

JOE'S JEANS INC.
Form 10-Q/A
November 13, 2015
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q/A

Amendment No. 1

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

For the quarterly period ended August 31, 2015

OR

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

For the transition period from _____ to _____

Commission File Number: 0-18926

JOE S JEANS INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

11-2928178

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

2340 South Eastern Avenue, Commerce, California

(Address of principal executive offices)

90040

(Zip Code)

(323) 837-3700

(Registrant's telephone number, including area code)

NO CHANGE

(Former name, former address and former fiscal year, if changed since last report)

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See definitions of large accelerated filer, accelerated filer and smaller reporting 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

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

The number of shares of the registrant's common stock outstanding as of October 13, 2015 was 69,968,208.

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Explanatory Note

The purpose of this Amendment No. 1 (this *Amendment*) on Form 10-Q/A to the Quarterly Report of Joe's Jeans Inc. (the *Company*) on Form 10-Q for the period ended August 31, 2015 (the *Form 10-Q*), filed with the Securities and Exchange Commission on October 13, 2015 (the *Original Filing Date*) is to make certain changes to the disclosures in the financial statements set forth therein. The Company determined that an error was made in the classification of certain liabilities in connection with certain information related to our discontinued operations on our Condensed Consolidated Balance Sheets and our Condensed Consolidated Statements of Cash Flows. The restatement, which is treated as a correction of an error, impacts our Condensed Consolidated Balance Sheets as of August 31, 2015 and November 30, 2014 and our Condensed Consolidated Statements of Cash Flows for the nine months ended August 31, 2015 and 2014. There was no effect on our Condensed Consolidated Statements of Net Loss and Comprehensive Loss for the periods presented in the Form 10-Q.

This Amendment speaks as of the Original Filing Date, does not reflect events that may have occurred subsequent to the Original Filing Date, and does not modify or update in any way disclosures made in the Form 10-Q. No other changes have been made to the Form 10-Q.

Pursuant to Rule 12b-15 under the Securities Exchange Act of 1934, as amended (the *Exchange Act*), the certifications required pursuant to the rules promulgated under the Exchange Act, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, which were included as exhibits to the Form 10-Q, have been amended, restated and re-executed as of the date of this Amendment and are included as Exhibits 31.1, 31.2 and 32 hereto.

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Table of Contents**PART I FINANCIAL INFORMATION****Item 1. Financial Statements.****JOE S JEANS INC. AND SUBSIDIARIES****CONDENSED CONSOLIDATED BALANCE SHEETS**

(in thousands, except per share data)

	August 31, 2015 (unaudited) (restated) See Note 4	November 30, 2014 (restated) See Note 4
ASSETS		
Current assets		
Cash and cash equivalents	\$ 368	\$ 1,054
Accounts receivable, net	142	1,279
Factored accounts receivable, net	8,518	11,105
Inventories, net	15,350	25,354
Deferred income taxes, net	5,786	6,065
Prepaid expenses and other current assets	1,512	1,212
Current portion of assets held for sale	72,532	57,050
Total current assets	104,208	103,119
Property and equipment, net	1,832	2,897
Goodwill	8,394	8,394
Intangible assets	55,022	56,773
Deferred financing costs	1,295	1,611
Other assets	778	958
Assets held for sale, net of current portion		30,197
Total assets	\$ 171,529	\$ 203,949
LIABILITIES AND STOCKHOLDERS EQUITY		
Current liabilities		
Accounts payable and accrued expenses	\$ 13,797	\$ 11,651
Buy-out payable	3,277	3,277
Line of credit	19,587	31,338
Short-term debt	59,183	59,003
Current portion of liabilities held for sale	5,860	11,680
Total current liabilities	101,704	116,949
Convertible notes	26,762	24,733
Deferred income taxes, net	18,373	17,765
Deferred rent	1,744	1,579
Other liabilities	393	643
Long-term liabilities held for sale		1,283
Total liabilities	148,976	162,952

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Commitments and contingencies

Stockholders' equity

Common stock, \$0.10 par value: 100,000 shares authorized, 70,802 shares issued and 69,968 outstanding (2015) and 69,822 shares issued and 69,298 outstanding (2014)	7,082	6,984
Additional paid-in capital	111,870	111,010
Accumulated deficit	(92,964)	(73,679)
Treasury stock, 834 shares (2015), 524 shares (2014)	(3,435)	(3,318)
Total stockholders' equity	22,553	40,997
Total liabilities and stockholders' equity	\$ 171,529	\$ 203,949

See accompanying notes to condensed consolidated financial statements.

