

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**Form S-3
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

HEALTH EQUITY, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

7389
(Primary Standard Industrial
Classification Code Number)

52-2383166
(I.R.S. Employer Identification Number)

**15 W. Scenic Pointe Dr.
Ste. 100
Draper, Utah 84020
(801) 727-1000**

(Address, including Zip Code, and Telephone Number, including Area Code, of Registrant's Principal Executive Offices)

**Jon Kessler
President and Chief Executive Officer
15 W. Scenic Pointe Dr.
Ste. 100
Draper, Utah 84020
(801) 727-1000**

(Name, Address, including Zip Code, and Telephone Number, including Area Code, of Agent for Service)

**Copies to:
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787 Seventh Avenue
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Approximate date of commencement of proposed sale to the public: From time to time after this Registration Statement becomes effective.

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 interest 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, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(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.

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, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer
Non-accelerated filer (Do not check if a smaller reporting company) Smaller reporting company
Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to Be Registered	Amount to Be Registered	Proposed Maximum Offering Price per Unit	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Securities to be sold by the Registrant:				
Common stock, par value \$0.0001 per share	(1)	(1)	(1)	(2)
Preferred stock, par value \$0.0001 per share	(1)	(1)	(1)	(2)
Warrants				
Debt securities	(1)	(1)	(1)	(2)
Units				
Securities to be sold by the Selling Stockholders:				
Common stock, par value \$0.0001 per share (3)	1,473,903	(3)	(3)	(3)

- (1) An indeterminate amount of securities to be offered by the registrant at indeterminate prices is being registered pursuant to this registration statement.
- (2) The registrant is deferring payment of the registration fee pursuant to Rule 456(b) under the Securities Act of 1933, or the Securities Act, as amended, and is omitting this information in reliance on Rule 456(b) and Rule 457(r) under the Securities Act. Any registration fees will be paid subsequently on a pay-as-you-go basis in accordance with Rule 457(r) under the Securities Act.
- (3) In accordance with Rule 415(a)(6) under the Securities Act, this registration statement carries over, as of the date of filing of this registration statement, 1,473,903 unsold shares of common stock that were previously registered by the registrant pursuant to its automatic registration statement on Form S-3 (File No. 333-206850) which was initially filed with the Securities and Exchange Commission on September 9, 2015. In connection with the registration of the offering of such unsold shares under such prior registration statement, the registrant previously paid the then applicable registration fee of \$5,062.67, which will continue to be applied to such unsold shares.



Common Stock
Preferred Stock
Debt Securities
Warrants
Units

From time to time with this prospectus, we may offer an indeterminate amount of common stock, preferred stock, debt securities and warrants or any combination thereof separately or in units, and certain selling stockholders named in this prospectus may offer up to 1,473,903 shares of common stock. The warrants may be convertible into or exercisable or exchangeable for common stock or preferred stock, the preferred stock may be convertible into or exchangeable for common stock and the debt securities may be convertible into or exchangeable for common stock or preferred stock. We provide more information about how we or the selling stockholders may elect to sell our securities in the section titled "Plan of Distribution" in this prospectus. Specific terms of these securities and offerings will be provided in supplements to this prospectus to the extent required by law. Before you invest, you should carefully read this prospectus and any prospectus supplement, together with the documents we incorporate by reference.

Our common stock is listed on the NASDAQ Global Select Market under the symbol "HQY." On September 6, 2018, the last reported sale price of our common stock was \$95.42 per share.

INVESTING IN OUR SECURITIES INVOLVES A HIGH DEGREE OF RISK. YOU SHOULD CAREFULLY REVIEW THE RISKS AND UNCERTAINTIES REFERENCED UNDER THE HEADING "RISK FACTORS" IN THIS PROSPECTUS AS WELL AS THOSE IN ANY SIMILAR SECTION CONTAINED IN THE APPLICABLE PROSPECTUS SUPPLEMENT AND ANY RELATED FREE WRITING PROSPECTUS, AND IN THE OTHER DOCUMENTS THAT ARE INCORPORATED BY REFERENCE INTO THIS PROSPECTUS OR THE APPLICABLE PROSPECTUS SUPPLEMENT.

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

The date of this prospectus is September 7, 2018

TABLE OF CONTENTS

THE COMPANY	1
RISK FACTORS	2
INFORMATION REGARDING FORWARD-LOOKING STATEMENTS	2
USE OF PROCEEDS	3
RATIO OF EARNINGS TO FIXED CHARGES	3
DESCRIPTION OF SECURITIES	3
SELLING STOCKHOLDERS	11
PLAN OF DISTRIBUTION	12
LEGAL MATTERS	14
EXPERTS	14
INCORPORATION OF CERTAIN INFORMATION BY REFERENCE	14
WHERE YOU CAN FIND MORE INFORMATION	15

This prospectus is part of an automatic registration statement that we filed with the SEC as a “well-known seasoned issuer” as defined in Rule 405 under the Securities Act of 1933, as amended, or the Securities Act, utilizing a “shelf” registration process for the delayed offering and sale of securities pursuant to Rule 415 under the Securities Act. Under this shelf registration process, we and the selling stockholders may offer and sell, from time to time, any combination of the securities described in this prospectus in one or more offerings. This prospectus provides you with a general description of the securities we and/or the selling stockholders may offer. If required by applicable law, each time we or one or more selling stockholders sell securities under this prospectus, we will provide a prospectus supplement that will contain specific information about the terms of that offering. We may also add, update or change in a prospectus supplement any information contained in this prospectus. To the extent any statement made in a prospectus supplement or a document incorporated by reference herein after the date hereof is inconsistent with the statements made in this prospectus, the statements made in this prospectus will be deemed modified or superseded by those made in the prospectus supplement or the incorporated document. You should read both this prospectus and any prospectus supplement together with additional information incorporated herein and therein described under the heading “Where You Can Find More Information” before you make any investment decision.

Neither we nor any selling stockholder have authorized anyone to provide you with information in addition to or different from that contained in this prospectus, any applicable prospectus supplement and any related free writing prospectus. We take no responsibility for, and can provide no assurances as to the reliability of, any information not contained in this prospectus, any applicable prospectus supplement or any related free writing prospectus that we or a selling stockholder may authorize to be provided to you. This prospectus is an offer to sell only the securities offered hereby, but only under circumstances and in jurisdictions where it is lawful to do so. You should assume that the information in this prospectus, any applicable prospectus supplement or any related free writing prospectus is accurate only as of the date on the front of the document (unless the information specifically indicates that another date applies) and that any information incorporated by reference is accurate only as of the date of the document incorporated by reference, regardless of the time of delivery of this prospectus, any applicable prospectus supplement or any related free writing prospectus, or any sale of a security.

The terms “we,” “our” and similar terms used in the descriptions of securities contained in this prospectus refer to HealthEquity, Inc. only, and not to its subsidiaries, unless the context requires otherwise, and the term “securities” refers collectively to our common stock, preferred stock, warrants to purchase common stock or preferred stock, debt securities, units or any combination of the foregoing securities.

THE COMPANY

We are a leader and an innovator in the high growth category of technology-enabled services platforms that empower consumers to make healthcare saving and spending decisions. Our platform provides an ecosystem where consumers can access their tax-advantaged healthcare savings, compare treatment options and pricing, evaluate and pay healthcare bills, receive personalized benefit and clinical information, earn wellness incentives, and make educated investment choices to grow their tax-advantaged healthcare savings. We can integrate with any health plan or banking institution to be the independent and trusted partner that enables consumers as they seek to manage, save and spend their healthcare dollars. We believe the secular shift to greater consumer responsibility for healthcare costs will require a significant portion of the approximately 190 million under-age 65 consumers with private health insurance in the United States to use a platform such as ours.

The core of our ecosystem is the health savings account, or HSA, a financial account through which consumers spend and save long term for healthcare on a tax-advantaged basis. As of April 30, 2018, we were the integrated HSA platform for 124 health plan and administrator partners and for employees at more than 40,000 employer clients. Our customers include individuals, employers of all sizes, health plans, and administrators. As of January 31, 2018, we had over 3.4 million HSAs on our platform. Management estimates that this represents over 7.5 million lives.

HealthEquity, Inc. was incorporated as a Delaware corporation on September 18, 2002. Our principal business office is located at 15 W. Scenic Pointe Dr., Ste. 100, Draper, Utah 84020. Our website address is www.healthequity.com. We do not incorporate the information contained on, or accessible through, our corporate website into this prospectus, and such information should not be considered to be part of this prospectus.

[Table of Contents](#)

RISK FACTORS

Investment in our securities involves a high degree of risk. You should consider carefully the risks and uncertainties described under the heading “Risk Factors” in any applicable prospectus supplement, our Annual Report on Form 10-K for the fiscal year ended January 31, 2018 and our other filings with the Securities and Exchange Commission, or SEC, pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, or the Exchange Act, which are incorporated herein by reference, before you decide whether to purchase any of our securities. These risks could materially adversely affect our business, financial condition, results of operations and cash flows, and you may lose part or all of your investment. For more information, see the section of this prospectus titled “Where You Can Find More Information.”

INFORMATION REGARDING FORWARD-LOOKING STATEMENTS

This prospectus, any prospectus supplement and the information incorporated by reference in this prospectus include forward-looking statements that involve risks and uncertainties. These forward-looking statements include, without limitation, statements regarding our industry, business strategy, plans, goals and expectations concerning our market position, product expansion, future operations, margins, profitability, future efficiencies, capital expenditures, liquidity and capital resources and other financial and operating information. When used in this discussion, the words “may,” “believes,” “intends,” “seeks,” “anticipates,” “plans,” “estimates,” “expects,” “should,” “assumes,” “continues,” “could,” “will,” “future” and the negative of these or similar terms and phrases are intended to identify forward-looking statements in this prospectus and the information incorporated by reference in this prospectus.

Forward-looking statements reflect our current expectations regarding future events, results or outcomes. These expectations may or may not be realized. Although we believe the expectations reflected in the forward-looking statements are reasonable, we can give you no assurance these expectations will prove to have been correct. Some of these expectations may be based upon assumptions, data or judgments that prove to be incorrect. Actual events, results and outcomes may differ materially from our expectations due to a variety of known and unknown risks, uncertainties and other factors. Although it is not possible to identify all of these risks and factors, they include, among others, the following:

- our ability to compete effectively in a rapidly evolving healthcare industry;
- our dependence on the continued availability and benefits of tax-advantaged health savings accounts;

- the significant competition we face and may face in the future, including from those with greater resources than us;
- cybersecurity breaches of our platform and other data interruptions, including resulting costs and liabilities, reputational damage and loss of business;
- the current uncertain healthcare environment, including changes in healthcare programs and expenditures and related regulations;
- our ability to comply with current and future privacy, healthcare, tax, investment advisor and other laws applicable to our business;
- our reliance on partners and third party vendors for distribution and important services;
- our ability to successfully identify, acquire and integrate additional portfolio purchases or acquisition targets;
- our ability to develop and implement updated features for our platform and successfully manage our growth;

[Table of Contents](#)

- our ability to protect our brand and other intellectual property rights;
- our reliance on our management team and key team members; and
- other risks and factors listed under “Risk Factors” and elsewhere in this prospectus and the information incorporated by reference in this prospectus.

In light of these risks, uncertainties and other factors, the forward-looking statements contained in this prospectus, any prospectus supplement and the information incorporated by reference in this prospectus might not prove to be accurate and you should not place undue reliance upon them. All forward-looking statements speak only as of the date made and we undertake no obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events or otherwise.

USE OF PROCEEDS

We intend to use the net proceeds we receive from the sale of securities by us as set forth in the applicable prospectus supplement. We will not receive any proceeds from the sale of securities by any selling stockholder.

RATIO OF EARNINGS TO FIXED CHARGES

Our ratio of earnings to fixed charges for recently completed fiscal years and any required interim periods will be specified in a prospectus supplement or in a document that we file with the SEC and incorporate by reference in the future.

DESCRIPTION OF SECURITIES

Common Stock

Subject to any preferential rights of any preferred stock created by our board of directors, each outstanding share of our common stock is entitled to such dividends as our board of directors may declare from time to time out of funds that we can legally use to pay dividends. The holders of common stock possess exclusive voting rights, except to the extent our board of directors specifies voting power with respect to any preferred stock that is issued.

Each holder of our common stock is entitled to one vote for each share of common stock and does not have any right to cumulate votes in the election of directors. In the event of liquidation, dissolution or winding-up of the Company, holders of our common stock will be entitled to receive on a pro-rata basis any assets remaining after provision for payment of creditors and after payment of any liquidation preferences to holders of preferred stock, if any.

The transfer agent and registrar for our common stock is American Stock Transfer & Trust Company, LLC.

Our common stock is listed on the NASDAQ Global Select Market under the symbol “HQY”. All shares of our common stock currently issued and outstanding are fully paid and non-assessable. Shares of our common stock offered by a prospectus supplement, upon issuance against full consideration, will be fully paid and non-assessable.

Preferred Stock

The particular terms of any series of preferred stock will be set forth in the prospectus supplement relating to the offering.

The rights, preferences, privileges and restrictions, including dividend rights, voting rights, terms of redemption, retirement and sinking fund provisions and liquidation preferences, if any, of the preferred stock of each series will be fixed or designated pursuant to a certificate of designation adopted by our board of directors or a duly authorized committee of our board of directors. The terms, if any, on which shares of any series of preferred stock

[Table of Contents](#)

are convertible or exchangeable into common stock will also be set forth in the prospectus supplement relating to the offering. These terms may include provisions for conversion or exchange, either mandatory, at the option of the holder, or at our option, in which case the number of shares of common stock to be received by the holders of preferred stock would be calculated as of a time and in the manner stated in the applicable prospectus supplement. The

description of the terms of a particular series of preferred stock that will be set forth in the applicable prospectus supplement does not purport to be complete and is qualified in its entirety by reference to the certificate of designation relating to the series.

Debt Securities

We may issue debt securities from time to time, in one or more series. The paragraphs below describe the general terms and provisions of the debt securities we may offer under this prospectus. When we offer to sell a particular series of debt securities, we will describe the specific terms of the securities in a supplement to this prospectus, including any additional covenants or changes to existing covenants relating to such series. The prospectus supplement also will indicate whether the general terms and provisions described in this prospectus apply to a particular series of debt securities.

If we issue debt securities at a discount from their principal amount, then, for purposes of calculating the aggregate initial offering price of the offered securities issued under this prospectus, we will include only the initial offering price of the debt securities and not the principal amount of the debt securities.

We have summarized below the material provisions of the indenture that will govern debt securities that we may issue, or indicated which material provisions will be described in the related prospectus supplement. The prospectus supplement relating to any particular securities offered will describe the specific terms of the securities, which may be in addition to or different from the general terms summarized in this prospectus. We have included the form of the indenture as an exhibit to our registration statement of which this prospectus is a part, and it is incorporated into this prospectus by reference. Because the summary in this prospectus and in any applicable prospectus supplement does not contain all of the information that you may find useful, you should read the documents relating to the securities that are described in this prospectus or in any applicable prospectus supplement. These documents will be filed as an exhibit to the registration statement of which this prospectus forms a part or will be incorporated by reference from another report that we file with the SEC. Please read “Where You Can Find More Information” in this prospectus to find out how you can obtain a copy of those documents. References to an “indenture” are references to the indenture, as supplemented, under which a particular series of debt securities is issued. As used under this caption, the term “debt securities” includes the debt securities being offered by this prospectus and all other debt securities issued by us under the indenture.

General

The indenture:

- does not limit the amount of debt securities that we may issue;
- allows us to issue debt securities in one or more series;
- does not require us to issue all of the debt securities of a series at the same time; and
- allows us to reopen a series to issue additional debt securities without the consent of the holders of the debt securities of such series.

The prospectus supplement for each offering of debt securities will provide the following terms, where applicable:

- the title of the debt securities and whether they are senior, senior subordinated or subordinated debt securities;

[Table of Contents](#)

- the aggregate principal amount of the debt securities being offered and any limit on their aggregate principal amount, and, if the series is to be issued at a discount from its face amount, the method of computing the accretion of such discount;
- the price at which the debt securities will be issued, expressed as a percentage of the principal and, if other than the full principal amount thereof, the portion of the principal amount thereof payable upon declaration of acceleration of the maturity thereof or, if applicable, the portion of the principal amount of such debt securities that is convertible into common stock or preferred stock or the method by which any such portion shall be determined;
- if convertible, the terms on which such debt securities are convertible, including the initial conversion price or rate or the method of calculation, how and when the conversion price or exchange ratio may be adjusted, whether conversion or exchange is mandatory, at the option of the holder or at our option, the conversion or exchange period, and any other provision in relation thereto, and any applicable limitations on the ownership or transferability of common stock or preferred stock received on conversion;
- the date or dates, or the method for determining the date or dates, on which the principal of the debt securities will be payable;
- the fixed or variable interest rate or rates of the debt securities, or the method by which the interest rate or rates is determined;
- the date or dates, or the method for determining the date or dates, from which interest will accrue;
- the dates on which interest will be payable;
- the record dates for interest payment dates, or the method by which we will determine those dates;
- the persons to whom interest will be payable;
- the basis upon which interest will be calculated if other than that of a 360-day year of twelve 30-day months;
- any collateral securing the performance of our obligations under the debt securities;
- the place or places where the principal of, premium, if any, and interest on, the debt securities will be payable;

- where the debt securities may be surrendered for registration of transfer or conversion or exchange;
- where notices or demands to or upon us in respect of the debt securities and the applicable indenture may be served;
- any provisions regarding our right to redeem or purchase debt securities or the right of holders to require us to redeem or purchase debt securities;
- any right or obligation we have to redeem, repay or purchase the debt securities pursuant to any sinking fund or analogous provision;
- the currency or currencies (including any composite currency) in which the debt securities are denominated and payable if other than United States dollars, and the currency or currencies (including any composite currency) in which principal, premium, if any, and interest, if any, will be payable, and if such payments may be made in a currency other than that in which the debt securities are

[Table of Contents](#)

denominated, the manner for determining such payments, including the time and manner of determining the exchange rate between the currency in which such securities are denominated and the currency in which such securities or any of them may be paid, and any additions to, modifications of or deletions from the terms of the debt securities to provide for or to facilitate the issuance of debt securities denominated or payable in a currency other than U.S. dollars;

- whether the amount of payments of principal of, premium, if any, or interest on, the debt securities may be determined according to an index, formula or other method and how such amounts will be determined;
- whether the debt securities will be in registered form, bearer form or both, and the terms of these forms;
- whether the debt securities will be issued in whole or in part in the form of a global security and, if applicable, the identity of the depositary for such global security;
- any provision for electronic issuance of the debt securities or issuance of the debt securities in uncertificated form;
- whether and upon what terms the debt securities of such series may be defeased or discharged, if different from the provisions set forth in the indenture for the series to which the supplemental indenture or authorizing resolution relates;
- any provisions granting special rights to holders of securities upon the occurrence of such events as specified in the applicable prospectus supplement;
- any deletions from, modifications of, or additions to our events of default or covenants or other provisions set forth in the indenture for the series to which the supplemental indenture or authorizing resolution relates; and
- any other material terms of the debt securities, which may be different from the terms set forth in this prospectus.

