 CTS stores, 40 Harmon stores and 10 buybuy BABY stores at the end of the corresponding quarter last year. At May 30, 2009, Company-wide total store square footage was approximately 32.2 million square feet. Since May 2008, the Company, through a joint venture, operates two stores in Mexico under the name Home & More.

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The Company plans to continue to expand its operations and invest in its infrastructure to reach its long-term objectives. During the fiscal first quarter of 2009, the Company opened six BBB stores, including its fifth store in Canada, one CTS store and one buybuy BABY store and closed one BBB store. For all of fiscal 2009, the Company expects to open approximately 35 new BBB stores throughout the United States and Canada, approximately seven new CTS stores, approximately 12 new buybuy BABY stores and approximately three new Harmon stores. The continued growth of the Company is dependent, in large part, upon the Company's ability to execute its expansion program successfully. The Company currently has no outstanding bank borrowings, and for fiscal 2009, expects its operations to be entirely funded from internally generated sources.

Liquidity and Capital Resources

Fiscal 2009 compared to Fiscal 2008

The Company has been able to finance its operations, including its expansion program, through internally generated funds. Net cash provided by operating activities for the three months ended May 30, 2009 was \$194.3 million as compared with \$65.8 million in the corresponding period of fiscal 2008. Year over year, the Company experienced a decrease in cash used for the net components of working capital (primarily accounts payable, merchandise inventories, and income taxes payable) and an increase in cash provided by net earnings.

Inventory per square foot was \$52.90 as of May 30, 2009, a decrease of approximately 6.7% from \$56.72 as of May 31, 2008. The Company continues to focus on optimizing inventory productivity while maintaining appropriate in-store merchandise levels to support sales.

Net cash used in investing activities for the three months ended May 30, 2009 was \$19.0 million as compared with \$51.5 million in the corresponding period of fiscal 2008. The \$32.5 million decrease in net cash used in investing activities is primarily due to a \$25.1 million decrease in capital expenditures, a \$4.7 million investment in the Company's unconsolidated joint venture in the prior fiscal year, and a \$2.8 million increase in redemptions of investment securities.

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Net cash provided by financing activities for the three months ended May 30, 2009 was \$11.9 million as compared with \$1.9 million in the corresponding period of 2008. The increase in net cash provided was primarily attributable to a \$12.1 million increase in cash proceeds from the exercise of stock options.

Auction Rate Securities

As of May 30, 2009, the Company held approximately \$209.2 million of net investments in auction rate securities. Beginning in mid-February 2008, the auction process for the Company's auction rate securities failed and continues to fail. These failed auctions result in a lack of liquidity in the securities but do not affect the underlying collateral of the securities. All of these investments carry triple-A credit ratings from one or more of the major credit rating agencies and the Company believes that given their high credit quality, it will ultimately recover at par all amounts invested in these securities.

During the third quarter of fiscal 2008, the Company entered into an agreement with the investment firm that sold the Company a portion of its auction rate securities to redeem at par approximately \$43.2 million of these securities. This agreement provides for, among other things, the option to redeem these securities at par during fiscal 2010. During the first quarter of fiscal 2009, the Company recorded an unrealized loss of approximately \$0.1 million related to these securities and also recorded \$0.1 million of pre-tax income to reflect the increase in fair value of the option to redeem these securities at par value. This resulted in no impact on the Company's net earnings. As of May 30, 2009, the fair value of this option was \$1.9 million. The Company anticipates that any future changes in the fair value of the related auction rate securities will be offset by the changes in the fair value of the option with no material impact to the Company's net earnings.

The remainder of approximately \$168.4 million of these securities at par had a temporary valuation adjustment of approximately \$2.4 million to reflect their current lack of liquidity. Since this valuation adjustment is deemed to be temporary, it was recorded in accumulated other comprehensive loss, net of a related tax benefit of approximately \$0.9 million, and did not affect the Company's net earnings for the first quarter of fiscal 2009.

The Company does not anticipate that any potential lack of liquidity in its auction rate securities, even for an extended period of time, will affect its ability to finance its operations, including its expansion program and planned capital expenditures. The Company continues to monitor efforts by the financial markets to find alternative means for restoring the liquidity of these investments. These investments are primarily classified as non-current assets until the Company has better visibility as to when their liquidity will be restored. The classification and valuation of these securities will continue to be reviewed quarterly.

During the three months ended May 30, 2009, approximately \$7.6 million of auction rate securities were redeemed at par. Subsequent to the end of the fiscal first quarter of 2009 through June 29, 2009, the Company additionally redeemed approximately \$1.4 million at par.

Seasonality

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The Company exhibits less seasonality than many other retail businesses, although sales levels are generally higher in August, November and December, and generally lower in February and October.

Recent Accounting Pronouncements

On March 2, 2008 and March 1, 2009, the Company adopted SFAS No. 157, Fair Value Measurements, for financial assets and liabilities and for non-financial assets and liabilities, respectively. SFAS No. 157 defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles and expands disclosures about fair value measurements. The adoption of SFAS No. 157 for financial and non-financial assets and liabilities did not have a material impact on the Company's consolidated financial statements.

In December 2008, the Financial Accounting Standards Board (FASB) issued FASB Staff Position (FSP) SFAS 132(R)-1, Employers Disclosures about Postretirement Benefit Plan Assets. FSP SFAS 132(R)-1 amends SFAS No. 132 (revised 2003), Employers Disclosures about Pensions and Other Postretirement Benefits an Amendment of FASB Statements No. 87, 88 and 106. FSP SFAS 132(R)-1 requires more detailed disclosures about the assets of a defined benefit pension or other postretirement plan. FSP SFAS 132(R)-1 is effective for fiscal years ending after December 15, 2009. The Company does not believe FSP SFAS 132(R)-1 will have a material impact on its consolidated financial statements.

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In April 2009, the FASB issued FSP SFAS 157-4, *Determining Fair Value When the Volume and Level of Activity for the Asset or Liability Have Significantly Decreased and Identifying Transactions That Are Not Orderly*, which provides guidance on determining fair value when there is no active market or where the price inputs being used represent distressed sales. FSP SFAS 157-4 is effective for interim and annual reporting periods ending after June 15, 2009. The Company does not believe FSP SFAS 157-4 will have a material impact on its consolidated financial statements.

In April 2009, the FASB issued FSP SFAS 107-1 and APB 28-1, *Interim Disclosures about Fair Value of Financial Instruments*, which amends