Table of Contents**JOE S JEANS INC. AND SUBSIDIARIES****CONDENSED CONSOLIDATED STATEMENTS OF NET LOSS AND COMPREHENSIVE LOSS**

(in thousands, except per share data)

	Three months ended		Nine months ended	
	August 31, 2015	August 31, 2014	August 31, 2015	August 31, 2014
	(unaudited)		(unaudited)	
Net sales	\$ 18,865	\$ 25,718	\$ 61,266	\$ 68,957
Cost of goods sold	10,542	13,279	35,190	36,301
Gross profit	8,323	12,439	26,076	32,656
Operating expenses				
Selling, general and administrative	11,443	10,585	34,895	31,220
Depreciation and amortization	799	905	2,448	2,728
Retail stores impairment	470	332	470	332
	12,712	11,822	37,813	34,280
Operating income (loss)	(4,389)	617	(11,737)	(1,624)
Other income				(2,268)
Interest expense	1,700	1,279	4,637	3,796
Income (loss) from continuing operations, before provision for income taxes	(6,089)	(662)	(16,374)	(3,152)
Income tax expense (benefit)	(12,801)	(174)	1,698	(860)
Income (loss) from continuing operations	6,712	(488)	(18,072)	(2,292)
Income (loss) from discontinued operations, net of tax	(1,053)	764	(1,213)	2,729
Net income (loss) and comprehensive income (loss)	\$ 5,659	\$ 276	\$ (19,285)	\$ 437
Earnings (loss) per common share - basic				
Earnings (loss) from continuing operations	0.10	(0.01)	(0.26)	(0.03)
Earnings (loss) from discontinued operations	(0.02)	0.01	(0.02)	0.04
Earnings (loss) per common share - basic	\$ 0.08	\$ 0.00	\$ (0.28)	\$ 0.01
Earnings (loss) per common share - diluted				
Earnings (loss) from continuing operations	\$ 0.10	\$ (0.01)	\$ (0.26)	\$ (0.03)
Earnings (loss) from discontinued operations	(0.02)	0.01	(0.02)	0.04
Earnings (loss) per common share - diluted	\$ 0.08	\$ 0.00	\$ (0.28)	\$ 0.01
Weighted average shares outstanding				
Basic	69,614	68,362	69,314	68,151
Diluted	69,620	68,880	69,314	68,935

See accompanying notes to condensed consolidated financial statements.

Table of Contents**JOE S JEANS INC. AND SUBSIDIARIES****CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**

(in thousands)

	Nine months ended	
	August 31, 2015	August 31, 2014
	(unaudited) (restated) See Note 4	
CASH FLOWS FROM OPERATING ACTIVITIES		
Net cash (used in) provided by continuing operations	\$ 4,876	\$ (2,895)
Net cash (used in) provided by discontinued operations	6,825	(3,550)
Net cash (used in) provided by operating activities	11,701	(6,445)
CASH FLOWS FROM INVESTING ACTIVITIES		
Purchases of property and equipment	(102)	(95)
Business acquisition		(418)
Net cash used in continuing investing activities	(102)	(513)
Net cash used in discontinued investing activities	(349)	(470)
Net cash used in investing activities	(451)	(983)
CASH FLOWS FROM FINANCING ACTIVITIES		
(Repayment of) proceeds from line of credit	(5,275)	5,467
Payments of promissory note		(1,235)
Repayment of term loan		(75)
Payment of taxes on restricted stock units	(68)	(343)
Purchase of restricted stock	(117)	(227)
Net cash (used in) provided by continuing financing activities	(5,460)	3,587
Cash (used in) provided by discontinued financing activities	(6,476)	4,020
Net cash (used in) provided by financing activities	(11,936)	7,607
NET CHANGE IN CASH AND CASH EQUIVALENTS	(686)	179
CASH AND CASH EQUIVALENTS, at beginning of period	1,054	785
CASH AND CASH EQUIVALENTS, at end of period	\$ 368	\$ 964

See accompanying notes to condensed consolidated financial statements.