Events of Default

Unless the applicable prospectus supplement states otherwise, when we refer to “events of default” as defined in the indenture with respect to any series of debt securities, we mean:

- our failure to pay interest on any debt security of such series when the same becomes due and payable and the continuance of any such failure for a period of 30 days;
- our failure to pay the principal or premium of any debt security of such series when the same becomes due and payable at maturity, upon acceleration, redemption or otherwise;
- our failure or the failure of any restricted subsidiary to comply with any of its agreements or covenants in, or provisions of, the debt securities of such series or the indenture (as they relate thereto) and such failure continues for a period of 60 days after our receipt of notice of the default from the trustee or from the holders of at least 25 percent in aggregate principal amount of the then outstanding debt securities of that series (except in the case of a default with respect to the provisions of the indenture regarding the consolidation, merger, sale, lease, conveyance or other disposition of all or substantially all of the assets of us (or any other provision specified in the applicable supplemental indenture or authorizing resolution), which will constitute an event of default with notice but without passage of time); or

[Table of Contents](#)

- certain events of bankruptcy, insolvency or reorganization occur with respect to the Company or any restricted subsidiary of the Company that is a significant subsidiary (as defined in the indenture).

If an event of default occurs and is continuing with respect to debt securities of any series outstanding, then the trustee or the holders of 25% or more in principal amount of the outstanding debt securities of that series will have the right to declare the principal amount of all the debt securities of that series to be due and payable immediately. However, the holders of at least a majority in principal amount of outstanding debt securities of such series may rescind and annul such declaration and its consequences, except an acceleration due to nonpayment of principal or interest on such series, if the rescission would not conflict with any judgment or decree and if all existing events of default with respect to such series have been cured or waived and all sums paid or advanced

by the trustee under the indenture and the reasonable compensation, expenses, disbursements and advances of the trustee, its agents and counsel have been paid.

The indenture also provides that the holders of at least a majority in principal amount of the outstanding debt securities of any series, by notice to the trustee, may, on behalf of all holders, waive any existing default and its consequences with respect to such series of debt securities, other than any event of default in payment of principal or interest.

The indenture will require the trustee to give notice to the holders of debt securities within 90 days after the trustee obtains knowledge of a default that has occurred and is continuing. However, the trustee may withhold notice to the holders of any series of debt securities of any default, except a default in payment of principal or interest, if any, with respect to such series of debt securities, if the trustee considers it in the interest of the holders of such series of debt securities to do so.

The holders of a majority of the outstanding principal amount of the debt securities of any series will have the right to direct the time, method and place of conducting any proceedings for any remedy available to the trustee with respect to such series, subject to limitations specified in the indenture.

Modification, Amendment, Supplement and Waiver

Without notice to or the consent of any holder of any debt security, we and the trustee may modify, amend or supplement the indenture or the debt securities of a series:

- to cure any ambiguity, omission, defect or inconsistency;
- to comply with the provisions of the indenture regarding the consolidation, merger, sale, lease, conveyance or other disposition of all or substantially all of our assets;
- to provide that specific provisions of the indenture shall not apply to a series of debt securities not previously issued or to make a change to specific provisions of the indenture that only applies to any series of debt securities not previously issued or to additional debt securities of a series not previously issued;
- to create a series and establish its terms;
- to provide for uncertificated debt securities in addition to or in place of certificated debt securities;
- to release a guarantor in respect of any series which, in accordance with the terms of the indenture applicable to such series, ceases to be liable in respect of its guarantee;
- to add a guarantor subsidiary in respect of any series of debt securities;
- to secure any series of debt securities;

[Table of Contents](#)

- to add to the covenants of the Company for the benefit of the holders or surrender any right or power conferred upon the Company;
- to appoint a successor trustee with respect to the securities;
- to comply with requirements of the SEC in order to effect or maintain the qualification of the indenture under the Trust Indenture Act;
- to make any change that does not adversely affect the rights of holders; or
- to conform the provisions of the indenture to the final offering document in respect of any series of debt securities.

The indenture will provide that we and the trustee may modify, amend, supplement or waive any provision of the debt securities of a series or of the indenture relating to such series with the written consent of the holders of at least a majority in principal amount of the outstanding debt securities of such series. However, without the consent of each holder of a debt security the terms of which are directly modified, amended, supplemented or waived, a modification, amendment, supplement or waiver may not:

- reduce the amount of debt securities of such series whose holders must consent to a modification, amendment, supplement or waiver;
- reduce the rate of or extend the time for payment of interest, including defaulted interest;
- reduce the principal of or extend the fixed maturity of any debt security or alter the provisions with respect to redemptions or mandatory offers to repurchase debt securities of a series in a manner adverse to holders;
- make any change that adversely affects any right of a holder to convert or exchange any debt security into or for shares of our common stock or other securities, cash or other property in accordance with the terms of such security;
- modify the ranking or priority of the debt securities of the relevant series;
- release any guarantor of any series from any of its obligations under its guarantee or the indenture otherwise than in accordance with the terms of the indenture;

- make any change to any provision of the indenture relating to the waiver of existing defaults, the rights of holders to receive payment of principal and interest on the debt securities, or to the provisions regarding amending or supplementing the indenture or the debt securities of a particular series with the written consent of the holders of such series, except to increase the percentage required for modification or waiver or to provide for consent of each affected holder of debt securities of such series;
- waive a continuing default or event of default in the payment of principal of or interest on the debt securities; or
- make any debt security payable at a place or in money other than that stated in the debt security, or impair the right of any holder of a debt security to bring suit as permitted by the indenture.

The holders of a majority in aggregate principal amount of the outstanding debt securities of such series may, on behalf of all holders of debt securities of that series, waive any existing default under, or compliance with,

[Table of Contents](#)

any provision of the debt securities of a particular series or of the indenture relating to a particular series of debt securities, other than any event of default in payment of interest or principal.

Defeasance

The indenture will permit us to terminate all our respective obligations under the indenture as they relate to any particular series of debt securities, other than the obligation to pay interest, if any, on and the principal of the debt securities of such series and certain other obligations, at any time by:

- depositing in trust with the trustee, under an irrevocable trust agreement, money or government obligations in an amount sufficient to pay interest, if any, on and the principal of the debt securities of such series to their maturity or redemption; and
- complying with other conditions, including delivery to the trustee of an opinion of counsel to the effect that holders will not recognize income, gain or loss for federal income tax purposes as a result of our exercise of such right and will be subject to federal income tax on the same amount and in the same manner and at the same times as would have been the case otherwise.

The indenture will also permit us to terminate all of our respective obligations under the indenture as they relate to any particular series of debt securities, including the obligations to pay interest, if any, on and the principal of the debt securities of such series and certain other obligations, at any time by:

- depositing in trust with the trustee, under an irrevocable trust agreement, money or government obligations in an amount sufficient to pay interest, if any, on and the principal of the debt securities of such series to their maturity or redemption; and
- complying with other conditions, including delivery to the trustee of an opinion of counsel to the effect that (A) we have received from, or there has been published by, the Internal Revenue Service a ruling, or (B) since the date such series of debt securities were originally issued, there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such opinion of counsel shall state that, holders will not recognize income, gain or loss for federal income tax purposes as a result of our exercise of such right and will be subject to federal income tax on the same amount and in the same manner and at the same times as would have been the case otherwise.

In addition, the indenture will permit us to terminate substantially all our respective obligations under the indenture as they relate to a particular series of debt securities by depositing with the trustee money or government obligations sufficient to pay all principal of and interest on such series at its maturity or redemption date if the debt securities of such series will become due and payable at maturity within one year or are to be called for redemption within one year of the deposit.

Transfer and Exchange

A holder will be able to transfer or exchange debt securities only in accordance with the indenture. The registrar may require a holder, among other things, to furnish appropriate endorsements and transfer documents, and to pay any taxes and fees required by law or permitted by the indenture.

Concerning the Trustee

Debt securities will be issued under an indenture between the Company and Wells Fargo Bank, National Association, as trustee. The indenture will contain limitations on the rights of the trustee, should it become our creditor, to obtain payment of claims in specified cases or to realize on property received in respect of any such claim as security or otherwise. The indenture will permit the trustee to engage in other transactions; however, if the trustee acquires any conflicting interest as defined in the Trust Indenture Act, it must eliminate such conflict within 90 days, apply to the SEC for permission to continue or resign. The trustee assumes no responsibility for the accuracy or completeness of the information concerning us or our affiliates or any other party contained in this

[Table of Contents](#)

prospectus, any supplement or amendment hereto, or in the registration statement of which this prospectus forms a part, or for any failure by us or any other party to disclose events that may have occurred and may affect the significance or accuracy of such information.

No Recourse Against Others

The indenture will provide that there is no recourse under any obligation, covenant or agreement in the applicable indenture or with respect to any debt security against any of our or our successor's past, present or future stockholders, employees, officers or directors.

Governing Law; Jury Trial Waiver

The laws of the State of New York will govern the indenture and the debt securities. The indenture provides that we and the trustee, and each holder of a debt security by its acceptance thereof, irrevocably waive, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to the indenture or the debt securities.

Warrants

We may issue warrants for the purchase of common stock, preferred stock and/or debt securities in one or more series, from time to time. We may issue warrants independently or together with common stock, preferred stock and/or debt securities, and the warrants may be attached to or separate from those securities.

If we issue warrants, they will be evidenced by warrant agreements or warrant certificates issued under one or more warrant agreements, which are contracts between us and an agent for the holders of the warrants. We urge you to read the prospectus supplement and any free writing prospectus related to any series of warrants we may offer, as well as the complete warrant agreement and warrant certificate that contain the terms of the warrants. If we issue warrants, forms of warrant agreements and warrant certificates relating to warrants for the purchase of common stock, preferred stock and debt securities will be incorporated by reference into the registration statement of which this prospectus is a part from reports we would subsequently file with the SEC.

Units

We may issue units consisting of any combination of the other types of securities offered under this prospectus in one or more series. We may evidence each series of units by unit certificates that we will issue under a separate agreement. We may enter into unit agreements with a unit agent. Each unit agent will be a bank or trust company that we select. We will indicate the name and address of the unit agent in the applicable prospectus supplement relating to a particular series of units.

The following description, together with the additional information included in any applicable prospectus supplement, summarizes the general features of the units that we may offer under this prospectus. You should read any prospectus supplement and any free writing prospectus that we may authorize to be provided to you related to the series of units being offered, as well as the complete unit agreements that contain the terms of the units. Specific unit agreements will contain additional important terms and provisions and we will file as an exhibit to the registration statement of which this prospectus is a part, or will incorporate by reference from another report that we file with the SEC, the form of each unit agreement relating to units offered under this prospectus.

If we offer any units, certain terms of that series of units will be described in the applicable prospectus supplement or related free writing prospectus, including, without limitation, the following, as applicable:

- the title of the series of units;
- identification and description of the separate constituent securities comprising the units;
- the price or prices at which the units will be issued;

[Table of Contents](#)

- the date, if any, on and after which the constituent securities comprising the units will be separately transferable;
- a discussion of certain United States federal income tax considerations applicable to the units; and
- any other terms of the units and their constituent securities.

SELLING STOCKHOLDERS

The following table provides the name of each selling stockholder and the number of shares of our common stock offered by each selling stockholder under this prospectus. Each selling stockholder listed below has previously been granted registration rights with respect to the shares offered pursuant to that Amended and Restated Registration Rights Agreement, dated as of August 11, 2011, among the Company and the investors listed on Schedule I thereto. The shares offered by this prospectus may be offered from time to time by the selling stockholders listed below. The selling stockholders are not obligated to sell any of the shares of common stock offered by this prospectus. The selling stockholders reserve the right to accept or reject, in whole or in part, any proposed sale of shares. The selling stockholders may also offer and sell less than the number of shares indicated. The selling stockholders are not making any representation that any shares covered by this prospectus will or will not be offered for sale.

Information with respect to beneficial ownership is based on our records, information filed with the SEC or the most recent information furnished to us by each selling stockholder. Beneficial ownership has been determined in accordance with the rules of the SEC. These rules generally attribute beneficial ownership of securities to persons who possess sole or shared voting power and investment power with respect to those securities. Unless otherwise indicated by footnote, and subject to applicable community property laws, to our knowledge, the persons and entities named in the table have sole voting and investment power with respect to all shares of common stock shown as beneficially owned by them.

Name	Shares Beneficially Owned Before the Offering		Number of Shares Being Sold	Shares Beneficially Owned After the Offering (1)	
	Number (#)	Percent (2)		Number (#)	Percent (2)
Berkley Capital Investors, L.P. (3)	704,618	1.1%	704,618	—	0
Stephen D. Neeleman, M.D. (4)	834,259	1.2%	769,285	64,974	*

* Denotes ownership of less than 1% of the outstanding shares of common stock.

- (1) Assumes that all of the shares of common stock registered by the selling stockholders have been sold.
- (2) Based on 62,261,227 shares of our common stock issued and outstanding as of August 31, 2018.
- (3) Berkley Capital Investors, L.P., a Delaware limited partnership (“Berkley Investors”), is the record holder of 704,618 shares of our common stock. Berkley Capital, LLC, a Delaware limited liability company (“Berkley Capital”), is the general partner of Berkley Investors. Berkley Capital is an indirect, wholly owned subsidiary of W. R. Berkley Corporation, a Delaware corporation (“W. R. Berkley” and, together with Berkley Investors and Berkley Capital, the “Berkley Companies”), and as such, the securities held of record by Berkley Investors may be deemed to be beneficially owned by W. R. Berkley. The voting and dispositive power over the shares is shared by the Berkley Companies. The address of each of Berkley Investors, Berkley Capital, and W. R. Berkley is 475 Steamboat Road, Greenwich, CT 06830.
- (4) Consists of (i) 566,285 shares held of record by The Stephen and Christine Neeleman Trust; (ii) 64,974 shares issuable upon exercise of outstanding options exercisable within 60 days of September 6, 2018; and (iii) 203,000 shares held of record by Neeleman Family Holdings, LLC, a Utah limited liability company (“Family Holdings”). Dr. Neeleman is the manager of Family Holdings and as such holds sole voting and dispositive power over the shares held of record by Family Holdings. Dr. Neeleman disclaims beneficial

[Table of Contents](#)

ownership of the shares held by Family Holdings except to the extent of his pecuniary interest therein. Dr. Neeleman also holds 23,764 shares of performance-based restricted stock not included in the table above, which may be forfeited depending upon whether or not certain financial performance objectives are achieved over the next three fiscal years.

PLAN OF DISTRIBUTION

We and any selling stockholder (including any selling stockholder’s transferees, assignees or other successors-in-interest) may sell the securities offered under this prospectus in any one or more of the following ways from time to time:

- through agents;
- to or through underwriters;
- through brokers or dealers;
- through a block trade in which the broker or dealer engaged to handle the block trade will attempt to sell the shares as agent, but may position and resell a portion of the block as principal to facilitate the transaction;
- directly to one or more purchasers, including through a specific bidding, auction or other process;
- through a combination of any of these methods of sale; or
- any other method permitted by applicable law.

The securities may be sold in one or more transactions at:

- fixed prices;
- prevailing market prices at the time of sale;
- prices related to the prevailing market prices;
- varying prices determined at the time of sale; or
- negotiated prices.

These sales may be effected in transactions:

- on any national securities exchange or quotation service on which our common stock may be listed or quoted at the time of sale, including the NASDAQ Stock Market;
- in the over-the-counter market;
- otherwise than on such exchanges or services or in the over-the-counter market;
- through the writing of options, whether the options are listed on an options exchange or otherwise (including the issuance by the selling stockholders of derivative securities);
- through the settlement of short sales; or
- through a combination of the foregoing.

[Table of Contents](#)

These transactions may include block transactions or crosses. Crosses are transactions in which the same broker acts as agent on both sides of the trade.

If required by applicable law, we will describe in a prospectus supplement the particular terms of the offering of the securities, including the following:

- the names of any agents, underwriters, brokers or dealers;
- the purchase price of the securities and the net proceeds from the sale;
- any underwriting discounts and other items constituting underwriters' compensation;
- any public offering price and any discounts or concessions allowed or reallocated or paid to dealers;
- any securities exchanges on which the shares of common stock may be listed; and
- any other information we think is material.

In addition, any selling stockholder may sell securities covered by this prospectus in private transactions or under Rule 144 of the Securities Act rather than pursuant to this prospectus.

We and the selling stockholders may sell securities from time to time through agents. We will name any agent involved in the offer or sale of such securities and will list commissions payable to these agents in a prospectus supplement, if required. These agents will be acting on a best efforts basis to solicit purchases for the period of their appointment, unless we state otherwise in any required prospectus supplement.

In connection with the sale of securities covered by this prospectus, broker-dealers may receive commissions or other compensation from us or the selling stockholders in the form of commissions, discounts or concessions. Broker-dealers may also receive compensation from purchasers of the securities for whom they act as agents or to whom they sell as principals or both. Compensation as to a particular broker-dealer may be in excess of customary commissions or in amounts to be negotiated. In connection with any underwritten offering, underwriters may receive compensation in the form of discounts, concessions or commissions from us, a selling stockholder or from purchasers of the securities for whom they act as agents. Underwriters may sell the securities to or through dealers, and such dealers may receive compensation in the form of discounts, concessions or commissions from the underwriters and/or commissions from the purchasers for whom they may act as agents. Any underwriters, broker-dealers, agents or other persons acting on our behalf or on behalf of any selling stockholders that participate in a distribution of securities may be deemed to be "underwriters" within the meaning of the Securities Act, and any profit on the sale of the securities by them and any discounts, commissions or concessions received by any of those underwriters, broker-dealers, agents or other persons may be deemed to be underwriting discounts and commissions under the Securities Act.

The aggregate amount of compensation in the form of underwriting discounts, concessions or fees and any profit on the resale of shares by the selling stockholders that may be deemed to be underwriting compensation pursuant to Financial Industry Regulatory, Inc. Rule 5110 will not exceed 8% of the gross proceeds of the offering to the selling stockholders.

In connection with the distribution of the common stock covered by this prospectus or otherwise, the selling stockholders may enter into hedging transactions with broker-dealers or other financial institutions. In connection with such transactions, broker-dealers or other financial institutions may engage in short sales of our securities in the course of hedging the positions they assume with a selling stockholder. A selling stockholder may also sell shares of common stock short and deliver the shares of common stock offered by this prospectus to close out short positions. A selling stockholder may also enter into options or other transactions with broker-dealers or other financial institutions that require the delivery to such broker-dealer or other financial institution of shares of common stock offered by this prospectus, which shares such broker-dealer or other financial institution may resell pursuant to this prospectus, as supplemented or amended to reflect such transaction. A selling stockholder may also

[Table of Contents](#)

from time to time pledge our securities pursuant to the margin provisions of customer agreements with a broker or other agreements with lenders. Upon a default, the broker or lender may offer and sell such pledged shares from time to time pursuant to this prospectus, as supplemented or amended to reflect such transaction.

Underwriters, agents, brokers or dealers may be entitled, pursuant to relevant agreements entered into with us, to indemnification by us or a selling stockholder against certain civil liabilities, including liabilities under the Securities Act that may arise from any untrue statement or alleged untrue statement of a material fact, or any omission or alleged omission to state a material fact in this prospectus, any supplement or amendment hereto, or in the registration statement of which this prospectus forms a part, or to contribution with respect to payments which the underwriters, agents, brokers or dealers may be required to make.