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JOE S JEANS INC. AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS EQUITY

(in thousands)

	Common Stock Shares	Common Stock Par Value	Additional Paid-In Capital	Accumulated Deficit	Treasury Stock	Total Stockholders Equity
Balance, November 30, 2013	68,878	\$ 6,890	\$ 107,933	\$ (45,963)	\$ (3,091)	\$ 65,769
Net income and comprehensive income (unaudited)				437		437
Embedded conversion feature net of taxes (unaudited)			2,058			2,058
Stock repurchase (unaudited)					(227)	(227)
Stock-based compensation, net of withholding taxes (unaudited)			595			595
Issuance of restricted stock (unaudited)	889	89	(89)			
Balance, August 31, 2014 (unaudited)	69,767	\$ 6,979	\$ 110,497	\$ (45,526)	\$ (3,318)	\$ 68,632
Balance, November 30, 2014	69,822	\$ 6,984	\$ 111,010	\$ (73,679)	\$ (3,318)	\$ 40,997
Net income and comprehensive income (unaudited)				(19,285)		(19,285)
Embedded conversion feature net of taxes (unaudited)						
Stock repurchase (unaudited)					(117)	(117)
Stock-based compensation, net of withholding taxes (unaudited)			958			958
Issuance of restricted stock (unaudited)	980	98	(98)			
Balance, August 31, 2015 (unaudited)	70,802	\$ 7,082	\$ 111,870	\$ (92,964)	\$ (3,435)	\$ 22,553

See accompanying notes to condensed consolidated financial statements.

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JOE S JEANS INC. AND SUBSIDIARIES

NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1 BASIS OF PRESENTATION

Our principal business activity involves the design, development and worldwide marketing of apparel products, which include denim jeans, related casual wear and accessories that bear the brand Joe s® and Hudson®. Our primary current operating subsidiaries are Joe s Jeans Subsidiary, Inc. (*Joe s Jeans Subsidiary*) and Hudson Clothing, LLC (*Hudson*). In addition, we have other subsidiaries, including Joe s Jeans Retail Subsidiary, Inc., Innovo West Sales, Inc., Hudson Clothing Holdings, Inc. and HC Acquisition Holding, Inc. All significant inter-company transactions have been eliminated. We completed the acquisition of Hudson on September 30, 2013 and the information presented includes the results of operations of Hudson from the date of acquisition. On September 11, 2015, we completed the sale of certain of our operating and intellectual property assets related to the Joe s® brand and business to two separate purchasers for an aggregate purchase price of \$80 million, the proceeds of which were used to repay all of our indebtedness outstanding under our term loan credit agreement with Garrison Loan Agency Service LLC and a portion of our indebtedness outstanding under our revolving credit agreement with CIT Commercial Services, Inc., a unit of CIT Group. See Note 2 Subsequent Events for additional information related to this and other transactions. As a result, we reported the operating results of our Joe s business in Income (loss) from discontinued operations, net of tax in our condensed consolidated statements of net loss and comprehensive loss for all periods presented. In addition, the assets and liabilities associated with our Joe s business are reported as held for sale (discontinued operations), in the condensed consolidated balance sheets for all periods presented. (see Note 3 Discontinued Operations). Unless otherwise indicated, the disclosures accompanying the condensed consolidated financial statements reflect our continuing operations.

Our reportable business segments are Wholesale and Retail. We manage, evaluate and aggregate our operating segments for segment reporting purposes primarily on the basis of business activity and operation. Our Wholesale segment is comprised of sales of Hudson® products to retailers, specialty stores and international distributors, includes revenue from licensing agreements and records expenses from sales, trade shows, distribution, product samples and customer service departments. Our Retail segment is comprised of sales to consumers through ten of our Joe s branded full price retail stores, 11 outlet stores and through our online retail site at www.hudsonjeans.com. Our Corporate and other is comprised of expenses from corporate operations, which include the executive, finance, legal, human resources, design and production departments and general advertising expenses associated with our brands. Sales of our Joe s® products are reported as discontinued operations.

Our unaudited condensed consolidated financial statements, which include the accounts of our wholly-owned subsidiaries, for the three and nine months ended August 31, 2015 and 2014 and the related footnote information have been prepared on a basis consistent with our audited consolidated financial statements as of November 30, 2014 contained in our Annual Report on Form 10-K for the fiscal year ended November 30, 2014, or the Annual Report. Our fiscal year end is November 30. Each fiscal year, as presented, is 52 weeks.