The selling stockholders and any other person participating in such distribution will be subject to the applicable provisions of the Exchange Act and the rules and regulations thereunder, including, without limitation, Regulation M, which may limit the timing of purchases and sales of any of the shares by the selling stockholders and any other participating person. Regulation M may also restrict the ability of any person engaged in the distribution of the shares to engage in market-making activities with respect to the shares. All of the foregoing may affect the marketability of the shares and the ability of any person or entity to engage in market-making activities with respect to the shares.

There can be no assurance that any selling stockholder will sell any or all of the securities registered pursuant to the registration statement of which this prospectus is a part.

LEGAL MATTERS

Unless otherwise specified in a prospectus supplement accompanying this prospectus, Willkie Farr & Gallagher LLP will pass upon the validity of the securities offered hereby. If any legal matters relating to offerings made in connection with this prospectus are passed upon by other counsel for underwriters, dealers or agents, such counsel will be named in the prospectus supplement relating to any such offering.

EXPERTS

The consolidated financial statements and management's assessment of the effectiveness of internal control over financial reporting (which is included in management's report on internal control over financial reporting) incorporated in this prospectus by reference to the Annual Report on Form 10-K for the year ended January 31, 2018 have been so incorporated in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

The SEC allows us to "incorporate by reference" the information that we file with them. This allows us to disclose important information to you by referring to those filed documents. Any information referred to in this way is considered part of this prospectus, and any information that we file with the SEC after the date of this prospectus will automatically update and supersede this information.

We are incorporating by reference the documents listed below, and all documents that we file after the date of this prospectus with the SEC pursuant to Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 prior to the termination of the offering of securities covered by this prospectus:

- Our Annual Report on Form 10-K for the year ended January 31, 2018;
- Our Quarterly Reports on Form 10-Q for the quarters ended April 30, 2018, filed with the SEC on June 7, 2018, and July 31, 2018, filed with the SEC on September 6, 2018; and
- Our Current Reports on Form 8-K filed with the SEC on March 28, 2018 (solely with respect to Item 5.02 thereof), April 6, 2018, June 21, 2018, July 6, 2018, and July 27, 2018.

14

[Table of Contents](#)

- The description of our common stock contained in our registration statement on Form 8-A (File No. 001-36568) filed with the SEC on July 25, 2014, including any amendment or report filed for the purpose of updating such description.

Unless we specifically state otherwise, none of the information furnished under Item 2.02 or Item 7.01 in our Current Reports on Form 8-K is, or will be, incorporated by reference in this prospectus.

We will provide to each person, including any beneficial owner, to whom a prospectus has been delivered, free of charge, upon oral or written request copies of any documents that we have incorporated by reference into this prospectus. You can obtain copies through our Investor Relations website at ir.healthequity.com or by contacting our Executive Vice President, General Counsel and Corporate Secretary, at: HealthEquity, Inc., 15 W. Scenic Pointe Dr., Ste. 100, Draper, UT 84020; (801) 727-1000.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any document that we file at the Public Reference Room of the SEC at 100 F Street, N.E., Washington, D.C. 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. In addition, the SEC maintains an Internet site at www.sec.gov, from which interested persons can electronically access our SEC filings, including the registration statement and the exhibits and schedules thereto.

15

[Table of Contents](#)

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution

The following table sets forth the estimated costs and expenses payable by us, other than underwriting discounts and commissions, in connection with the sale of the securities being registered hereby.

	Amount to be Paid
SEC registration fee	(1)(2)
Printing and engraving expenses	(2)
Legal fees and expenses	(2)

Trustee's fees and expenses	(2)
Accounting fees and expenses	(2)
Transfer agent and registrar	(2)
Miscellaneous	(2)
TOTAL	(2)

- (1) In accordance with Rule 415(a)(6) under the Securities Act, this registration statement carries over, as of the date of filing of this registration statement, 1,473,903 unsold shares of common stock that were previously registered by the registrant pursuant to its automatic registration statement on Form S-3 (File No. 333-206850) which was initially filed with the Securities and Exchange Commission on September 9, 2015. In connection with the registration of the offering and sale of such unsold shares under such prior registration statement, the registrant previously paid the then applicable registration fee of \$5,062.67, which will continue to be applied to such unsold shares.
- (2) Estimated fees and expenses are not presently known. The foregoing sets forth the general categories of expenses (other than underwriting discounts and commissions) that we anticipate that we will incur in connection with the offering of securities under this registration statement. An estimate of the aggregate expenses in connection with the issuance and distribution of the securities being offered will be included in the applicable prospectus supplement.

Item 15. Indemnification of Directors and Officers

Section 145 of the Delaware General Corporation Law authorizes a corporation's board of directors to grant, and authorizes a court to award, indemnity to officers, directors and other corporate agents.

As permitted by Section 102(b)(7) of the Delaware General Corporation Law, the registrant's certificate of incorporation includes provisions that eliminate the personal liability of its directors for monetary damages for breach of their fiduciary duty as directors, except for the following:

- any breach of the director's duty of loyalty to the registrant or its stockholders;
- acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of the law;
- under Section 174 of the Delaware General Corporation Law (regarding unlawful dividends and stock purchases); or
- any transaction from which the director derived an improper benefit.

To the extent Section 102(b)(7) is interpreted, or the Delaware General Corporation Law is amended, to allow similar protections for officers of a corporation, such provisions of the registrant's certificate of incorporation shall also extend to those persons.

In addition, as permitted by Section 145 of the Delaware General Corporation law, the bylaws of the registrant provide that:

II-1

[Table of Contents](#)

- The registrant shall indemnify its directors and officers for serving the registrant in those capacities or for serving other business enterprises at the registrant's request, to the fullest extent permitted by Delaware law. Delaware law provides that a corporation may indemnify such person if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the registrant and, with respect to any criminal proceeding, had not reasonable cause to believe such person's conduct was unlawful.
- The registrant may, in its discretion, indemnify employees and agents in those circumstances where indemnification is permitted by applicable law.
- The registrant is required to advance expenses, as incurred, to its directors and officers in connection with defending a proceeding, except that such director or officer shall undertake to repay such advances if it is ultimately determined that such person is not entitled to indemnification.
- The registrant will not be obligated pursuant to its bylaws to indemnify a person with respect to proceedings initiated by that person, except with respect to proceedings authorized by the registrant's board of directors or brought to enforce a right to indemnification.
- The rights conferred in the bylaws are not exclusive, and the registrant is authorized to enter into indemnification agreements with its directors, officers, employees and agents and to obtain insurance to indemnify such persons.

The registrant's policy is to enter into separate indemnification agreements with each of its directors and officers that provide the maximum indemnity allowed to directors and executive officers by Section 145 of the Delaware General Corporation Law and also provides for certain additional procedural protections. The registrant also maintains directors and officers insurance to insure such persons against certain liabilities.

These indemnification provisions and the indemnification agreements entered into between the registrant and its officers and directors may be sufficiently broad to permit indemnification of the registrant's officers and directors for liabilities (including reimbursement of expenses incurred) arising under the Securities Act.

Item 16. Exhibits

The exhibits to the registration statement are listed in the index below:

Exhibit Number	Exhibit Description	Incorporated by Reference			
		Form	Date	Number	Filed Herewith
1.1*	Form of Underwriting Agreement				

3.1	Second Amended and Restated Certificate of Incorporation	8-K	7/6/2018	001-36568	
3.2	Second Amended and Restated By-Laws	8-K	7/6/2018	001-36568	
4.1	Form of Common Stock Certificate	S-1/A	7/16/2014	333-196645	
4.2	Form of Indenture				X
4.3*	Form of Debt Security				
4.4*	Form of Preferred Stock Certificate				
4.5*	Form of Certificate of Designations				
4.6*	Form of Warrant Agreement				
4.7*	Form of Warrant Certificate				
4.8*	Form of Unit Agreement				
5.1	Opinion of Willkie Farr & Gallagher LLP				X
12.1*	Computation of Ratio of Earnings to Fixed Charges				
23.1	Consent of Independent Registered Public Accounting Firm				X
23.2	Consent of Willkie Farr & Gallagher LLP (included in Exhibit 5.1)				X
24.1	Power of Attorney (included on the signature page)				X
25.1	Statement of Eligibility on Form T-1 of Wells Fargo Bank, National Association, under the Trust Indenture Act of 1939, as amended				X

II-2

[Table of Contents](#)

* To be filed, if necessary, subsequent to the effectiveness of this registration statement as an exhibit to a report filed under the Exchange Act to be incorporated by reference herein or to a post-effective amendment hereto, if applicable.

Item 17. Undertakings

The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made of securities registered hereby, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (i), (ii) and (iii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the SEC by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

(A) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(B) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of

II-3

[Table of Contents](#)

prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such

date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(5) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities:

The undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

- (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
- (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
- (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
- (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes that:

II-4

[Table of Contents](#)

(1) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A under the Securities Act and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

II-5

[Table of Contents](#)

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Draper, State of Utah, on September 7, 2018.

HEALTH EQUITY, INC.

By: /s/ Jon Kessler
Jon Kessler
President and Chief Executive Officer

II-6

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Jon Kessler, Stephen D. Neeleman, M.D. and Darcy Mott, and each of them acting individually, as his or her true and lawful attorneys-in-fact and agents, each with full power of substitution, for him or her in any and all capacities, to sign any and all amendments to this registration statement, including post-effective amendments or any abbreviated registration statement and any amendments thereto filed pursuant to Rule 462(b) increasing the number of securities for which registration is sought, and to file the same, with all exhibits thereto and other documents in connection therewith, with the SEC, granting unto said attorneys-in-fact and agents, with full power of each to act alone, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully for all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or his, her or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Robert W. Selander</u> Robert W. Selander	Chairman of the Board, Director	September 7, 2018
<u>/s/ Jon Kessler</u> Jon Kessler	President, Chief Executive Officer, and Director (Principal Executive Officer)	September 7, 2018
<u>/s/ Darcy Mott</u> Darcy Mott	Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	September 7, 2018
<u>/s/ Frank A. Corvino</u> Frank A. Corvino	Director	September 7, 2018
<u>/s Adrian T. Dillon</u> Adrian T. Dillon	Director	September 7, 2018
<u>/s/ Evelyn Dilsaver</u> Evelyn Dilsaver	Director	September 7, 2018
<u>/s/ Debra McCowan</u> Debra McCowan	Director	September 7, 2018
<u>/s/ Frank T. Medici</u> Frank T. Medici	Director	September 7, 2018
<u>/s/ Stephen D. Neeleman, M.D.</u> Stephen D. Neeleman, M.D.	Vice Chairman and Director	September 7, 2018
<u>/s/ Ian Sacks</u> Ian Sacks	Director	September 7, 2018
<u>/s/ Gayle Wellborn</u> Gayle Wellborn	Director	September 7, 2018

HEALTHEQUITY, INC.

Debt Securities

Indenture

Dated as of,

WELLS FARGO BANK, NATIONAL ASSOCIATION,

as Trustee

CROSS-REFERENCE TABLEThis Cross-Reference Table is not a part of the Indenture

TIA Section	Indenture Section
310(a)(1)	7.10
(a)(2)	7.10
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	7.10
(b)	7.08; 7.10
311(a)	7.11
(b)	7.11
(c)	N.A.
312(a)	2.05
(b)	12.03
(c)	12.03
313(a)	7.06
(b)(1)	N.A.
(b)(2)	7.06
(c)	12.02
(d)	7.06
314(a)	4.03; 4.04; 12.02
(b)	N.A.
(c)(1)	12.04
(c)(2)	12.04
(c)(3)	N.A.
(d)	N.A.
(e)	12.05
315(a)	7.01(b)
(b)	7.05; 12.02
(c)	7.01(a)
(d)	7.01(c)
(e)	6.11
316(a)(last sentence)	2.12
(a)(1)(A)	6.05
(a)(1)(B)	6.04
(a)(2)	N.A.
(b)	6.07
(c)	10.04
317(a)(1)	6.08
(a)(2)	6.09
(b)	2.04
318(a)	12.01

N.A. means Not Applicable.

TABLE OF CONTENTS

This Table of Contents is not a part of the Indenture

ARTICLE ONE DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01	Definitions	1
Section 1.02	Other Definitions	4
Section 1.03	Incorporation by Reference of Trust Indenture Act	4
Section 1.04	Rules of Construction	4

ARTICLE TWO THE SECURITIES

Section 2.01	Form and Dating	5
Section 2.02	Execution and Authentication	7
Section 2.03	Registrar and Paying Agent	7
Section 2.04	Paying Agent to Hold Money in Trust	8
Section 2.05	Securityholder Lists	8
Section 2.06	Transfer and Exchange	8
Section 2.07	Replacement Securities	9
Section 2.08	Outstanding Securities	9
Section 2.09	Temporary Securities	9
Section 2.10	Cancellation	9
Section 2.11	Defaulted Interest	10
Section 2.12	Treasury Securities	10
Section 2.13	CUSIP/ISIN Numbers	10
Section 2.14	Deposit of Moneys	10
Section 2.15	Book-Entry Provisions for Global Security	10
Section 2.16	No Duty to Monitor	12

ARTICLE THREE REDEMPTION

Section 3.01	Notices to Trustee	12
Section 3.02	Selection of Securities to be Redeemed	12
Section 3.03	Notice of Redemption	13
Section 3.04	Effect of Notice of Redemption	14
Section 3.05	Deposit of Redemption Price	14
Section 3.06	Securities Redeemed in Part	14

ARTICLE FOUR COVENANTS

Section 4.01	Payment of Securities	14
Section 4.02	Maintenance of Office or Agency	14
Section 4.03	Reports	14
Section 4.04	Compliance Certificate	15
Section 4.05	Waiver of Stay, Extension or Usury Laws	15

ARTICLE FIVE SUCCESSOR CORPORATION

Section 5.01	When Company May Merge, etc.	15
--------------	------------------------------	----

ARTICLE SIX DEFAULTS AND REMEDIES

Section 6.01	Events of Default	16
Section 6.02	Acceleration	17
Section 6.03	Other Remedies	17
Section 6.04	Waiver of Existing Defaults	18
Section 6.05	Control by Majority	18
Section 6.06	Limitation on Suits	18
Section 6.07	Rights of Holders to Receive Payment and Convert	18
Section 6.08	Collection Suit by Trustee	19
Section 6.09	Trustee May File Proofs of Claim	19
Section 6.10	Priorities	19
Section 6.11	Undertaking for Costs	19

**ARTICLE SEVEN
TRUSTEE**

Section 7.01	Duties of Trustee	20
Section 7.02	Rights of Trustee	20
Section 7.03	Individual Rights of Trustee	22
Section 7.04	Trustee’s Disclaimer	22
Section 7.05	Notice of Defaults	22
Section 7.06	Reports by Trustee to Holders	22
Section 7.07	Compensation and Indemnity	22
Section 7.08	Replacement of Trustee	23
Section 7.09	Successor Trustee by Merger, etc.	24
Section 7.10	Eligibility; Disqualification	24
Section 7.11	Preferential Collection of Claims Against Company	24

**ARTICLE EIGHT
DISCHARGE OF INDENTURE**

Section 8.01	Defeasance upon Deposit of Moneys or Government Obligations	24
Section 8.02	Survival of the Company’s Obligations	26
Section 8.03	Application of Trust Money	26
Section 8.04	Repayment to the Company	27
Section 8.05	Reinstatement	27

**ARTICLE NINE
RESERVED**

**ARTICLE TEN
AMENDMENTS, SUPPLEMENTS AND WAIVERS**

Section 10.01	Without Consent of Holders	27
Section 10.02	With Consent of Holders	28
Section 10.03	Compliance with Trust Indenture Act	29
Section 10.04	Revocation and Effect of Consents	29
Section 10.05	Notation on or Exchange of Securities	30
Section 10.06	Trustee to Sign Amendments, etc.	30

ii

**ARTICLE ELEVEN
SECURITIES IN FOREIGN CURRENCIES**

Section 11.01	Applicability of Article	30
---------------	--------------------------	----

**ARTICLE TWELVE
MISCELLANEOUS**

Section 12.01	Trust Indenture Act Controls	30
Section 12.02	Notices	30
Section 12.03	Communications by Holders with Other Holders	31
Section 12.04	Certificate and Opinion as to Conditions Precedent	31
Section 12.05	Statements Required in Certificate or Opinion	32
Section 12.06	Rules by Trustee and Agents	32
Section 12.07	Legal Holidays	32
Section 12.08	Governing Law	32
Section 12.09	No Adverse Interpretation of Other Agreements	32
Section 12.10	No Recourse Against Others	33
Section 12.11	Successors and Assigns	33
Section 12.12	Duplicate Originals	33
Section 12.13	Severability	33
Section 12.14	Waiver of Jury Trial	33

SIGNATURES

EXHIBIT A — Form of Security

iii

Each party agrees as follows for the benefit of the other party and for the equal and ratable benefit of the Holders of the Company's debt securities issued under this Base Indenture:

ARTICLE ONE
DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01 **Definitions.**

“**Affiliate**” means, when used with reference to a specified person, any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Person specified.

“**Agent**” means any Registrar, Securities Custodian, Paying Agent or co-Registrar or agent for service of notices and demands.

“**Applicable Procedures**” means, with respect to any payment, conversion, tender, redemption, transfer or exchange of or for beneficial interests in any Global Security, the rules and procedures of the Depository that apply to such payment, conversion, tender, redemption, transfer or exchange.

“**Authorizing Resolution**” means a resolution adopted by the Board of Directors or by an Officer or committee of Officers pursuant to Board delegation authorizing a Series.

“**Bankruptcy Law**” means Title 11 of the United States Code, as amended, or any similar federal or state law for the relief of debtors.

“**Board of Directors**” means the Board of Directors of the Company or any duly authorized committee thereof.

“**Capital Stock**” means, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated) of or in such Person's capital stock or other equity interests.

“**Company**” means the party named as such in this Indenture until a successor replaces it pursuant to the Indenture and thereafter means the successor.

“**control**” means, when used with respect to any Person, the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“**Corporate Trust Office**” means the office of the Trustee at which at any particular time its corporate trust business in respect of this Indenture shall be administered and which at the date hereof is located at 150 East 42nd Street, 40th Floor, MAC J0161-403, New York, New York 10017, Attn: Corporate Trust Services, and for Agent services such office shall also mean the office or agency of the Trustee located at Corporate Trust Operations, MAC N9300-070, 600 South Fourth Street, Seventh Floor, Minneapolis, MN 55415, or such other address as to which the Trustee may give notice to the Company, or if at any time there is more than one Trustee, means the Corporate Trust Office of any such other Trustee with respect to the Securities of the applicable series.

“**Default**” means any event, act or condition that is, or after notice or the passage of time or both would be, an Event of Default.

“**Definitive Security**” means a certificated Security that is not a Global Security registered in the name of the Securityholder thereof.

1

“**Depository**” means, with respect to Securities of any Series which the Company shall determine will be issued in whole or in part as a Global Security, DTC, another clearing agency, or any successor registered as a clearing agency under the Exchange Act, and any other applicable U.S. or foreign statute or regulation, which, in each case, shall be designated by the Company pursuant to Section 2.01.

“**Dollars**” and “**\$**” mean United States Dollars.

“**DTC**” means The Depository Trust Company, New York, New York.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

“**Foreign Currency**” means any currency, currency unit or composite currency, including, without limitation, the Euro, issued by the government of one or more countries other than the United States of America or by any recognized confederation or association of such governments.

“**GAAP**” means generally accepted accounting principles set forth in the accounting standards codification of the Financial Accounting Standards Board or in such other statements by such or any other entity as may be approved by a significant segment of the accounting profession of the United States, as in effect on the date of this Base Indenture.

“**Global Security**” means, with respect to any Series, a Security executed by the Company and delivered by the Trustee to the Depository or pursuant to the Depository's instruction, all in accordance with the Indenture, which shall be registered in the name of the Depository or its nominee.

“**Government Obligations**” means securities which are (i) direct obligations of the United States or the other government or governments in the confederation which issued the Foreign Currency in which the principal of or any interest on the Security of the applicable Series shall be payable, in each case for the payment of which its full faith and credit is pledged or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States or such other government or governments, in each case the full and timely payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States or such other government or governments, which, in either case are not callable or redeemable at the option of the issuer or issuers thereof, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such Government Obligations or a specific payment of interest on or principal of any such Government Obligation held by such custodian for the account of the holder of a depository receipt; provided that (except as required by law) such custodian is not authorized to make any deduction from the

amount payable to the holder of such depositary receipt from any amount received by the custodian in respect of the Government Obligation or the specific payment of interest on or principal of the Government Obligation evidenced by such depositary receipt.

“**Holder**” or “**Securityholder**” means the Person in whose name a Security is registered on the Registrar’s books.

“**Indenture**” means this Base Indenture as amended or supplemented from time to time, including pursuant to any Authorizing Resolution, Officers’ Certificate or supplemental indenture pertaining to any Series, and including, for all purposes of this instrument and any such Authorizing Resolution, Officers’ Certificate or supplemental indenture, the provisions of the TIA that are deemed to be a part of and govern this Base Indenture and any such Authorizing Resolution, Officers’ Certificate or supplemental indenture, respectively, and shall include the terms and provisions contained in the Securities as contemplated by Section 2.01.

“**Issue Date**” means, with respect to any Series, the date on which the Securities of such Series are originally issued under this Indenture.

“**NYUCC**” means the New York Uniform Commercial Code, as in effect from time to time.

2

“**Officer**” means the Chairman of the Board, the President, any Vice President, the Treasurer, the Controller or the Secretary of the Company.

“**Officers’ Certificate**” means a certificate signed by two Officers or by an Officer and an Assistant Treasurer or an Assistant Secretary of the Company.

“**Opinion of Counsel**” means a written opinion from legal counsel, who may be an employee of or counsel to the Company, or other counsel reasonably satisfactory to the Trustee. Each such opinion shall include the statements provided for in Section 12.05 if and to the extent required by the provisions of such Section.

“**Person**” means any individual, corporation, partnership, limited liability company, joint venture, incorporated or unincorporated association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

“**principal**” of a debt security means the principal of the security *plus*, when appropriate, the premium, if any, on the security.

“**Property**” of any Person means all types of real, personal, tangible, intangible or mixed property owned by such Person, whether or not included in the most recent consolidated balance sheet of such Person and its Subsidiaries under GAAP.

“**SEC**” means the Securities and Exchange Commission or any successor agency performing the duties now assigned to it under the TIA.

“**Securities**” means any Securities that are issued under this Base Indenture.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Securities Custodian**” means the Trustee as custodian with respect to the Global Securities or any successor entity thereto.

“**Series**” means a series of Securities established under this Base Indenture.

“**Significant Subsidiary**” means any Subsidiary of the Company which would constitute a “significant subsidiary” as defined in Rule 1-02 of Regulation S-X under the Securities Act and the Exchange Act.

“**Subsidiary**” of any Person means any corporation or other entity of which a majority of the Capital Stock having ordinary voting power to elect a majority of the board of directors of such entity or other persons performing similar functions is at the time directly or indirectly owned or controlled by such Person.

“**TIA**” means the Trust Indenture Act of 1939, as amended, as in effect from time to time, except as otherwise provided herein.

“**Trustee**” means the party named as such in this Base Indenture until a successor replaces it pursuant to this Base Indenture and thereafter means the successor serving hereunder; provided, however, that if at any time there is more than one such Person, “Trustee” as used with respect to the Securities of any Series shall mean only the Trustee with respect to Securities of that Series.

“**Trust Officer**” means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, senior associate, associate, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall have direct responsibility for the administration of this Indenture, or any other officer to whom any corporate trust matter is referred because of such Person’s knowledge of and familiarity with the particular subject.

3

“**United States**” means the United States of America.

Section 1.02 Other Definitions.

<u>Term</u>	<u>Defined in Section</u>
Agent Members	2.15

Base Indenture	Preamble
Business Day	12.07
Covenant Defeasance	8.01
Custodian	6.01
Event of Default	6.01
Legal Defeasance	8.01
Legal Holiday	12.07
Paying Agent	2.03
Registrar	2.03
Security Register	2.03
Successor	5.01

Section 1.03 Incorporation by Reference of Trust Indenture Act.

Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture. The following TIA terms used in this Indenture have the following meanings:

“Commission” means the SEC.

“indenture securities” means the Securities of a particular Series.

“indenture security holder” means a Securityholder.

“indenture to be qualified” means this Indenture.

“indenture trustee” or “institutional trustee” means the Trustee.

“obligor” on the indenture securities means the Company or any other obligor on the Securities of a Series.

All other TIA terms used in this Indenture that are defined by the TIA, defined by TIA reference to another statute or defined by SEC rule have the meanings so assigned to them.

Section 1.04 Rules of Construction.

Unless the context otherwise requires:

- (1) a term has the meaning assigned to it herein;
- (2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP and all accounting determinations shall be made in accordance with GAAP;
- (3) “or” is not exclusive and “including” means “including without limitation”;
- (4) words in the singular include the plural, and in the plural include the singular;

- (5) “herein,” “hereof” and “hereunder,” and other words of similar import, refer to this Indenture as a whole (including any Authorizing Resolution or supplemental indenture relating to the relevant Series) and not to any particular Article, Section or other subdivision;
- (6) all exhibits are incorporated by reference herein and expressly made a part of this Indenture; and
- (7) any transaction or event shall be considered “permitted by” or made “in accordance with” or “in compliance with” this Indenture or any particular provision thereof if such transaction or event is not expressly prohibited by this Indenture or such provision, as the case may be.

**ARTICLE TWO
THE SECURITIES**

Section 2.01 Form and Dating.

The aggregate principal amount of Securities that may be issued under this Base Indenture is unlimited. The Securities may be issued from time to time in one or more Series. Each Series shall be created by an Authorizing Resolution, Officers’ Certificate, or a supplemental indenture that establishes the terms of the Series, which may include the following:

- (1) the title of the Series (which shall distinguish the Securities of such Series from all other Securities);
- (2) the aggregate principal amount (or any limit on the aggregate principal amount) of the Series and, if any Securities of a Series are to be issued at a discount from their face amount, the method of computing the accretion of such discount;
- (3) the interest rate or method of calculation of the interest rate;
- (4) the date from which interest will accrue;

- (5) the record dates for interest payable on Securities of the Series;
- (6) the dates when, places where and manner in which principal and interest are payable;
- (7) the Registrar, Securities Custodian and Paying Agent if other than the Trustee;
- (8) the terms of any mandatory (including any sinking fund requirements) or optional redemption by the Company;
- (9) the terms of any redemption or repurchase at the option of Holders;
- (10) the permissible denominations in which Securities of such Series are issuable, if different from \$2,000 and multiples of \$1,000 in excess thereof;
- (11) whether Securities of such Series will be issued in registered or bearer form and the terms of any such forms of Securities;
- (12) whether the Securities of the Series shall be issued in whole or in part in the form of a Global Security or Securities, the terms and conditions, if different from those contained in this Base Indenture, upon which such Global Security or Securities may be exchanged in whole or in part for Definitive Securities; the Depository for such Global Security or Securities; and the form of any legend or legends, if any, to be borne by any such Global Security or Securities in addition to or in lieu of the legends referred to in Section 2.15;

5

- (13) the currency or currencies (including any composite currency) in which principal or interest or both may be paid;
- (14) if payments of principal or interest may be made in a currency other than that in which Securities of such Series are denominated, the manner for determining such payments, including the time and manner of determining the exchange rate between the currency in which such Securities are denominated and the currency in which such Securities or any of them may be paid, and any deletions from or modifications of or additions to the terms of this Indenture to provide for or to facilitate the issuance of Securities denominated or payable, at the election of the Company or a Holder thereof or otherwise, in a Foreign Currency;
- (15) provisions for electronic issuance of Securities or issuance of Securities of such Series in uncertificated form;
- (16) any Events of Default, covenants and/or defined terms in addition to or in lieu of those set forth in this Base Indenture;
- (17) whether and upon what terms Securities of such Series may be defeased or discharged if different from the provisions set forth in this Base Indenture;
- (18) the form of the Securities of such Series, which, unless the Authorizing Resolution, Officers' Certificate, or supplemental indenture otherwise provides, shall be in the form of Exhibit A, except as otherwise provided in any indenture supplemental hereto;
- (19) any terms that may be required by or advisable under applicable law;
- (20) the percentage of the principal amount of the Securities of such Series which is payable if the maturity of the Securities of such Series is accelerated in the case of Securities issued at a discount from their face amount;
- (21) whether Securities of such Series will or will not have the benefit of guarantees and the Company's Subsidiaries that will be the initial guarantors of such Series and, if applicable, the terms and conditions upon which such guarantees may be subordinated to other indebtedness of the respective guarantors;
- (22) whether the Securities of such Series are senior or subordinated debt securities, and if subordinated debt securities, the terms of such subordination;
- (23) whether the Securities of the Series will be convertible into or exchangeable for other Securities, common shares or other securities of any kind of the Company or another obligor, and, if so, the terms and conditions upon which such Securities will be so convertible or exchangeable, including the initial conversion or exchange price or rate or the method of calculation, how and when the conversion price or exchange ratio may be adjusted, whether conversion or exchange is mandatory, at the option of the holder or at the Company's option, the conversion or exchange period, and any other provision in relation thereto;
- (24) the provisions, if any, relating to any security provided for the Securities of the Series, and any subordination in right of payment, if any, of the Securities of the Series; and
- (25) any other terms in addition to or different from those contained in this Base Indenture applicable to such Series.

All Securities of one Series need not be issued at the same time and, unless otherwise provided, a Series may be reopened for issuances of additional Securities of such Series pursuant to an Authorizing Resolution, an Officers' Certificate or in any indenture supplemental hereto. No Authorizing Resolution or Officers' Certificate

6

may affect the Trustee's own rights, duties or immunities under this Indenture or otherwise with respect to any Series except as it may agree in writing.

The creation and issuance of a Series and the authentication and delivery thereof are not subject to any conditions precedent.

Section 2.02 **Execution and Authentication.**

One Officer shall sign the Securities for the Company by manual or facsimile signature.

If an Officer whose signature is on a Security no longer holds that office at the time the Trustee authenticates the Security, the Security shall nevertheless be valid.

A Security shall not be valid until the Trustee manually signs the certificate of authentication on the Security. The signature shall be conclusive evidence that the Security has been authenticated under this Base Indenture.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any series executed by the Company to the Trustee for authentication. Each Security shall be dated the date of its authentication. The Trustee shall authenticate Securities for original issue upon receipt of, and shall be fully protected in relying upon:

- (a) An order to the Trustee signed by an Officer of the Company directing the Trustee to authenticate the Securities;
- (b) a copy of the resolution or resolutions of the Board of Directors in or pursuant to which the terms and form of the Securities were established, certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect as of the date of such certificate, and if the terms and form of such Securities are established by an Officers' Certificate pursuant to general authorization of the Board of Directors, such Officers' Certificate;
- (c) an Officers' Certificate of the Company delivered in accordance with Section 12.04; and
- (d) an Opinion of Counsel delivered in accordance with Section 12.04, stating (i) that the form of such Securities has been established in conformity with the provisions of this Indenture; (ii) that the terms of such Securities have been established in conformity with the provisions of this Indenture; and (iii) that this Indenture and such Securities, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and binding obligations of the Company, enforceable in accordance with their terms, subject, as to enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors' rights generally and the application of general principles of equity.

The Trustee shall have the right to decline to authenticate and deliver any Securities under this Section if the Trustee, being advised by counsel, determines that such action may not lawfully be taken or if the Trustee in good faith shall determine that such action would expose the Trustee to personal liability to existing Holders.

Section 2.03 **Registrar and Paying Agent.**

The Company shall maintain an office or agency where Securities may be presented for registration of transfer or where Securities of a Series that are convertible or exchangeable may be surrendered for conversion or exchange ("**Registrar**"), an office or agency where Securities may be presented for payment ("**Paying Agent**") and an office or agency where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The Registrar shall keep a register of the Securities and of their transfer and exchange

7

(the "**Security Register**"). The Company may have one or more co-Registrars and one or more additional paying agents. The term "**Paying Agent**" includes any additional paying agent.

The Company shall enter into an appropriate agency agreement with any Agent not a party to this Base Indenture. The agreement shall implement the provisions of this Indenture that relate to such Agent. The Company shall promptly notify the Trustee in writing of the name and address of any such Agent and the Trustee shall have the right to inspect the Securities Register at all reasonable times to obtain copies thereof, and the Trustee shall have the right to rely upon such register as to the names and addresses of the Holders and the principal amounts and certificate numbers thereof. If the Company fails to maintain a Registrar or Paying Agent or fails to give the foregoing notice, the Trustee shall act as such.

The Company initially appoints the Trustee as Registrar, Securities Custodian, and Paying Agent.

Section 2.04 **Paying Agent to Hold Money in Trust.**

Each Paying Agent shall hold in trust for the benefit of Securityholders and the Trustee all money held by the Paying Agent for the payment of principal of or interest on the Securities, and shall notify the Trustee of any default by the Company in making any such payment. If the Company or a Subsidiary acts as Paying Agent, it shall segregate the money and hold it as a separate trust fund. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon doing so the Paying Agent shall have no further liability for the money.

Section 2.05 **Securityholder Lists.**

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Securityholders. If the Trustee is not the Registrar, the Company shall furnish to the Trustee at least five (5) Business Days before each semiannual interest payment date and at such other times as the Trustee may request in writing a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Securityholders.

Section 2.06 **Transfer and Exchange.**

Where a Security is presented to the Registrar or a co-Registrar with a request to register a transfer, the Registrar shall register the transfer as requested if the requirements of Section 8-401(a) of the NYUCC are met and the other provisions of this Section 2.06 are satisfied. Where Securities are presented to the Registrar or a co-Registrar with a request to exchange them for an equal principal amount of Securities of other denominations, the Registrar

shall make the exchange as requested if the same requirements are met. To permit transfers and exchanges, the Trustee shall authenticate Securities at the Registrar's request. The Registrar need not transfer or exchange any Security selected for redemption or repurchase, except the unredeemed or repurchased part thereof if the Security is redeemed or repurchased in part, or transfer or exchange any Securities for a period of 15 days before a selection of Securities to be redeemed or repurchased. Any exchange or transfer shall be without charge, except that the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto except in the case of exchanges pursuant to 2.09, 3.06, or 10.05 not involving any transfer. Each Securityholder that is a transferor of a Security shall provide or cause to be provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including any cost basis reporting obligations under Internal Revenue Code Section 6045. The Trustee may rely on information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

Any Holder of a Global Security shall, by acceptance of such Global Security, agree that transfers of beneficial interests in such Global Security may be effected only through a book entry system maintained by the Depository as Holder of such Global Security (or its agent), and that ownership of a beneficial interest in the Security shall be required to be reflected in a book entry.

Section 2.07 **Replacement Securities.**

If the Holder of a Security claims that the Security has been lost, destroyed, mutilated or wrongfully taken, the Company shall issue and execute a replacement security and, upon written request of any Officer of the Company, the Trustee shall authenticate such replacement Security, *provided*, in the case of a lost, destroyed or wrongfully taken Security, that the requirements of Section 8-405 of the NYUCC are met. If any such lost, destroyed, mutilated or wrongfully taken Security shall have matured or shall be about to mature, the Company may, instead of issuing a substitute Security therefor, pay such Security without requiring (except in the case of a mutilated Security) the surrender thereof. In every case the applicant for a replacement Security shall furnish such security or indemnity (i.e., a surety bond) which must be sufficient in the judgment of the Company and the Trustee to protect the Company, the Trustee and any Agent from any loss liability, cost or expense which any of them may suffer if a Security is replaced, including the acquisition of such Security by a bona fide purchaser. The Company and the Trustee may charge for their expenses in replacing a Security.

Section 2.08 **Outstanding Securities.**

Securities outstanding at any time are all Securities authenticated by the Trustee except for those cancelled by it and those described in this Section. A Security does not cease to be outstanding because the Company or one of its Affiliates holds the Security.

If a Security is replaced pursuant to Section 2.07, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Security is held by a "protected purchaser" (as such term is defined in the NYUCC).

If the Paying Agent holds on a redemption date, purchase date or maturity date money sufficient to pay Securities payable on that date, then on and after that date such Securities cease to be outstanding and interest on them ceases to accrue.

Subject to the foregoing provisions of this Section, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

Section 2.09 **Temporary Securities.**

Until Definitive Securities are ready for delivery, the Company may prepare and the Trustee shall authenticate temporary Securities. Temporary Securities shall be substantially in the form of Definitive Securities but may have variations that the Company considers appropriate for temporary Securities. Without unreasonable delay, the Company shall prepare and, upon surrender for cancellation of the temporary Security, the Company shall execute and the Trustee shall authenticate Definitive Securities in exchange for temporary Securities. Until so exchanged, the temporary Securities shall in all respects be entitled to the same benefits under this Indenture as Definitive Securities authenticated and delivered hereunder.

Section 2.10 **Cancellation.**

The Company at any time may deliver Securities to the Trustee for cancellation. The Registrar and Paying Agent shall forward to the Trustee any Securities surrendered to them for registration of transfer, exchange, redemption, purchase or payment. The Trustee and no one else shall cancel and dispose of such cancelled or tendered securities, or retain in accordance with its standard retention policy, all Securities surrendered for registration of transfer, exchange, redemption, purchase, payment or cancellation. Unless the Authorizing Resolution or supplemental indenture so provides, the Company may not issue new Securities to replace Securities that it has previously paid or delivered to the Trustee for cancellation.

Section 2.11 **Defaulted Interest.**

If the Company defaults in a payment of interest on the Securities of any Series, it shall pay the defaulted interest plus any interest payable on the defaulted interest to the persons who are Securityholders of such Series on a subsequent special record date. The Company shall fix such special record date and a payment date which shall be reasonably satisfactory to the Trustee. At least 15 days before such special record date, the Company shall mail or send to each Securityholder of the relevant Series a notice that states the record date, the payment date and the amount of defaulted interest to be paid. On or before the date such notice is mailed or sent, the Company shall deposit with the Paying Agent money sufficient to pay the amount of defaulted interest to be so paid. The Company may pay defaulted interest in any other lawful manner if, after notice given by the Company to the Trustee of the proposed payment, such manner of payment shall be deemed practicable by the Trustee.

Section 2.12 **Treasury Securities.**

In determining whether the Holders of the required principal amount of Securities of a Series have concurred in any direction, waiver, consent or notice, Securities owned by the Company or any of its Affiliates shall be considered as though they are not outstanding, except that for the

purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Securities which a Trust Officer of the Trustee actually knows are so owned shall be so considered.