Going Concern

The accompanying consolidated financial statements for the year ended November 30, 2014 and three and nine months ended August 31, 2015 were prepared under the assumption that we will continue to operate as a going concern, which contemplates the realization of assets and the liquidation of liabilities in the ordinary course of business. We face various uncertainties that raise substantial doubt about our ability to continue as a going concern. These financial statements do not include any adjustments that may result from the outcome of these uncertainties.

On November 6, 2014, we received an initial notice of default and event of default and demand for payment of default interest under the term loan credit facility for violating certain financial and maintenance covenants from Garrison Loan Agency Service LLC (*Garrison*). As of August 31, 2015, we were not in compliance with certain financial and maintenance covenants under the term loan credit agreement. As a result of the events of default under the term loan credit agreement, this also triggered a default and an event of default under the terms of the revolving credit agreement with CIT Commercial Services, Inc., a unit of CIT Group, (*CIT*). Both lenders reserved their respective rights to exercise any and all remedies available to them under their respective agreements and demanded payment of interest under those agreements at the default rate of interest. In addition, as a result of the events of default under the term loan credit agreement and the revolving credit agreement, we also were in default of our subordinated convertible notes issued to the former equity owners of Hudson. Under the terms of the revolving credit and term loan credit agreements, we were prohibited from

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making any payments under the subordinated convertible notes, but we were accruing interest on the convertible notes at the default rate. We were also prohibited from making earn-out payments to our former creative director, Mr. Dahan under his buy-out agreement.

On September 11, 2015, our indebtedness outstanding under the term loan credit agreement was fully repaid with a portion of the proceeds of the sale of certain Joe's assets. As a result, the term loan credit agreement was paid in full and terminated on September 11, 2015. We also used a portion of the proceeds from the asset sale to repay a substantial portion of our indebtedness under the revolving credit agreement, and on September 11, 2015, we entered into an amended and restated revolving credit agreement, which waived our existing defaults, forbearance defaults and certain other defaults. See Note 2 Subsequent Events for a further discussion of the asset sales, the repayment of certain obligations under our agreements with Garrison and CIT, and the terms of our amended and restated revolving credit agreement.

NOTE 2 SUBSEQUENT EVENTS

On September 8, 2015, we entered into the definitive agreements described below (collectively, the *Transaction Agreements*) in which, subject to the completion of the conditions described below, we (i) sold certain of our operating and intellectual property assets related to the Joe's Business to two separate purchasers for an aggregate purchase price of \$80 million (the *Asset Sale*), the proceeds of which were used to repay all of our indebtedness outstanding under our term loan credit agreement with Garrison Loan Agency Service LLC and a portion of our indebtedness outstanding under our revolving credit agreement with CIT Commercial Services, Inc. (*CIT*), a unit of CIT Group; (ii) will combine our remaining business operated under the Hudson® brand with RG Parent, LLC, a Delaware limited liability company (*RG* or *Robert Graham*), pursuant to the Merger Agreement (defined below), (iii) will issue and sell \$50 million of a new series of the Company's preferred stock in a private placement to an affiliate of Tengram Capital Partners, L.P. (*TCP*); and (iv) will exchange outstanding convertible notes for a combination of cash, shares of our common stock, \$0.10 par value per share (*Common Stock*), and modified convertible notes (the *Modified Convertible Notes*) (collectively, the *Merger Transactions*). RG is a portfolio company of TCP and its principal business activity involves the design, development and marketing of luxury lifestyle brand apparel products under the brand Robert Graham®.

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After the completion of the Asset Sale, we expect to change our name to Differential Brands Group Inc. After the completion of the Merger and the Merger Transactions, the RG equity holders will own approximately 44.8% of our Common Stock, the preferred stock owned by TCP will be convertible into approximately 22.8% of our Common Stock, the convertible noteholders will own approximately 18.2% of our Common Stock and the existing stockholders (including the outstanding equity awards under our incentive plan) will own approximately 13.5% of our Common Stock, all on a fully diluted basis, assuming the modified convertible notes are converted and calculated at the market price on September 30, 2015. In connection with the Merger and the Merger Transactions, we expect that we will enter into new financing arrangements pursuant to which we will have approximately \$25 million of indebtedness outstanding under a new revolving credit facility and \$50 million of indebtedness outstanding under a new term loan credit facility, the proceeds of which will be used to repay our remaining indebtedness outstanding under the revolving credit agreement with CIT and certain indebtedness owed to the holders of the convertible notes and Joseph M. Dahan. See Risk Factors for an additional discussion regarding the risks and uncertainties related to the Merger and Merger Transactions.