Section 2.13 **CUSIP/ISIN Numbers.**

The Company in issuing the Securities of any Series may use a “CUSIP” and/or “ISIN” or other similar number, and if so, the Trustee shall use the CUSIP and/or ISIN or other similar number in notices as a convenience to Holders of such Securities; provided that no representation is hereby deemed to be made by the Trustee as to the correctness or accuracy of any such CUSIP and/or ISIN or other similar number printed in the notice or on such Securities, and that reliance may be placed only on the other identification numbers printed on such Securities. Any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice and that reliance may be placed only on the other identification numbers printed on the Securities, and any such notice shall not be affected by any defect in or omission of such numbers. The Company shall promptly notify the Trustee of any change in any CUSIP and/or ISIN or other similar number.

Section 2.14 **Deposit of Moneys.**

Prior to 11:00 a.m., New York City time, on each interest payment date and maturity date with respect to each Series, the Company shall have deposited with the Paying Agent in immediately available funds money in the applicable currency sufficient to make cash payments due on such interest payment date or maturity date, as the case may be, in a timely manner which permits the Paying Agent to remit payment to the Holders of such Series on such interest payment date or maturity date, as the case may be.

Section 2.15 **Book-Entry Provisions for Global Security.**

(a) Any Global Security of a Series initially shall (i) be registered in the name of the Depository or the nominee of such Depository, (ii) be delivered to the Trustee as Securities Custodian for such Depository and (iii) bear any required legends. The Company has entered into a letter of representations with the Depository in the form provided by the Depository and the Trustee and each Agent are hereby authorized to act in accordance with such letter and Applicable Procedures.

Members of, or participants in, the Depository (“**Agent Members**”) shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Depository, or the Trustee as its custodian, or under the Global Security, and the Depository may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner of the Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depository or impair, as

between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of a Holder of any Security.

(b) Transfers of any Global Security shall be limited to transfers in whole, but not in part, to the Depository, its successors or their respective nominees. Interests of beneficial owners in the Global Security may be transferred or exchanged for Definitive Securities in accordance with the rules and procedures of the Depository. In addition, Definitive Securities shall be transferred to all beneficial owners in exchange for their beneficial interests in a Global Security if (i) the Depository notifies the Company that it is unwilling or unable to continue as Depository for the Global Security or the Depository has ceased to be a “clearing agency” registered under the Exchange Act, and a successor depository is not appointed by the Company within 90 days of such notice, or (ii) the Company elects, at any time in its sole discretion, to discontinue use of the system of book entry transfer through any Depository. Any Security that is held in the form of a Global Security and that is exchanged pursuant to clause (i) above shall be so exchanged in whole and not in part, and any Security that is held in the form of a Global Security and that is exchanged pursuant to clause (ii) above may be exchanged in whole or from time to time in part as directed by the Company. In connection with any proposed transfer of Definitive Security in exchange for Global Security, the Company or DTC shall be required to provide or cause to be provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Internal Revenue Code Section 6045. The Trustee may rely on information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

(c) In connection with any transfer or exchange of a portion of the beneficial interest in any Global Security to beneficial owners pursuant to paragraph (b), the Registrar shall (if one or more Definitive Securities are to be issued) reflect on its books and records the date and a decrease in the principal amount of the Global Security in an amount equal to the principal amount of the beneficial interest in the Global Security to be transferred, and the Company shall execute, and the Trustee shall authenticate and deliver, one or more Definitive Securities of like Series and amount.

(d) In connection with the transfer of an entire Global Security to beneficial owners pursuant to paragraph (b), the Global Security shall be deemed to be surrendered to the Trustee for cancellation, and the Company shall execute, and the Trustee shall authenticate and deliver, to each beneficial owner identified by the Depository in exchange for its beneficial interest in the Global Security, an equal aggregate principal amount of Definitive Securities of the same Series in authorized denominations.

(e) The Holder of any Global Security may grant proxies and otherwise authorize any person, including Agent Members and persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Securities of such Series.

(f) Unless otherwise provided in the Authorizing Resolution or supplemental indenture for a particular Series, each Global Security of such Series shall bear legends in substantially the following forms:

“THIS GLOBAL SECURITY IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS SECURITY) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE HOLDERS OF BENEFICIAL INTERESTS HEREIN, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (I) THE TRUSTEE MAY MAKE ANY SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO THE INDENTURE, (II) THIS GLOBAL SECURITY MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.06 AND SECTION 2.15 OF THE INDENTURE, (III) THIS GLOBAL SECURITY MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO THE INDENTURE AND (IV) THIS GLOBAL SECURITY MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF THE COMPANY.”

“UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR SECURITIES IN DEFINITIVE FORM, THIS SECURITY MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR TO ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE

OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.”

Section 2.16 **No Duty to Monitor.**

The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among Agent Members or beneficial owners of interests in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Neither the Trustee nor any Agent shall have any responsibility for any actions taken or not taken by the Depositary.

ARTICLE THREE
REDEMPTION

Section 3.01 **Notices to Trustee.**

Securities of a Series that are redeemable prior to maturity shall be redeemable in accordance with their terms and, unless the Authorizing Resolution, Officers’ Certificate, or supplemental indenture provides otherwise, in accordance with this Article Three.

If the Company wants to redeem Securities pursuant to Paragraph 4 of the Securities, the Company shall notify the Trustee in writing of the redemption date and the principal amount of Securities to be redeemed. The Company shall notify the Trustee of such redemption at least 15 days prior to the date on which notice is required to be delivered or mailed to Holders pursuant to Section 3.03. Any such notice may be cancelled at any time prior to notice of such redemption being mailed or sent to Holders. Any such cancelled notice shall be void and of no effect. If the redemption price is not known at the time such notice is to be given, the actual redemption price, calculated as described in the terms of the Securities, will be set forth in an Officers’ Certificate of the Company delivered to the Trustee prior to the redemption date.

If the Company wants to credit any Securities previously redeemed, retired or acquired against any redemption pursuant to Paragraph 5 of the Securities, it shall notify the Trustee of the amount of the credit and it shall deliver any Securities not previously delivered to the Trustee for cancellation with such notice at least 15 days prior to the date notice is to be given to Holders of such redemption (unless a shorter period shall be satisfactory to the Trustee).

Section 3.02 **Selection of Securities to be Redeemed.**

If fewer than all of the Securities of a Series are to be redeemed, the Trustee (or Depositary, as applicable) shall select the Securities to be redeemed by lot, pro rata, or such other method the Trustee (or Depositary, as applicable) considers fair and appropriate and in a manner that complies with applicable requirements of the Depositary. The Trustee (or Depositary, as applicable) shall make the selection from Securities outstanding not previously called for redemption and shall promptly notify the Company of the serial numbers or other identifying attributes of the Securities so selected. The Trustee (or Depositary, as applicable) may select for

redemption portions of the principal of Securities that have denominations larger than the minimum denomination for the Series. Securities and portions of them it selects shall be in amounts equal to a permissible denomination for the Series. Provisions of this Indenture that apply to Securities called for redemption also apply to portions of Securities called for redemption.

Unless otherwise provided in the Authorizing Resolution, Officers’ Certificate, or supplemental indenture relating to a Series, if any Security selected for partial redemption is converted into or exchanged for the Company’s Capital Stock or other securities, cash or other property in part before termination of the conversion or exchange right with respect to the portion of the Security so selected, the converted portion of such Security shall be deemed (so far as may be) to be the portion selected for redemption. Securities which have been converted or exchanged during a selection of Securities to be redeemed shall be treated as outstanding for the purpose of such selection.

Section 3.03 **Notice of Redemption.**

At least 30 days but not more than 60 days before a redemption date, the Company shall mail, or in the case of Global Securities send or cause to be sent in accordance with Applicable Procedures, a notice of redemption by first-class mail, postage prepaid, to each Holder of Securities to be redeemed.

The notice shall identify the Securities to be redeemed and shall state:

- (1) the redemption date;
- (2) the redemption price or the formula pursuant to which such price will be calculated;
- (3) if any Security is being redeemed in part, the portion of the principal amount of such Security to be redeemed and that, after the redemption date, upon surrender of such Security, a new Security or Securities in principal amount equal to the unredeemed portion shall be issued upon cancellation of the original Security;
- (4) in the case of Securities of a Series that are convertible or exchangeable into shares of the Company's Capital Stock or other securities, cash or other property, the conversion or exchange price or rate, the date or dates on which the right to convert or exchange the principal of the Securities of such Series to be redeemed will commence or terminate and the place or places where such Securities may be surrendered for conversion or exchange;
- (5) the name and address of the Paying Agent;
- (6) that Securities called for redemption must be surrendered to the Paying Agent to collect the redemption price;
- (7) that interest on Securities called for redemption ceases to accrue on and after the redemption date;
- (8) that the Securities are being redeemed pursuant to the mandatory redemption or the optional redemption provisions, as applicable;
- (9) the CUSIP number and/or ISIN or other similar number used to identify the Securities, that no representation is hereby deemed to be made by the Trustee as to the correctness or accuracy of any such CUSIP and/or ISIN or other similar number printed in the notice or on such Securities, and that reliance may be placed only on the other identification numbers printed on such Securities; and
- (10) any conditions precedent to such redemption.

At the Company's request, the Trustee shall give the notice of redemption in the Company's name and at its expense; *provided, however*, that the Company shall deliver to the Trustee at least 15 days prior to the date on which notice of redemption is to be mailed or sent or such shorter period as may be satisfactory to the Trustee, an Officers' Certificate requesting that the Trustee give such notice together with the notice to be given as an exhibit thereto setting forth the information to be stated in such notice as provided in the preceding paragraph.

Section 3.04 Effect of Notice of Redemption.

Once notice of redemption is mailed or sent, Securities called for redemption become due and payable on the redemption date and at the redemption price as set forth in the notice of redemption, which notice, and which obligation to redeem such Securities, may, at the Company's discretion, be subject to one or more conditions precedent as set forth in such notice. Upon surrender to the Paying Agent, such Securities shall be paid at the redemption price, *plus* accrued and unpaid interest to the redemption date. If any such condition precedent has not been satisfied, the Company will provide notice to the Trustee prior to the redemption date that such condition precedent has not been satisfied, the notice of redemption is rescinded or delayed and the redemption subject to the satisfaction of such condition precedent shall not occur or shall be delayed. The Trustee shall promptly send a copy of such notice to the Holders of the Securities.

Section 3.05 Deposit of Redemption Price.

On or before 11:00 a.m. New York City time on the redemption date, the Company shall deposit with the Paying Agent immediately available funds in the applicable currency sufficient to pay the redemption price of and accrued interest on all Securities to be redeemed on that date.

Section 3.06 Securities Redeemed in Part.

Upon surrender of a Security that is redeemed in part, the Company shall execute and the Trustee shall authenticate (or transfer by book entry) for each Holder a new Security of the same Series equal in principal amount to the unredeemed portion of the Security surrendered.

**ARTICLE FOUR
COVENANTS**

Section 4.01 Payment of Securities.

The Company shall pay the principal of, premium, if any, and interest on a Series on the dates, in the currency and in the manner provided in the Securities of the Series. An installment of principal, premium, if any, or interest shall be considered paid on the date it is due if the Paying Agent holds by 11:00 a.m. New York City time on that date money in the applicable currency designated for and sufficient to pay the installment.

Section 4.02 Maintenance of Office or Agency.

The Company shall maintain the office or agency required under Section 2.03. The Company shall give prior written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the address of the Trustee.

Section 4.03 Reports.

At any time when the Company is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the Company shall file with the Trustee, within fifteen (15) days after it actually files the same with the SEC (regardless of when the same is required to be filed with the SEC), each annual, quarterly or current report, information or proxy statement other report which the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act; *provided, however*, that the Company shall not be required to file or

deliver to the Trustee any material for which the Company has sought and received, or is seeking, confidential treatment by the SEC; and, *provided further*, that the Company shall be deemed to have filed such information with the Trustee if the Company has filed such information on the SEC's EDGAR system (or any successor system) and such information is publicly available. The Company also shall comply with the other provisions of TIA Section 314(a). The Trustee shall have no obligation to determine whether or not such information, documents or reports have been filed through the EDGAR filing system (or such successor thereto). The Trustee does not have the duty to review such information, documents or reports, is not considered to have notice of the content of such information, documents or reports and does not have a duty to verify the accuracy of such information, documents or reports. Delivery of such statements, reports, notices and other information and documents to the Trustee pursuant to any of the provisions of this Section 4.03 is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

Section 4.04 Compliance Certificate.

The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company an Officers' Certificate, one signer of which shall be the principal executive, financial or accounting officer of the Company and that need not comply with Section 12.05, stating whether or not the signers know of any continuing Default by the Company in performing any of its obligations under this Indenture. If they do know of such a Default, the certificate shall describe the Default. In addition, the Company will notify the Trustee within 5 Business Days upon the Company's knowledge of a Default.

Section 4.05 Waiver of Stay, Extension or Usury Laws.

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury law or other law that would prohibit or forgive the Company from paying all or any portion of the principal of or interest on the Securities of any Series as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Indenture; and (to the extent that it may lawfully do so) the Company expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

**ARTICLE FIVE
SUCCESSOR CORPORATION**

Section 5.01 When Company May Merge, etc.

The Company will not consolidate or merge with or into, or sell, lease, convey or otherwise dispose of all or substantially all of its assets (including by way of liquidation or dissolution), to any Person (in each case other than in a transaction in which the Company is the survivor of a consolidation or merger, or the transferee in a sale, lease, conveyance or other disposition) unless:

- (1) the Person formed by or surviving such consolidation or merger (if other than the Company), or to which such sale, lease, conveyance or other disposition will be made (collectively, the "**Successor**") assumes by supplemental indenture in a form reasonably satisfactory to the Trustee all of the obligations of the Company under the Securities, as the case may be, and the Indenture,
- (2) immediately after giving effect to such transaction, no Default or Event of Default has occurred and is continuing, and
- (3) the Company or the surviving entity delivers to the Trustee an Officers' Certificate and an Opinion of Counsel, in each case stating that such transaction and such supplemental indenture complies

with this Section 5.01, that all conditions precedent provided for herein relating to such transaction and supplemental indenture have been complied with.

The foregoing provisions shall not apply to a transaction the purpose of which is to change the state of incorporation of the Company.

Upon any such consolidation, merger, sale, lease, conveyance or other disposition, the Successor will be substituted for the Company under the Indenture. The Successor may then exercise every power and right of the Company under this Indenture, and except in the case of a lease, the Company will be released from all of its liabilities and obligations in respect of the Securities and the Indenture. If the Company leases all or substantially all of its assets, the Company will not be released from its obligations to pay the principal of and interest, if any, on the Securities.

**ARTICLE SIX
DEFAULTS AND REMEDIES**

Section 6.01 Events of Default.

An "**Event of Default**" with respect to a Series occurs upon the occurrence of any of the following:

- (1) the failure by the Company to pay interest on any Security of such Series when the same becomes due and payable and the continuance of any such failure for a period of 30 days;
- (2) the failure by the Company to pay the principal of any Security of such Series when the same becomes due and payable at maturity, upon acceleration, redemption or otherwise;
- (3) the failure by the Company to comply with any of its agreements or covenants in, or provisions of, the Securities of such Series or this Indenture (as they relate thereto) and such failure continues for the period and after the notice specified below (except in the case of a default with respect to Article Five (or any other provision specified in the applicable supplemental indenture, Officers' Certificate, or Authorizing Resolution), which will constitute an Event of Default with notice but without passage of time);
- (4) the Company or any Subsidiary that is a Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law:
 - (A) commences a voluntary case,
 - (B) consents to the entry of an order for relief against it in an involuntary case,
 - (C) consents to the appointment of a Custodian of it or for all or substantially all of its Property, or
 - (D) makes a general assignment for the benefit of its creditors;
- (5) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:
 - (A) is for relief against the Company or any Subsidiary that is a Significant Subsidiary as debtor in an involuntary case,
 - (B) appoints a Custodian of the Company or any Subsidiary that is a Significant Subsidiary or a Custodian for all or substantially all of the Property of the Company, or
 - (C) orders the liquidation of the Company or any Subsidiary that is a Significant Subsidiary,

and the order or decree remains unstayed and in effect for 60 days.

A Default as described in subclause (3) above will not be deemed an Event of Default until the Trustee notifies the Company, or the Holders of at least 25 percent in principal amount of the then outstanding Securities of the applicable Series notify the Company and the Trustee, of the Default and (except in the case of a default with respect to Article Five (or any other provision specified in the applicable supplemental indenture or Authorizing Resolution)) the Company does not cure the Default within 60 days after receipt of the notice. The notice must specify the Default, demand that it be remedied and state that the notice is a "Notice of Default." If such a Default is cured within such time period, it ceases to exist, without any action by the Trustee or any other Person.

The term "**Custodian**" means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

Section 6.02 Acceleration.

If an Event of Default (other than an Event of Default with respect to the Company resulting from subclause (4) or (5) above), shall have occurred and be continuing under the Indenture, the Trustee by notice to the Company, or the Holders of at least 25 percent in principal amount of the Securities of the applicable Series then outstanding by notice to the Company and the Trustee, may declare all Securities of such Series to be due and payable immediately. Upon such declaration of acceleration, the amounts due and payable on the Securities of such Series will be due and payable immediately. If an Event of Default with respect to the Company specified in subclauses (4) or (5) above occurs, all amounts due and payable on the Securities of such Series will ipso facto become and be immediately due and payable without any declaration, notice or other act on the part of the Trustee and the Company or any Holder.

Holdes of a majority in principal amount of the then outstanding Securities of such Series may rescind an acceleration with respect to such Series and its consequence (except an acceleration due to nonpayment of principal or interest) if the rescission would not conflict with any judgment or decree and if all existing Events of Default (other than the non-payment of accelerated principal) have been cured or waived and all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel have been paid.

No such rescission shall extend to or shall affect any subsequent Event of Default, or shall impair any right or power consequent thereon.

Section 6.03 Other Remedies.

If an Event of Default on a Series occurs and is continuing, the Trustee may pursue any available remedy by proceeding at law or in equity to collect the payment of principal of or interest on the Series or to enforce the performance of any provision in the Securities or this Indenture applicable to the Series.

The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Securityholder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative. If the Trustee or any Securityholder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Securityholder, then and in every such case, subject to any determination in such proceedings, the Company, the Trustee and the Securityholders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Securityholders shall continue as though no such proceeding has been instituted.

Section 6.04 **Waiver of Existing Defaults.**

Subject to Section 10.02, the Holders of a majority in principal amount of the outstanding Securities of a Series on behalf of all the Holders of the Series by notice to the Trustee may waive an existing Default on such Series and its consequences. When a Default is waived, it is cured and stops continuing, and any Event of Default arising therefrom shall be deemed to have been cured; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 6.05 **Control by Majority.**

The Holders of a majority in principal amount of the outstanding Securities of a Series may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on it with respect to such Series. The Trustee, however, may refuse to follow any direction (i) that conflicts with law or this Indenture, (ii) that, subject to Section 7.01, the Trustee determines is unduly prejudicial to the rights of other Securityholders (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not any such directions are unduly prejudicial to such Securityholders), (iii) that would involve the Trustee in personal liability, if there shall be reasonable grounds for believing that adequate indemnity against such liability is not reasonably assured to it, or (iv) if the Trustee shall not have been provided with indemnity satisfactory to it. The Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

Section 6.06 **Limitation on Suits.**

A Securityholder of a Series may not pursue any remedy with respect to this Indenture or the Securities of a Series unless:

- (1) the Holder gives to the Trustee written notice of a continuing Event of Default on the Series;
- (2) the Holders of at least 25% in principal amount of the outstanding Securities of the Series make a written request to the Trustee to pursue the remedy;
- (3) such Holder or Holders offer to the Trustee security or indemnity satisfactory to the Trustee against any loss, liability or expense;
- (4) the Trustee does not comply with the request within 60 days after receipt of the request and the offer of security or indemnity; and
- (5) no written request inconsistent with such written request shall have been given to the Trustee pursuant to Section 6.05.