IP Asset Purchase Agreement

On September 8, 2015, we, along with Joe's Holdings LLC, a Delaware limited liability company (**IP Assets Purchaser**), and solely for the purposes of its related guarantee, Sequential Brands Group, Inc., a Delaware corporation, entered into an asset purchase agreement (the **IP Asset Purchase Agreement**), pursuant to which, the IP Assets Purchaser, among other things, purchased certain intellectual property assets (the **Intellectual Property Assets**) used or held for use in our business operated under the brand names Joe's Jeans, Joe's, Joe's JD and else (the **Business**). The aggregate purchase price was \$67 million. Additionally, at the closing of the sale, the IP Assets Purchaser deposited \$2.5 million to an escrow account, which will be used to defer certain costs and expenses which may be incurred by us after the closing of the transaction.

The IP Asset Purchase Agreement contains representations and warranties, covenants related to our operations and business, and indemnification rights of both parties after the closing of the transaction that are customary for transactions of this type.

We will retain and operate the 32 Joe's® brand retail stores after the closing of the Operating Asset Purchase Agreement and the IP Asset Purchase Agreement and thereafter will proceed with the disposition of certain stores; provided, however that, certain retail stores designated by Operating Assets Purchaser will be transferred to the Operating Assets Purchaser on or prior to December 31, 2016 for no additional consideration. Subject to certain limitations on our aggregate net liability with respect to the net costs and expenses related to the operation of the retail stores if the Merger Transactions do not close, such costs and expenses will be borne by us, the IP Assets Purchaser and the Operating Assets Purchaser. The Operating Assets Purchaser will supply Joe's® branded merchandise to the retail stores for resale under a license from the IP Assets Purchaser.

Operating Asset Purchase Agreement

On September 8, 2015, we, along with GBG USA Inc., a Delaware corporation (**Operating Assets Purchaser**), entered into an asset purchase agreement (the **Operating Asset Purchase Agreement** and together with the IP Asset Purchase Agreement, the **Asset Purchase Agreements**), pursuant to which, the Operating Assets Purchaser, among other things, purchased certain inventory and other assets and assume certain liabilities from us and our subsidiaries related to the Joe's Business, including certain employees of the Joe's Business and at a later date, specified Joe's store leases. The aggregate purchase price was \$13 million. Additionally, at the closing of the sale, the Operating Assets Purchaser deposited \$1.5 million into an escrow account, which will be used to defer certain costs and expenses which may be incurred by the Company

after the closing of the transaction.

The Operating Asset Purchase Agreement contains representations and warranties, covenants of the Company, and indemnification rights of both parties after the closing of the transaction that are customary for transactions of this type.

On September 11, 2015, we completed the Asset Sale of the Joe's Business pursuant to the respective Asset Purchase Agreements. The proceeds were used to repay all of our indebtedness outstanding under the term loan credit agreement and a portion of our indebtedness outstanding under our revolving credit agreement.

Agreement and Plan of Merger

On September 8, 2015, we entered into an Agreement and Plan of Merger (the **Merger Agreement**) with JJ Merger Sub LLC, a Delaware limited liability company and our wholly owned subsidiary (**Merger Sub**), and RG, pursuant to which Merger Sub will merge with and into RG on the terms and subject to the conditions set forth in the Merger Agreement (the **Merger**), with RG surviving the Merger as our wholly-owned subsidiary. Subject to the conditions set forth in the Merger Agreement, the Merger is expected to close in the fourth quarter of 2015.

At the effective time of the Merger (the **Effective Time**), on the terms and subject to the conditions set forth in the Merger Agreement, all of the common units of RG (the **RG Units**) outstanding immediately prior to the Effective Time will be converted into the right to receive an aggregate of \$81 million in cash (the **Aggregate Cash Consideration**) and 8,870,968 shares of Common Stock (after giving effect to a 1 for 30 reverse stock split) (the **Aggregate Stock Consideration** and, together with the Aggregate Cash Consideration, the **Aggregate Merger Consideration**). The portion of the Aggregate Merger Consideration constituting the Aggregate Cash Consideration will be reduced by an amount necessary to satisfy certain indebtedness of RG outstanding as of the Effective Time (as adjusted, the **Actual Cash Consideration** and, together with the Aggregate Stock Consideration, the **Actual Merger Consideration**).