A Securityholder may not use this Indenture to prejudice the rights of another Holder of Securities of the same Series or to obtain a preference or priority over another Holder of Securities of the same Series (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances by such Holder are unduly prejudicial to another Holder).

Section 6.07 **Rights of Holders to Receive Payment and Convert.**

Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of principal of, premium, if any, and interest on any Security, on or after the respective due dates expressed in the Security, or to bring suit for the enforcement of any such payment on or after such respective dates, is absolute and unconditional and shall not be impaired or affected without the consent of the Holder. Notwithstanding anything to the contrary in this Indenture or the Securities, the right of any Holder of Securities to convert such Securities in accordance with this Indenture, or to bring suit for the enforcement of such right, shall not be impaired or affected without the consent of the Holder.

Section 6.08 **Collection Suit by Trustee.**

If an Event of Default in payment of interest or principal specified in Section 6.01(1) or (2) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company for the whole amount of principal and interest remaining unpaid and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable and documented compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

Section 6.09 **Trustee May File Proofs of Claim.**

The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements, and advances of the Trustee, its agents and counsel) and the Securityholders allowed in any judicial proceedings relative to the Company or its creditors or Property, and unless prohibited by applicable law or regulation, may vote on behalf of the Holders in any election of a Custodian and be a member of a creditors' committee or other similar committee, and shall be entitled and empowered to collect and receive any moneys or other Property payable or deliverable on any such claims and to distribute the same and any Custodian in any such judicial proceeding is hereby authorized by each Securityholder to make such payments to the Trustee. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein shall be deemed to authorize the Trustee to authorize or consent to or vote for or accept or adopt on behalf of any Securityholder any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder or to authorize the Trustee to vote in respect of the claim of any Securityholder except as aforesaid for the election of the Custodian.

Section 6.10 **Priorities.**

If the Trustee collects any money or property pursuant to this Article with respect to Securities of any Series, and after an Event of Default any money or other property distributable in respect of the Company's obligations under this Indenture, shall be paid or distributed in the following order:

First: to the Trustee (including any predecessor Trustee) for amounts due under Section 7.07;

Second: to Securityholders of the Series for amounts due and unpaid on the Series for principal and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Series for principal and interest, respectively; and

Third: to the Company or as a court of competent jurisdiction shall direct.

The Trustee may fix a record date and payment date for any payment to Securityholders pursuant to this Section 6.10.

Section 6.11 Undertaking for Costs.

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having the due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07 or a suit by Holders of more than 10% in principal amount of the Series.

19

ARTICLE SEVEN TRUSTEE

Section 7.01 Duties of Trustee.

(a) If an Event of Default has occurred and is continuing with respect to Securities of any Series, the Trustee shall, prior to the receipt of directions from the Holders of a majority in principal amount of the Securities of the Series, exercise its rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(b) Except during the continuance of an Event of Default:

(1) The Trustee need perform only those duties that are specifically set forth in this Indenture and no others and no implied covenants or obligations shall be read into this Indenture against the Trustee.

(2) In the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. The Trustee, however, in the case of certificates or opinions specifically required by any provision hereof to be furnished to it, shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture but need not confirm or investigate the accuracy of mathematical calculations or other facts or matters stated therein.

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(1) This paragraph does not limit the effect of paragraph (b) of this Section.

(2) The Trustee shall not be liable for any error of judgment made in good faith by a Trust Officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts.

(3) The Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05 or any other direction of the Holders permitted hereunder.

(d) Every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b) and (c) of this Section.

(e) The Trustee may refuse to perform any duty or exercise any right or power unless it receives indemnity satisfactory to it against any loss, liability, claim or expense.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(g) None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if there shall be reasonable grounds for believing that the repayment of such funds or adequate indemnity against such liability is not reasonably assured to it. The Trustee shall not be required to give any bond or surety in respect of the performance of its powers or duties hereunder. The permissive rights or powers of the Trustee to do things enumerated in this Indenture shall not be construed as a duty of the Trustee.

Section 7.02 Rights of Trustee.

Subject to Section 7.01:

20

(a) The Trustee may conclusively rely and shall be fully protected in acting or refraining from acting on any document, resolution, certificate, instrument, report, or direction (whether in its original or facsimile form) believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document, resolution, certificate, instrument, report, or direction.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel or both, which shall conform to Sections 12.04 and 12.05 hereof and containing such other statements as the Trustee reasonably deems necessary to perform its duties hereunder. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on the Officers' Certificate, Opinion of Counsel or any other direction of the Company permitted hereunder.

(c) The Trustee may act through agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee shall not be liable for any action taken, suffered or omitted by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture.

(e) The Trustee may consult with counsel of its selection, and the advice of such counsel or any Opinion of Counsel as to matters of law shall be full and complete authorization and protection in respect of any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel or Opinion of Counsel.

(f) Unless otherwise specifically provided in the Indenture, any demand, request, direction or notice from the Company shall be sufficient if signed by an Officer of the Company.

(g) For all purposes under this Indenture, the Trustee shall not be deemed to have notice or knowledge of any Default or Event of Default unless written notice of any Default or Event of Default is received from the Company or from the Holders of at least 25% of the aggregate principal amount of the Securities of the applicable Series by a Trust Officer of the Trustee at its Corporate Trust Office and such notice references the Securities generally, the Company and this Indenture.

(h) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity reasonably satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

(i) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(j) In no event shall the Trustee be responsible or liable for special, indirect, punitive, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(k) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be compensated, reimbursed, and indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

(l) The Trustee may request that the Company deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture.

(m) In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services, or other unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 7.03 Individual Rights of Trustee.

The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or its affiliates with the same rights it would have if it were not Trustee. Any Agent may do the same with like rights. The Trustee, however, must comply with Sections 7.10 and 7.11.

Section 7.04 Trustee's Disclaimer.

The Trustee makes no representation as to and shall not be responsible for the validity or adequacy of this Indenture, the Securities or of any prospectus used to sell the Securities of any Series; it shall not be accountable for the Company's use of the proceeds from the Securities or any money paid to the Company or upon the Company's direction under any provision of this Indenture; it shall not be accountable for any money paid to the Company, or upon the Company's direction, if made under and in accordance with any provision of this Indenture; it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee; and it shall not be responsible for any statement of the Company in this Indenture or in the Securities other than its certificate of authentication. Under no circumstances shall the Trustee be liable in its individual capacity for the obligations evidenced by the Securities. The Trustee shall have no obligation to pursue any action that is not in accordance with applicable law.

Section 7.05 **Notice of Defaults.**

If a Default on a Series occurs and is continuing and if it is known to a Trust Officer of the Trustee, the Trustee shall deliver to each Securityholder of the Series notice of the Default (which shall specify any uncured Default known to it) within 90 days after the Trustee obtains such knowledge. Except in the case of a default in payment of principal of or interest on a Series, the Trustee may withhold the notice if and so long as the board of directors of the Trustee, the executive or any trust committee of such directors and/or responsible officers of the Trustee in good faith determine(s) that withholding the notice is in the interests of Holders of the Series.

Section 7.06 **Reports by Trustee to Holders.**

Within 60 days after each May 15 beginning with the May 15 following the date of this Indenture and the first issuance of Securities hereunder, the Trustee shall mail to each Securityholder a brief report dated as of such May 15 that complies with TIA § 313(a) (but if no event described in TIA § 313(1) through (8) has occurred within the twelve months preceding the reporting date no report in relation thereto need be transmitted). The Trustee also shall comply with TIA § 313(b).

A copy of each report at the time of its mailing to Securityholders shall be delivered to the Company and filed by the Trustee with the SEC and each national securities exchange on which the Securities are listed. The Company agrees to notify the Trustee of each national securities exchange on which the Securities are listed.

Section 7.07 **Compensation and Indemnity.**

The Company shall pay to the Trustee from time to time reasonable compensation for its services subject to any written agreement between the Trustee and the Company (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust). The Company shall reimburse

the Trustee upon request for all reasonable and documented out-of-pocket expenses incurred by it, including the reasonable and documented compensation and the expenses and disbursements of its agents and counsel. Such expenses shall include the reasonable and documented compensation and expenses of the Trustee's agents and counsel. The Company shall indemnify the Trustee, its officers, directors, employees and agents and hold it harmless against any loss, liability, damage, claim, fee, cost, or expense incurred or made by or on behalf of it in connection with the administration of this Indenture or the trust hereunder and its duties or the exercise or performance of any of its rights or powers hereunder including the costs and expenses of defending itself against or investigating any claim in the premises, whether asserted by the Company, any Holder, or any other Person, and including reasonable and documented attorneys' fees and expenses and court costs incurred in connection with any action, claim or suit brought to enforce the Trustee's right to compensation, reimbursement or indemnification hereunder. The Trustee shall notify the Company promptly of any claim of which it has received written notice and for which it may seek indemnity. Failure by the Trustee to so notify the Company shall not relieve the Company of its obligations hereunder. The Company shall defend the claim and the Trustee shall provide reasonable cooperation at the Company's expense in the defense. The Trustee may have separate counsel and the Company shall pay the reasonable and documented fees and expenses of such counsel. The Company need not pay for any settlement made without its consent, which consent will not be unreasonably withheld. The Company need not reimburse any expense or indemnify against any loss or liability incurred by the Trustee through the Trustee's, or its officers', directors', or employees' negligence or willful misconduct as finally adjudicated by a court of competent jurisdiction.

To ensure the Company's payment obligations in this Section, the Trustee shall have a claim prior to the Securities of all Series on all money or Property held or collected by the Trustee, except that held in trust to pay principal of or interest on particular Securities. When the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 6.01 or in connection with Article Six hereof, the expenses (including the reasonable fees and expenses of its counsel) and the compensation for services in connection therewith are to constitute expenses of administration under any Bankruptcy Law. Section 7.07 shall survive the discharge of the Indenture or resignation or removal of the Trustee. "Trustee" for the purposes of this Section 7.07 shall include any predecessor Trustee and the Trustee in each of its capacities hereunder and each agent, custodian and other person employed to act hereunder; provided, however, that the negligence or willful misconduct of any Trustee hereunder shall not affect the rights of any other Trustee hereunder.

Section 7.08 **Replacement of Trustee.**

The Trustee may resign with respect to Securities of any or all Series by so notifying the Company. The Holders of a majority in principal amount of the outstanding Securities (or of the relevant Series) may remove the Trustee by so notifying the removed Trustee in writing and may appoint a successor trustee with the Company's consent. Such resignation or removal shall not take effect until the appointment by the Securityholders of the relevant Series or the Company as hereinafter provided of a successor trustee and the acceptance of such appointment by such successor trustee. The Company may remove the Trustee and any Securityholder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee for any or no reason, including if:

- (1) the Trustee fails to comply with Section 7.10 after written request by the Company or any bona fide Securityholder who has been a Securityholder for at least six months;
- (2) the Trustee is adjudged a bankrupt or an insolvent;
- (3) a receiver or other public officer takes charge of the Trustee or its Property; or
- (4) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company shall promptly appoint a successor trustee with respect to the Securities of the relevant Series. If a successor trustee does not take office within 30 days after the retiring Trustee resigns or is removed, the retiring Trustee at the expense of the Company, the Company or any Holder may petition any court of competent jurisdiction for the appointment of a successor trustee.

A successor trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Immediately after that, the retiring Trustee shall, upon payment of its charges hereunder, transfer all Property held by it as Trustee to the successor trustee, the resignation or removal of the retiring Trustee shall become effective, and the successor trustee shall have all the rights, powers and duties of the Trustee under this Indenture. A successor trustee shall mail or send notice of its succession to each Securityholder.

Section 7.09 Successor Trustee by Merger, etc.

If the Trustee consolidates with, merges with or into or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor trustee.

Section 7.10 Eligibility; Disqualification.

This Indenture shall always have a Trustee who satisfies the requirements of TIA § 310(a)(1), (2) and (5). The Trustee shall have a combined capital and surplus of at least \$10,000,000 as set forth in its most recent published annual report of condition. The Trustee shall comply with TIA § 310(b). To the extent permitted by the TIA, the Trustee shall not be deemed to have a conflicting interest with respect to the Securities of any Series under this Indenture or any other indenture of the Company by virtue of being a trustee under this Indenture with respect to any particular Series.

Section 7.11 Preferential Collection of Claims Against Company.

The Trustee shall comply with TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated therein.

**ARTICLE EIGHT
DISCHARGE OF INDENTURE**

Section 8.01 Defeasance upon Deposit of Moneys or Government Obligations.

(a) The Company may, at its option and at any time, elect to have either paragraph (b) or paragraph (c) below be applied to the outstanding Securities of any Series upon compliance with the applicable conditions set forth in paragraph (d).

(b) Upon the Company's exercise under paragraph (a) of the option applicable to this paragraph (b) with respect to any Series, the Company shall be deemed to have been released and discharged from its obligations with respect to the outstanding Securities of the Series on the date the applicable conditions set forth below are satisfied (hereinafter, "**Legal Defeasance**"). For this purpose, such Legal Defeasance means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by the outstanding Securities of a Series, which shall thereafter be deemed to be "outstanding" only for the purposes of the Sections and matters under this Indenture referred to in (i) and (ii) below, and the Company shall be deemed to have satisfied all its other obligations under such Securities and this Indenture insofar as such Securities are concerned, except for the following which shall survive until otherwise terminated or discharged hereunder: (i) the rights of Holders of outstanding Securities of a Series to receive solely from the trust fund described in paragraph (d) below and as more fully set forth in such paragraph, payments in respect of the principal of and interest on such Securities when such payments are due and (ii) obligations listed in Section 8.02, subject to compliance with this Section 8.01. The Company may exercise its option under this paragraph (b) with respect to a Series notwithstanding the prior exercise of its option under paragraph (c) below with respect to the Securities of the Series.

(c) Upon the Company's exercise under paragraph (a) of the option applicable to this paragraph (c) with respect to a Series, the Company shall be released and discharged from the obligations under any covenant contained in Article Five, Section 4.03 and any other covenant contained in or referenced in the Authorizing Resolution, Officers' Certificate, or supplemental indenture relating to such Series (to the extent such release and

discharge shall not be prohibited thereby), on and after the date the conditions set forth below are satisfied (hereinafter, "**Covenant Defeasance**"), and the Securities of such Series shall thereafter be deemed to be not "outstanding" for the purpose of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed "outstanding" for all other purposes hereunder. For this purpose, such Covenant Defeasance means that, with respect to the outstanding Securities of a Series, the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in the covenants described in the preceding sentence, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 6.01(3) or otherwise, but, except as specified above, the remainder of this Indenture and such Securities shall be unaffected thereby.

(d) The following shall be the conditions to application of either paragraph (b) or paragraph (c) above to the outstanding Securities of the applicable Series:

(1) The Company shall have irrevocably deposited in trust with the Trustee (or another qualifying trustee), pursuant to an irrevocable trust and security agreement in form and substance reasonably satisfactory to the Trustee, money in the currency in which the Securities of such Series are payable or Government Obligations or a combination thereof in such amounts and at such times as are sufficient, in the written opinion of a nationally recognized firm of independent public accountants delivered to the Trustee (only if any Government Obligations are so included), to pay the principal of and interest on the outstanding Securities of such Series to maturity or redemption; *provided, however*, that the Trustee (or other qualifying trustee) shall have received an irrevocable written order from the Company instructing the Trustee (or other qualifying trustee) to apply such money or the proceeds of such Government Obligations to said payments with respect to the Securities of such Series to maturity or redemption;

(2) No Default or Event of Default (other than a Default or Event of Default resulting from non-compliance with any covenant from which the Company is released upon effectiveness of such Legal Defeasance or Covenant Defeasance pursuant to paragraph (b) or (c) hereof, as applicable)

shall have occurred and be continuing on the date of such deposit or result therefrom;

(3) (i) In the event the Company elects paragraph (b) hereof, the Company shall deliver to the Trustee an Opinion of Counsel in the United States, in form and substance reasonably satisfactory to the Trustee, to the effect that (A) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (B) since the Issue Date pertaining to such Series, there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall state that, or (ii) in the event the Company elects paragraph (c) hereof, the Company shall deliver to the Trustee an Opinion of Counsel in the United States, in form and substance reasonably satisfactory to the Trustee, to the effect that, in the case of clauses (i) and (ii), and subject to customary assumptions and exclusions, Holders of the Securities of such Series will not recognize income, gain or loss for federal income tax purposes as a result of such deposit and the defeasance contemplated hereby and will be subject to federal income tax in the same amounts and in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred;

(4) The Company shall have delivered to the Trustee an Officers' Certificate, stating that the deposit under clause (1) was not made by the Company with the intent of preferring the Holders of the Securities of such Series over any other creditors of the Company or with the intent of defeating, hindering, delaying or defrauding any other creditors of the Company or others;

(5) The Company shall have delivered to the Trustee an Opinion of Counsel (subject to customary assumptions and qualifications) to the effect that, assuming no intervening bankruptcy of the Company between the date of deposit and the 91st day following the deposit and assuming that no Holder is an "insider" of the Company under applicable Bankruptcy Law, after the 91st day following the deposit, the trust funds shall not be subject to the effect of Section 547 of the United States Bankruptcy Code or any analogous New York State law provision; and

25

(6) The Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent specified herein relating to the defeasance contemplated by this Section 8.01 have been complied with.

In the event all or any portion of the Securities of a Series are to be redeemed through such irrevocable trust, the Company must make arrangements satisfactory to the Trustee, at the time of such deposit, for the giving of the notice of such redemption or redemptions by the Trustee in the name and at the expense of the Company.

(e) In addition to the Company's rights above under this Section 8.01, the Company may terminate all of its obligations under this Indenture with respect to a Series, when:

(1) All Securities of such Series theretofore authenticated and delivered (other than Securities which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.07 and Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust) have been delivered to the Trustee for cancellation or all such Securities not theretofore delivered to the Trustee for cancellation (A) have become due and payable, (B) will become due and payable at maturity within one year or (C) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company, and in each such case, the Company has irrevocably deposited or caused to be deposited with the Trustee (or another qualifying trustee) as trust funds in trust solely for that purpose an amount of money in the currency in which the Securities of such Series are payable or Government Obligations or a combination thereof sufficient, in the opinion of a nationally recognized firm of independent public accountants delivered to the Trustee (only if any Government Obligations are so included), to pay and discharge the entire indebtedness on the Securities of such Series not theretofore delivered to the Trustee for cancellation, for principal of and interest on the Securities of such Series, on the date of such deposit or to the maturity or redemption date, as the case may be;

(2) The Company has paid or caused to be paid all other sums payable hereunder by the Company;

(3) The Company has delivered irrevocable instructions to the Trustee (or such other qualifying trustee), to apply the deposited money toward the payment of the Securities of such Series at maturity or redemption, as the case may be; and

(4) The Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, stating that all conditions precedent specified in this Section 8.01(e) relating to the satisfaction and discharge of this Indenture have been complied with.