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The Merger Agreement contains customary representations, warranties and covenants of us and RG.

The completion of the Merger is subject to customary closing conditions, including, among others, (i) our stockholder approval of: (x) the issuance of Common Stock in connection with the Merger, (y) the issuance of Common Stock upon conversion of the Company's Series A Preferred Stock (defined below) pursuant to the Stock Purchase Agreement (as defined below), and (z) a charter amendment to effect a 1 for 30 reverse stock split of our Common Stock (the **Reverse Stock Split**), (ii) consummation of the asset sales pursuant to each of the IP Asset Purchase Agreement and Operating Asset Purchase Agreement, (iii) consummation of the transactions contemplated by the Stock Purchase Agreement (defined below), (iv) consummation of the transactions contemplated by the Rollover Agreement (as defined below), (v) RG must have obtained financing or the persons who have committed to provide financing must be prepared to provide the financing immediately following the Effective Time, (vi) the Registration Statement on Form S-4 registering the Common Stock to be issued in connection with the Merger must have become effective, (vii) the Common Stock to be issued in the Merger must be authorized for listing on NASDAQ and (viii) since the date of the Merger Agreement, there must not be any changes, events, effects, developments, occurrences or state of facts that, individually or in the aggregate would reasonably be expected to have a material adverse effect on us or RG, subject to customary exceptions.

The Merger Agreement may be terminated under certain circumstances, including if the Merger has not been consummated on or before February 8, 2016.

We have agreed to pay RG a termination fee of \$5.25 million, less certain expenses, if: (i) we terminate the Merger Agreement under certain circumstances and within twelve months after such termination, consummates a takeover proposal or enters into a definitive agreement with respect to a takeover proposal; (ii) the Merger Agreement is terminated by RG as a result of the Board changing its recommendation with respect to the Merger and related transactions; or (iii) the Merger Agreement is terminated by us because we have received a superior proposal and enter into a definitive agreement with respect thereto. In the event that the Merger Agreement is terminated by us because of RG's failure to obtain financing or by RG because the Merger has not occurred by February 8, 2016 at a time that we would have the right to terminate pursuant to a financing issue and have provided notice of such right, in each case, so long as we are not in breach of certain obligations related to obtaining the financing, then RG must pay us a reverse termination fee of \$7.5 million, less certain expenses they may have been previously reimbursed to us. If either party terminates the Merger Agreement as a result of the other party's breach, then the breaching party must pay the non-breaching party up to an aggregate amount of \$3 million for all of the documented out-of-pocket fees and expenses incurred in connection with the Merger Agreement and related transactions.

Stock Purchase Agreement

On September 8, 2015, we entered into a stock purchase agreement (the **Stock Purchase Agreement**) with TCP Denim, LLC, a Delaware limited liability company and affiliate of TCP (the **Purchaser**), pursuant to which we will issue and sell to Purchaser immediately prior to the consummation of the Merger an aggregate of fifty thousand (50,000) shares of the Company's preferred stock, par value \$0.10 per share, designated as Series A Convertible Preferred Stock (the **Series A Preferred Stock**), for an aggregate purchase price of \$50 million in cash. Concurrently with the execution of the Stock Purchase Agreement, Tengram Capital Partners Fund II, L.P., a Delaware limited partnership, is entering into a limited guaranty in favor of us with respect to the obligations of the Purchaser under the Stock Purchase Agreement to pay the purchase price.

The Stock Purchase Agreement also provides that the proceeds from the sale of Series A Preferred Stock must be used for the purposes of consummating the Merger and the transactions contemplated by the Merger Agreement. The Stock Purchase Agreement provides that at the Effective Time, the applicable number of directors on our Board will resign such that only two directors on the Board immediately prior to the

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closing will remain on the Board immediately following the closing. Furthermore, as of the Effective Time, the Board shall appoint the three persons designated by Purchaser to fill three of such vacancies as a director. A remaining vacancy will be filled by our chief executive officer following the Effective Time.