Section 8.02 Survival of the Company's Obligations.

Notwithstanding the satisfaction and discharge of this Indenture under Section 8.01, the Company's obligations in Paragraph 8 of the Securities and Sections 2.03 through 2.07, 4.01, 7.07, 7.08, 8.04 and 8.05, however, shall survive until the Securities of an applicable Series are no longer outstanding. Thereafter, the Company's obligations in Paragraph 8 of the Securities of such Series and Sections 7.07, 8.04 and 8.05 shall survive (as they relate to such Series) such satisfaction and discharge.

Section 8.03 Application of Trust Money.

The Trustee shall hold in trust money or Government Obligations deposited with it pursuant to Section 8.01. It shall apply the deposited money and the money from Government Obligations in accordance with this Indenture to the payment of principal of and interest on the Securities of the defaced Series. The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or non-callable Government Obligations deposited pursuant to Section 8.01 or the principal and interest received in

26

respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the Securities.

Section 8.04 Repayment to the Company.

The Trustee and the Paying Agent shall promptly pay to the Company upon request any excess money or securities held by them at any time. The Trustee and the Paying Agent shall pay to the Company upon request, subject to applicable abandoned property law, any money held by them for the payment of principal or interest that remains unclaimed for two years; *provided, however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once in a newspaper of general circulation in the City of New York or mail to each such Holder notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication or mailing, any unclaimed balance of such money then remaining will be repaid to the Company. After payment to the Company, Securityholders entitled to the money must look solely to the Company for payment as general creditors unless applicable abandoned property law designates another person and all liability of the Trustee or such Paying Agent with respect to such money shall cease.

Section 8.05 Reinstatement.

If the Trustee is unable to apply any money or Government Obligations in accordance with Section 8.01 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Securities relating to the Series shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.01 until such time as the Trustee is permitted to apply all such money or Government Obligations in accordance with Section 8.01; *provided, however*, that (a) if the Company has made any payment of interest on or principal of any Securities of the Series because of the reinstatement of its obligations hereunder, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money or Government Obligations held by the Trustee and (b) unless otherwise required by any legal proceeding or any order or judgment of any court or governmental authority, the Trustee shall return all such money or Government Obligations to the Company promptly after receiving a written request therefor at any time, if such reinstatement of the Company's obligations has occurred and continues to be in effect.

**ARTICLE NINE
RESERVED**

**ARTICLE TEN
AMENDMENTS, SUPPLEMENTS AND WAIVERS**

Section 10.01 Without Consent of Holders.

The Company and the Trustee may amend or supplement this Indenture or the Securities of a Series without notice to or consent of any Securityholder of such Series:

- (1) to cure any ambiguity, omission, defect or inconsistency;
- (2) to comply with Article Five;
- (3) to provide that specific provisions of this Indenture shall not apply to a Series not previously issued or to make a change to specific provisions of this Indenture that only applies to any Series not previously issued or to additional Securities of a Series not previously issued;
- (4) to create a Series and establish its terms;
- (5) to provide for uncertificated Securities in addition to or in place of certificated Securities;

27

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- (6) to release a guarantor in respect of any Series which, in accordance with the terms of this Indenture applicable to the particular Series, ceases to be liable in respect of its guarantee;
 - (7) to add a guarantor in respect of any Series;
 - (8) to secure any Series;
 - (9) to add to the covenants of the Company for the benefit of the Holders or surrender any right or power conferred upon the Company;
 - (10) to appoint a successor trustee with respect to the Securities;
 - (11) to comply with requirements of the SEC in order to effect or maintain the qualification of this Indenture under the TIA;
 - (12) to make any other change that does not adversely affect the rights of Securityholders in any material respect; and
 - (13) to conform the provisions of the Indenture to the final offering memorandum or prospectus in respect of any Series.

After an amendment under this Section 10.01 becomes effective, the Company shall mail or send notice of such amendment to the Securityholders.

Section 10.02 With Consent of Holders.

The Company and the Trustee may amend or supplement any provision of the Securities of a Series or of this Indenture relating to such Series without notice to any Securityholder of such Series but with the written consent of the Holders of at least a majority in principal amount of the outstanding Securities of such Series (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, Securities of such Series). Each such Series shall vote as a separate class. The Holders of a majority in principal amount of the outstanding Securities of any Series may waive compliance by the Company with any provision of the Securities of such Series or of this Indenture relating to such Series without notice to any Securityholder (including any waiver granted in connection with a purchase of, or tender offer or exchange offer for, Securities of such Series). Without the

consent of each Holder of a Security the terms of which are directly amended, supplemented or waived, however, an amendment, supplement or waiver, including a waiver pursuant to Section 6.04, may not (with respect to any Securities of such Series held by a non-consenting Holder):

- (1) reduce the amount of Securities of the relevant Series whose Holders must consent to an amendment, supplement or waiver;
- (2) reduce the rate of or extend the time for payment of interest, including defaulted interest, on any Security;

(3) reduce the principal of or extend the fixed maturity of any Security or alter the provisions (including related definitions) with respect to redemption of any Security pursuant to Article Three hereof or with respect to any obligations on the part of the Company to offer to purchase or to redeem Securities of a Series pursuant to the Authorizing Resolution or supplemental indenture pertaining to such Series in a manner adverse to Holders;

(4) make any change that adversely affects any right of a Holder to convert or exchange any Security into or for shares of the Company's Capital Stock or other securities, cash or other property in accordance with the terms of such Security;

28

(5) modify the ranking or priority of the Securities of the relevant Series or any guarantee thereof;

(6) release any guarantor of any Series from any of its obligations under its guarantee or this Indenture otherwise than in accordance with the terms of this Indenture;

(7) make any change in Sections 6.04, 6.07 or this Section 10.02, except to increase the percentage required for modification or waiver or to provide for consent of each affected Holder of Securities of such Series;

(8) waive a continuing Default or Event of Default in the payment of the principal of or interest on any Security; or

(9) make any Security payable at a place or in money other than that stated in the Security, or impair the right of any Securityholder to bring suit as permitted by Section 6.07.

An amendment of a provision included solely for the benefit of one or more Series does not affect the interests of Securityholders of any other Series. The Company shall cause notice of any supplemental indenture to be given to Holders promptly following its execution.

It shall not be necessary for the consent of the Holders under this Section to approve the particular form of any proposed supplement, but it shall be sufficient if such consent approves the substance thereof.

Section 10.03 Compliance with Trust Indenture Act.

Every amendment to or supplement of this Indenture or any Securities shall comply with the TIA as then in effect.

Section 10.04 Revocation and Effect of Consents.

A consent to an amendment, supplement or waiver by a Holder shall bind the Holder and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent is not made on any Security. Unless otherwise provided in the consent or the consent solicitation statement or other document describing the terms of the consent, any Holder or subsequent Holder may revoke the consent as to its Security or portion of a Security. Any revocation of a consent by the Holder of a Security or any such subsequent Holder shall be effective only if the Trustee receives the notice of revocation before the date on which the Trustee receives an Officers' Certificate from the Company certifying that the requisite number of consents have been received.

The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Holders of Securities of any Series entitled to consent to any amendment, supplement or waiver, which record date shall be at least 10 days prior to the first solicitation of such consent. If a record date is fixed, and if Holders otherwise have a right to revoke their consent under the consent or the consent solicitation statement or other document describing the terms of the consent, then notwithstanding the second to last sentence of the immediately preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to revoke any consent previously given, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 90 days after such record date.

An amendment, supplement or waiver with respect to a Series becomes effective upon the (i) receipt by the Company or the Trustee of the requisite consents, (ii) satisfaction of any conditions to effectiveness as set forth in this Indenture or any indenture supplemental hereto containing such amendment, supplement or waiver and (iii) execution of such amendment, supplement or waiver (or the related supplemental indenture) by the Company and the Trustee. After an amendment, supplement or waiver with respect to a Series becomes effective, it shall bind every Holder of such Series, unless it makes a change described in any of clauses (1) through (9) of

29

Section 10.02, in which case, the amendment, supplement or waiver shall bind a Holder of a Security of such Series only if it has consented to such amendment, supplement or waiver and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security; provided that no such waiver shall impair or affect the right of any Holder to receive payment of principal of and interest on a Security, on or after the respective due dates expressed in such Security, or to bring suit for the enforcement of any such payment on or after such respective dates without the consent of such Holder.

Section 10.05 Notation on or Exchange of Securities.

If an amendment, supplement or waiver changes the terms of a Security, the Company may require the Holder of the Security to deliver it to the Trustee, at which time the Trustee shall place an appropriate notation on the Security about the changed terms and return it to the Holder. Alternatively, if the Company or the Trustee so determines, the Company in exchange for the Security shall issue and the Trustee shall authenticate a new Security that reflects the changed terms.

Section 10.06 Trustee to Sign Amendments, etc.

Subject to Section 7.02(b), the Trustee shall sign any amendment, supplement or waiver authorized pursuant to this Article if the amendment, supplement or waiver does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may but need not sign it. In signing or refusing to sign such amendment or supplemental indenture, the Trustee shall be provided with and shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel as conclusive evidence that such amendment, supplement or waiver is authorized or permitted by this Indenture, and (solely with respect to such Opinion of Counsel) that it will be valid and binding upon the Company and enforceable in accordance with its terms.

**ARTICLE ELEVEN
SECURITIES IN FOREIGN CURRENCIES**

Section 11.01 Applicability of Article.

Whenever this Indenture provides for (i) any action by, or the determination of any of the rights of, Holders of Securities of any Series in which not all of such Securities are denominated in the same currency, or (ii) any distribution to Holders of Securities, in the absence of any provision to the contrary pursuant to this Indenture or the Securities of any particular Series, any amount in respect of any Security denominated in a Foreign Currency shall be treated for any such action or distribution as that amount of Dollars that could be obtained for such amount on such reasonable basis of exchange and as of the record date with respect to Securities of such Series (if any) for such action, determination of rights or distribution (or, if there shall be no applicable record date, such other date reasonably proximate to the date of such action, determination of rights or distribution) as the Company may specify in a written notice to the Trustee or, in the absence of such written notice, as the Trustee may determine.

**ARTICLE TWELVE
MISCELLANEOUS**

Section 12.01 Trust Indenture Act Controls.

If any provision of this Indenture limits, qualifies or conflicts with another provision which is required to be included in this Indenture by the TIA, the required provision shall control.

Section 12.02 Notices.

Any order, consent, notice or communication shall be sufficiently given if in writing and delivered in person or mailed by first class mail, postage prepaid, or overnight air courier guaranteeing next day delivery, addressed as follows:

30

if to the Company:

HealthEquity, Inc.
15 W. Scenic Pointe Drive
Suite 100
Draper, UT 84020
Attn: Chief Financial Officer

if to the Trustee:

Wells Fargo Bank, National Association
150 East 42nd Street, 40th Floor
New York, NY 10017
Attention: Corporate Trust Services

The Company or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications.

Any notice or communication mailed to a Securityholder shall be mailed to him by first class mail at his address as it appears on the registration books of the Registrar and shall be sufficiently given to him if so mailed within the time prescribed. Notwithstanding any other provision of this Indenture or any Security, where this Indenture or any Security provides for notice of any event (including any notice of redemption or repurchase) to a Holder of a Global Security (whether by mail or otherwise), such notice shall be sufficiently given if given to the Depository (or its designee) pursuant to the standing instructions from the Depository or its designee, including by electronic mail in accordance with Applicable Procedures.

Failure to mail or send a notice or communication to a Securityholder or any defect in it shall not affect its sufficiency with respect to other Securityholders. If a notice or communication is mailed or sent in the manner provided above, it is duly given, whether or not the addressee receives it except that notice to the Trustee shall only be effective upon receipt thereof by the Trustee.

If the Company mails or sends notice or communications to the Securityholders, it shall mail or send a copy to the Trustee at the same time.

In addition to the foregoing, the Trustee agrees to accept and act upon notice, instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods. If the party elects to give the Trustee e-mail or facsimile instructions

(or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The party providing electronic instructions agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 12.03 Communications by Holders with Other Holders.

Securityholders may communicate pursuant to TIA § 312(b) with other Securityholders with respect to their rights under this Indenture or the Securities. The Company, the Trustee, the Registrar, each Agent and anyone else shall have the protection of TIA § 312(c).

Section 12.04 Certificate and Opinion as to Conditions Precedent.

Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:

31

- (1) an Officers' Certificate (which shall include the statements set forth in Section 12.05) stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and
- (2) an Opinion of Counsel (which shall include the statements set forth in Section 12.05) stating that, in the opinion of such counsel, all such conditions precedent, if any, provided for in this Indenture relating to the proposed action or inaction, have been complied with.

Any Officers' Certificate may be based, and may state that it is so based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, internal or external legal counsel. Any Opinion of Counsel may be based, and may state that it is so based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an Officer or Officers of the Company or any guarantor stating that the information with respect to such factual matters is known to the Company or such guarantor, unless such counsel knows that the certificate or opinion or representations with respect to such matters are erroneous.

Section 12.05 Statements Required in Certificate or Opinion.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

- (1) a statement that the person making such certificate or opinion has read such covenant or condition;
- (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (3) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (4) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

Section 12.06 Rules by Trustee and Agents.

The Trustee may make reasonable rules for action by or a meeting of Securityholders. The Registrar or Paying Agent may make reasonable rules for its functions.

Section 12.07 Legal Holidays.

A "Legal Holiday" is a Saturday, a Sunday, a legal holiday or a day on which the Trustee or banking institutions in New York, New York are not required to be open. If a payment date is a Legal Holiday, payment may be made on the next succeeding day that is not a Legal Holiday with the same force and effect as if made on such payment date, and no interest shall accrue for the intervening period. If this Indenture provides for a time period that ends or requires performance of any non-payment obligation by a day that is not a Business Day, then such time period shall instead be deemed to end on, and such obligation shall instead be performed by, the next succeeding Business Day. A "Business Day" is any day other than a Legal Holiday.

Section 12.08 Governing Law.

The laws of the State of New York shall govern this Indenture and the Securities of each Series.

Section 12.09 No Adverse Interpretation of Other Agreements.

This Indenture may not be used to interpret another indenture, loan or debt agreement of the Company or a Subsidiary. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

32

Section 12.10 No Recourse Against Others.

All liability described in Paragraph 12 of the Securities of any director, officer, employee or stockholder, as such, of the Company is, to the fullest extent permitted by applicable law, waived and released.

Section 12.11 Successors and Assigns.

All covenants and agreements of the Company in this Indenture and the Securities shall bind its successors and assigns. All agreements of the Trustee in this Indenture shall bind its successors and assigns.

Section 12.12 Duplicate Originals.

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 12.13 Severability.

In case any one or more of the provisions contained in this Indenture or in the Securities of a Series shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Indenture or of such Securities.

Section 12.14 Waiver of Jury Trial.

EACH OF THE COMPANY AND THE TRUSTEE, AND EACH SECURITY HOLDER, BY ITS ACCEPTANCE THEREOF, HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SECURITIES OR THE TRANSACTION CONTEMPLATED HEREBY.

Section 12.15 U.S.A. Patriot Act.

The Company acknowledges that in accordance with Section 326 of the U.S.A. PATRIOT Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. PATRIOT Act.

[Signature Page Follows]

SIGNATURES

IN WITNESS WHEREOF, the parties have caused this Indenture to be duly executed, all as of the date first above written.

HEALTH EQUITY, INC.

By: _____
Name:
Title:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee

By: _____
Name:
Title:

[Signature Page]

EXHIBIT A

No. CUSIP/ISIN No.:

[Title of Security]

HEALTH EQUITY, INC.
a Delaware corporation

promises to pay to or registered assigns the principal sum of [Dollars]⁽¹⁾ on .

Interest Payment Dates: and

Record Dates: and

HEALTH EQUITY, INC.

By:

Name:

Title:

WELLS FARGO BANK, NATIONAL ASSOCIATION,

as Trustee, certifies that this is one of the Securities referred to in the within mentioned Indenture.

Dated:

By:

Authorized Signatory:

(1) Or other currency. Insert corresponding provisions on reverse side of Security in respect of foreign currency denomination or interest payment requirement.

HEALTH EQUITY, INC.

[Title of Security]

HEALTH EQUITY, INC., a Delaware corporation (together with its successors and assigns, the "Company"), issued this Security under an Indenture dated as of (as amended, modified or supplemented from time to time in accordance therewith, the "Base Indenture"), as supplemented by the Supplemental Indenture dated as of (the "Supplemental Indenture" and together with the Base Indenture, the "Indenture"), by and among the Company and WELLS FARGO BANK, NATIONAL ASSOCIATION, as trustee (in such capacity, the "Trustee"), to which reference is hereby made for a statement of the respective rights, obligations, duties and immunities thereunder of the Company, the Trustee and the Holders and of the terms upon which the Securities are, and are to be, authorized and delivered. All terms used in this Security that are defined in the Indenture shall have the meanings assigned to them therein.

1. Interest. The Company promises to pay interest on the principal amount of this Security at the rate per annum shown above. The Company will pay interest semiannually on and of each year, commencing, until the principal is paid or made available for payment. Interest on the Securities will accrue from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid, from . Interest will be computed on the basis of a 360-day year of twelve 30-day months.

2. Method of Payment. The Company will pay interest on the Securities (except defaulted interest, if any, which will be paid on such special payment date to Holders of record on such special record date as may be fixed by the Company) to the persons who are registered Holders of Securities at the close of business on the [Insert record dates] immediately preceding the interest payment date. Holders must surrender Securities to a Paying Agent to collect principal payments. The Company will pay principal and interest in money of [Insert applicable country or currency] that at the time of payment is legal tender for payment of public and private debts.

3. Paying Agent and Registrar. Initially, the Trustee will act as Paying Agent and Registrar. The Company may change or appoint any Paying Agent, Registrar or co-Registrar without notice. The Company or any of its Subsidiaries or any of their Affiliates may act as Paying Agent, Registrar or co-Registrar.

4. Optional Redemption.(1) The Company may redeem the Securities at any time on or after , in whole or in part, at the following redemption prices (expressed as a percentage of their principal amount) together with interest accrued and unpaid to the date fixed for redemption:

If redeemed during the twelve-month period commencing on and ending on in each of the following years

Percentage

[Insert provisions relating to redemption at option of Holders, if any]

Notice of redemption will be mailed or sent at least 30 days but not more than 60 days before the redemption date to each Holder of Securities to be redeemed at its registered address. Securities in denominations larger than(2) may be redeemed in part. On and after the redemption date interest ceases to accrue on Securities or portions of them called for redemption, provided that if the Company shall default in the payment of such Securities at the redemption price together with accrued interest, interest shall continue to accrue at the rate borne by the Securities.

(1) If applicable.

(2) Insert applicable denominations and multiples.

5. **Mandatory Redemption.**⁽³⁾ The Company shall redeem []% of the aggregate principal amount of Securities originally issued under the Indenture on each of [], which redemptions are calculated to retire []% of the Securities originally issued prior to maturity. Such redemptions shall be made at a redemption price equal to 100% of the principal amount thereof, together with accrued interest to the redemption date. The Company may reduce the principal amount of Securities to be redeemed pursuant to this Paragraph 5 by the principal amount of any Securities previously redeemed, retired or acquired, otherwise than pursuant to this Paragraph 5, that the Company has delivered to the Trustee for cancellation and not previously credited to the Company's obligations under this Paragraph 5. Each such Security shall be received and credited for such purpose by the Trustee at the redemption price and the amount of such mandatory redemption payment shall be reduced accordingly.

6. **Denominations, Transfer, Exchange.** The Securities are in registered form only without coupons in denominations of⁽⁴⁾ and integral multiples of in excess thereof.⁽⁵⁾ A Holder may transfer or exchange Securities by presentation of such Securities to the Registrar or a co-Registrar with a request to register the transfer or to exchange them for an equal principal amount of Securities of other denominations. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not transfer or exchange any Security selected for redemption or purchase, except the unredeemed or unpurchased part thereof if the Security is redeemed or purchased in part, or transfer or exchange any Securities for a period of 15 days before a selection of Securities to be redeemed or purchased.

7. **Persons Deemed Owners.** The registered Holder of this Security shall be treated as the owner of it for all purposes.

8. **Unclaimed Money.** Subject to any applicable abandoned property law, the Trustee and the Paying Agent shall pay to the Company upon written request any money held by them for the payment of principal or interest that remains unclaimed for two years, and thereafter, Holders entitled to the money must look to the Company for payment as general creditors.

9. **Amendment, Supplement, Waiver.** Subject to certain exceptions, the Indenture or the Securities of a Series may be amended or supplemented with the consent of the Holders of at least a majority in principal amount of the outstanding Securities of such Series and any past default or compliance with any provision relating to any Series of the Securities may be waived in a particular instance with the consent of the Holders of a majority in principal amount of the outstanding Securities of such Series.⁽⁶⁾ Without the consent of any Securityholder, the Company and the Trustee may amend or supplement the Indenture or the Securities in certain respects as specified in the Indenture.

10. **Successor Corporation.** When a successor corporation assumes all the obligations of its predecessor under the Securities and the Indenture, the predecessor corporation will be released from those obligations.

11. **Trustee Dealings With Company.** Subject to certain limitations imposed by the TIA, the Trustee under the Indenture, in its individual or any other capacity, may make loans to, accept deposits from, and perform services for the Company or its affiliates, and may otherwise deal with the Company or its affiliates, as if it were not Trustee, including owning or pledging the Securities.

12. **No Recourse Against Others.** A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Securities or the Indenture or

(3) If applicable.

(4) Insert applicable denominations and multiples.

(5) Insert applicable denominations and multiples.

(6) If different terms apply, insert a brief summary thereof.

for any claim based on, in respect of or by reason of, such obligations or their creation. Each Holder by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Securities. The waiver may not be effective to waive liabilities under the federal securities laws.

13. **Discharge of Indenture.** The Indenture contains certain provisions pertaining to defeasance and discharge, which provisions shall for all purposes have the same effect as if set forth herein.

14. **Authentication.** This Security shall not be valid until an authorized signatory of the Trustee signs the certificate of authentication on the other side of this Security.

15. **Abbreviations.** Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= custodian), and U/G/M/A (= Uniform Gift to Minors Act).

16. **GOVERNING LAW.** THIS SECURITY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

17. **CUSIP and ISIN Numbers.** Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP and ISIN numbers to be printed on the Securities and has directed the Trustee to use CUSIP and ISIN numbers in notices as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Securities or as contained in any notice and reliance may be placed only on the other identification numbers placed thereon.

18. **Copies.** The Company will furnish to any Holder upon written request and without charge a copy of the Indenture and the applicable Authorizing Resolution or supplemental indenture. Requests may be made to: HealthEquity, Inc., 15 W. Scenic Pointe Drive, Suite 100, Draper,

ASSIGNMENT FORM

If you the Holder want to assign this Security, fill in the form below:

I or we assign and transfer this Security to (insert assignee's social security or tax ID number)

(Print or type assignee's name, address, and zip code)

and irrevocably appoint agent to transfer this Security on the books of the Company. The agent may substitute another to act for him.

Date: _____

Your signature
(Sign exactly as your name appears on the other side of this Security)

Signature Guarantee: _____

September 7, 2018

HealthEquity, Inc.
15 W. Scenic Pointe Dr., Ste. 100
Draper, Utah 84020

Ladies and Gentlemen:

We have acted as counsel to HealthEquity, Inc., a Delaware corporation (the "Company"), in connection with the Company's Registration Statement on Form S-3 to which this opinion is filed as an exhibit (the "Registration Statement"), filed with the Securities and Exchange Commission (the "Commission") pursuant to the Securities Act of 1933, as amended (the "Securities Act"), for the registration of: (A) the sale by the Company from time to time of (i) common stock, par value \$0.0001 per share ("Common Stock"), of the Company, (ii) preferred stock, par value \$0.0001 per share ("Preferred Stock"), of the Company, (iii) debt securities (the "Debt Securities") of the Company, (iv) warrants to purchase Common Stock, warrants to purchase Preferred Stock and warrants to purchase Debt Securities (collectively, the "Warrants"), and (v) units of the Company comprised of any combination of Debt Securities, Common Stock, Preferred Stock, and Warrants (the "Units"); and (B) an aggregate of 1,473,903 shares of Common Stock to be sold from time to time by certain selling stockholders of the Company (the "Selling Stockholder Shares"). The Debt Securities are to be issued under an indenture substantially in the form attached as an exhibit to the Registration Statement (the "Base Indenture"), as may be supplemented.

We have examined copies of the Second Amended and Restated Certificate of Incorporation of the Company (the "Certificate of Incorporation"), the Second Amended and Restated Bylaws of the Company, the Base Indenture, the Registration Statement, the prospectus included in the Registration Statement (the "Prospectus"), relevant resolutions adopted by the Company's Board of Directors (the "Board of Directors"), and other records and documents that we have deemed necessary for the purpose of this opinion.

We have also examined forms of the Debt Securities, the specimen Common Stock and are familiar with originals or copies, certified or otherwise identified to our satisfaction, of such other documents, corporate records, papers, statutes and authorities as we have deemed necessary to form a basis for the opinions hereinafter expressed.

In our examination, we have assumed the genuineness of all signatures and the conformity to original documents of all copies submitted to us. As to various questions of fact material to our opinion, we have relied on statements and certificates of officers and representatives of the Company and public officials.

HealthEquity, Inc.
September 7, 2018
Page 2

In connection with the opinions expressed below, we have assumed that, at or prior to the time of the delivery of any such security, (i) the Company shall have duly established the terms of such security and duly authorized the issuance and sale of such security and such authorization shall not have been modified or rescinded; (ii) such parties other than the Company shall have the power, corporate or other, to enter into and perform all obligations in accordance with the documents to be executed by such parties, and we have also assumed that upon the execution and delivery by such parties of such documents that such documents shall constitute valid and binding obligations of such parties; (iii) the Registration Statement shall be effective and such effectiveness shall not have been terminated or rescinded; and (iv) there shall not have occurred any change in law affecting the validity or enforceability of such security. We have also assumed that none of the terms of any security to be established subsequent to the date hereof, nor the issuance and delivery of such security, nor the compliance by the Company with the terms of such security will violate any applicable law or will result in a violation of any provision of any instrument or agreement then binding upon the Company, or any restriction imposed by any court or governmental body having jurisdiction over the Company.

Based on and subject to the foregoing and to the other qualifications and limitations set forth herein, we are of the opinion that:

1. When (i) the applicable Base Indenture and any supplemental indenture to be entered into in connection with the issuance of any Debt Security have been duly authorized, executed and delivered by the relevant trustee and the Company, (ii) the specific terms of a particular Debt Security have been duly authorized and established in accordance with the applicable Base Indenture and supplemental indenture and (iii) such Debt Security has been duly authorized, executed, authenticated, issued, delivered and paid for as contemplated by the Registration Statement and any prospectus supplement relating thereto, and in accordance with the applicable Base Indenture and supplemental indenture and the applicable underwriting or other agreement, such Debt Security will constitute a valid and binding obligation of the Company, enforceable in accordance with its terms, except to the extent that enforcement may be limited by (a) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar other laws now or hereinafter in effect relating to or affecting the enforcement of creditors' rights generally and (b) general principles of equity (regardless of whether considered in a proceeding at law or in equity).

2. Upon (i) designation of the relative rights, preferences and limitations of any series of Preferred Stock and approval of the terms of the offering thereof and related matters by the Board of Directors in accordance with the Company's Certificate of Incorporation and (ii) the proper filing with the Secretary of State of the State of Delaware of a Certificate of Designations relating to such series of Preferred Stock, all necessary corporate action on the part of the Company will have been taken to authorize the issuance and sale of such series of Preferred Stock proposed to be sold by the Company, and when such shares of Preferred Stock are issued, delivered and paid for as contemplated by the Registration Statement and any prospectus supplement relating thereto, and in accordance with the applicable underwriting or other agreement, such shares of Preferred Stock will be validly issued, fully paid and non-assessable.

3. When (i) all necessary corporate action on the part of the Company has been taken to authorize the issuance and sale of such shares of Common Stock proposed to be sold by the Company under the Registration Statement and any prospectus supplement relating thereto, including

HealthEquity, Inc.
September 7, 2018
Page 3

upon conversion of the Debt Securities or the Preferred Stock or exercise of the Warrants, and (ii) such shares of Common Stock are issued, delivered and paid for as contemplated by the Registration Statement and any prospectus supplement relating thereto, and in accordance with the applicable underwriting or other agreement and the terms of such Debt Securities, Preferred Stock or Warrants, as applicable, such shares of Common Stock will be validly issued, fully paid and non-assessable.

4. When (i) the creation of and the issuance and terms of the Warrants, the terms of the offering thereof and related matters have been duly approved by all necessary corporate action of the Board of Directors, (ii) the warrant agreement or agreements relating to the Warrants have been duly authorized and validly executed and delivered by the Company and the warrant agent appointed by the Company and (iii) the Warrants or certificates representing the Warrants have been duly executed, authenticated, issued, delivered and paid for as contemplated by the Registration Statement and any prospectus supplement relating thereto, and in accordance with the applicable underwriting or other agreement, the Warrants will be duly authorized and validly issued and will constitute valid and binding obligations of the Company, enforceable in accordance with their terms, except to the extent that enforcement may be limited by (a) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar other laws now or hereinafter in effect relating to or affecting the enforcement of creditors' rights generally and (b) general principles of equity (regardless of whether considered in a proceeding at law or in equity).

5. When (i) the creation of and the issuance and terms of the Units, the terms of the offering thereof and related matters have been duly approved by all necessary corporate action of the Board of Directors, (ii) the unit agreement, if any, relating to the Units has been duly authorized and validly executed and delivered by the Company and (iii) the Units or certificates representing the Units have been duly executed, authenticated, issued and delivered against payment of the consideration fixed therefor, as contemplated by the Registration Statement and any prospectus supplement relating thereto, and in accordance with the applicable underwriting or other agreement, the Units will be duly authorized and validly issued and will constitute valid and binding obligations of the Company, enforceable in accordance with their terms, except to the extent that enforcement may be limited by (a) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar other laws now or hereinafter in effect relating to or affecting the enforcement of creditors' rights generally and (b) general principles of equity (regardless of whether considered in a proceeding at law or in equity).

6. The Selling Stockholder Shares are validly issued, fully paid and non-assessable.

The opinions expressed herein are limited to the laws of the State of New York, the General Corporation Law of the State of Delaware and the federal laws of the United States of America, and we express no opinion with respect to the laws of any other country, state or jurisdiction.

This opinion is limited to matters expressly set forth herein, and no opinion is to be implied or may be inferred beyond the matters expressly stated herein.

The opinions expressed herein are given as of the date hereof, and we assume no obligation to update or supplement such opinions after the date hereof.

HealthEquity, Inc.
September 7, 2018
Page 4

We hereby consent to the filing of this opinion with the Commission as an exhibit to the Registration Statement and to the use of our name under the heading "Legal Matters" in the Registration Statement and in the related prospectus or any supplemental prospectus thereto. In giving this consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ WILLKIE FARR & GALLAGHER LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in this Registration Statement on Form S-3 of HealthEquity, Inc. of our report dated March 28, 2018 relating to the consolidated financial statements and the effectiveness of internal control over financial reporting, which appears in HealthEquity, Inc.'s Annual Report on Form 10-K for the year ended January 31, 2018. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers LLP
Salt Lake City, Utah
September 7, 2018

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM T-1

STATEMENT OF ELIGIBILITY UNDER THE TRUST INDENTURE ACT OF 1939 OF A CORPORATION DESIGNATED TO ACT AS TRUSTEE

o CHECK IF AN APPLICATION TO DETERMINE ELIGIBILITY OF A TRUSTEE PURSUANT TO SECTION 305(b)(2)

WELLS FARGO BANK, NATIONAL ASSOCIATION

(Exact name of trustee as specified in its charter)

A National Banking Association
(Jurisdiction of incorporation of
organization if not a U.S. national
bank)

94-1347393
(I.R.S. Employer
Identification No.)

101 North Phillips Avenue
Sioux Falls, South Dakota
(Address of principal executive offices)

57104
(Zip code)

Wells Fargo & Company
Law Department, Trust Section
MAC N9305-175
Sixth Street and Marquette Avenue, 17th Floor
Minneapolis, Minnesota 55479
(612) 667-4608
(Name, address and telephone number of agent for service)

HEALTHEQUITY, INC.

(Exact name of obligor as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

52-2383166
(I.R.S. Employer
Identification No.)

15 W. Scenic Pointe Dr.
Ste. 100
Draper, Utah
(Address of principal executive offices)

84020
(Zip code)

Debt Securities
(Title of indenture securities)

Item 1. General Information. Furnish the following information as to the trustee:

- (a) Name and address of each examining or supervising authority to which it is subject.

Comptroller of the Currency
Treasury Department
Washington, D.C.

Federal Deposit Insurance Corporation
Washington, D.C.

(b) Whether it is authorized to exercise corporate trust powers.

The trustee is authorized to exercise corporate trust powers.

Item 2. Affiliations with Obligor. If the obligor is an affiliate of the trustee, describe each such affiliation.

None with respect to the trustee.

No responses are included for Items 3-14 of this Form T-1 because the obligor is not in default as provided under Item 13.

Item 15. Foreign Trustee. Not applicable.

Item 16. List of Exhibits. List below all exhibits filed as a part of this Statement of Eligibility.

- Exhibit 1. A copy of the Articles of Association of the trustee as now in effect.*
- Exhibit 2. A copy of the Comptroller of the Currency Certificate of Corporate Existence for Wells Fargo Bank, National Association, dated January 14, 2015.*
- Exhibit 3. A copy of the Comptroller of the Currency Certification of Fiduciary Powers for Wells Fargo Bank, National Association, dated January 6, 2014.*
- Exhibit 4. Copy of By-laws of the trustee as now in effect.*
- Exhibit 5. Not applicable.
- Exhibit 6. The consent of the trustee required by Section 321(b) of the Act.
- Exhibit 7. A copy of the latest report of condition of the trustee published pursuant to law or the requirements of its supervising or examining authority.
- Exhibit 8. Not applicable.
- Exhibit 9. Not applicable.

* Incorporated by reference to the exhibit of the same number to the trustee's Form T-1 filed as exhibit to the Filing 305B2 dated March 13, 2015 of Navient Funding, LLC and Navient Credit Funding, LLC, file number 333-190926.

SIGNATURE

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, Wells Fargo Bank, National Association, a national banking association organized and existing under the laws of the United States of America, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Chicago and State of Illinois on the 6th day of September, 2018.

WELLS FARGO BANK, NATIONAL ASSOCIATION

/s/ Gregory S. Clarke

Gregory S. Clarke
Vice President

EXHIBIT 6

September 6, 2018

Securities and Exchange Commission
Washington, D.C. 20549

Gentlemen:

In accordance with Section 321(b) of the Trust Indenture Act of 1939, as amended, the undersigned hereby consents that reports of examination of the undersigned made by Federal, State, Territorial, or District authorities authorized to make such examination may be furnished by such authorities to the Securities and Exchange Commission upon its request therefor.

Very truly yours,

WELLS FARGO BANK, NATIONAL ASSOCIATION

/s/ Gregory S. Clarke
 Gregory S. Clarke
 Vice President

Exhibit 7

Consolidated Report of Condition of

Wells Fargo Bank National Association
 of 101 North Phillips Avenue, Sioux Falls, SD 57104
 And Foreign and Domestic Subsidiaries,

at the close of business June 30, 2018, filed in accordance with 12 U.S.C. §161 for National Banks.

	<u>Dollar Amounts In Millions</u>
ASSETS	
Cash and balances due from depository institutions:	
Noninterest-bearing balances and currency and coin	\$ 19,803
Interest-bearing balances	143,123
Securities:	
Held-to-maturity securities	144,098
Available-for-sale securities	250,007
Equity Securities with readily determinable fair value not held for trading	94
Federal funds sold and securities purchased under agreements to resell:	
Federal funds sold in domestic offices	79
Securities purchased under agreements to resell	34,203
Loans and lease financing receivables:	
Loans and leases held for sale	13,308
Loans and leases, net of unearned income	918,993
LESS: Allowance for loan and lease losses	9,864
Loans and leases, net of unearned income and allowance	909,129
Trading Assets	44,974
Premises and fixed assets (including capitalized leases)	8,073
Other real estate owned	502
Investments in unconsolidated subsidiaries and associated companies	12,118
Direct and indirect investments in real estate ventures	163
Intangible assets	40,514
Other assets	54,889
Total assets	\$ 1,675,077
LIABILITIES	
Deposits:	
In domestic offices	\$ 1,269,998
Noninterest-bearing	415,406
Interest-bearing	854,592
In foreign offices, Edge and Agreement subsidiaries, and IBFs	52,292
Noninterest-bearing	897
Interest-bearing	51,395
Federal funds purchased and securities sold under agreements to repurchase:	
Federal funds purchased in domestic offices	8,421
Securities sold under agreements to repurchase	6,394

	<u>Dollar Amounts In Millions</u>
Trading liabilities	11,024
Other borrowed money (includes mortgage indebtedness and obligations under capitalized leases)	116,305
Subordinated notes and debentures	11,749

Other liabilities	34,525
Total liabilities	\$ 1,510,708
EQUITY CAPITAL	
Perpetual preferred stock and related surplus	0
Common stock	519
Surplus (exclude all surplus related to preferred stock)	112,567
Retained earnings	54,424
Accumulated other comprehensive income	-3,482
Other equity capital components	0
Total bank equity capital	164,028
Noncontrolling (minority) interests in consolidated subsidiaries	341
Total equity capital	164,369
Total liabilities, and equity capital	\$ 1,675,077

I, John R. Shrewsberry, Sr. EVP & CFO of the above-named bank do hereby declare that this Report of Condition has been prepared in conformance with the instructions issued by the appropriate Federal regulatory authority and is true to the best of my knowledge and belief.

John R. Shrewsberry
Sr. EVP & CFO

We, the undersigned directors, attest to the correctness of this Report of Condition and declare that it has been examined by us and to the best of our knowledge and belief has been prepared in conformance with the instructions issued by the appropriate Federal regulatory authority and is true and correct.

Directors

Enrique Hernandez, Jr
Federico F. Pena
James Quigley