The following is a summary of the terms of the Series A Preferred Stock as set forth in the form of certificate of designation for the Series A Preferred Stock: (i) each share of Series A Preferred Stock entitles the holder thereof to receive cumulative cash dividends, payable quarterly, at an annual rate of 10%, plus accumulated and accrued dividends thereon through such date; additionally, if the Board declares or pays a dividend on the Common Stock, then each holder of the Series A Preferred Stock will be entitled to receive a cash dividend on an as converted basis; (ii) each holder of the Series A Preferred Stock is entitled to vote on an as converted basis and together with the holders of Common Stock as a single class, subject to certain limitations; (iii) for so long as a to be determined percent of the shares of the Series A Preferred Stock remain outstanding, the holders of the Series A Preferred Stock,

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exclusively and as a separate class, will be entitled to elect three (3) members of the Board (the *Series A Directors*), and such Series A Director may only be removed without cause by the affirmative vote of the holders of a majority of the shares of Series A Preferred Stock; (iv) the holders of the Series A Preferred Stock have separate class voting rights with respects to certain matters affecting their rights; (v) upon any liquidation event, holders of the Series A Preferred Stock are entitled to receive the greater of the liquidation preference on the date of determination and the amount that would be payable to the holders of the Series A Preferred Stock had such holders converted their shares of Series A Preferred Stock into shares of Common Stock immediately prior to such liquidation event; and (vi) each share of the Series A Preferred Stock is convertible, at the option of the holder thereof, at any time and without the payment of additional consideration by the holder, at an initial conversion price of \$11.10 (after taking into account the 1 for 30 reverse stock split).

Rollover Agreement

On September 8, 2015, we entered into a rollover agreement (the *Rollover Agreement*) with the holders of convertible notes (the *Convertible Notes*), pursuant to which they have agreed to contribute to us the Convertible Notes in exchange for the following:

- issuance of a number of shares of our Common Stock with a value per share of \$11.10 equal to the sum (i) of a specified percentage of the principal amount of Convertible Notes held by such noteholder, which principal amount, as of July 1, 2015, is an aggregate of \$33,990,538 and will be increased by any PIK interest payable in accordance with the terms of the Convertible Notes until the time that is immediately prior to the Effective Time (the *Rollover Time*), and (without duplication) and (ii) all accrued interest, including default interest as applicable, owing on 50% of the principal amount of such Convertible Notes in accordance with the terms of the Convertible Notes as of the Rollover Time, which amount, as of July 1, 2015, is an aggregate of \$1,936,617 and which will continue to accrue interest in accordance with the terms of the Convertible Notes until the Rollover Time. The holders of Convertible Notes will receive in the aggregate approximately 14.0% of our Common Stock outstanding immediately after consummation of the Merger;
- a cash payment to each noteholder equal to twenty-five percent (25%) of the principal amount of Convertible Notes as of the Rollover Time held by each such holder of the Convertible Notes, which principal amount, as of July 1, 2015, is an aggregate of \$33,990,538, which will be increased by any PIK interest payable in accordance with the terms of the Convertible Notes until the Rollover Time; and
- Modified Convertible Notes with a principal amount equal to the sum of (i) a specified percentage of the principal amount of Convertible Notes as of the Rollover Time held by each holder of the Convertible Notes, which principal amount, as of July 1, 2015, is an aggregate of \$33,990,538 and will be increased by any PIK interest payable in accordance with the terms of the Convertible Notes until the Rollover Time, and (without duplication) (ii) all accrued interest, including default interest as applicable, owing on 50% of the principal amount of the Convertible Notes in accordance with the terms of the Convertible Notes as of the Rollover Time, which amount, as of July 1, 2015, is an aggregate of \$1,936,617 and which will continue to accrue interest in accordance with the terms of the Convertible Notes until the Rollover Time. The holders of Convertible Notes will receive in the aggregate approximately \$16.4 million outstanding principal amount of Modified Convertible Notes.

The Rollover Agreement will be automatically terminated upon termination of the Merger Agreement prior to the Rollover Time. The Rollover Agreement may also be terminated by us or by Mr. Kim and Fireman Capital CPF Hudson Co-Invest LP (*Fireman*) if the Rollover Time has not occurred prior to April 8, 2016.

The Modified Convertible Notes are structurally and contractually subordinated to our senior debt and will mature five and a half years following the date of such note. The Modified Convertible Notes accrue interest quarterly on the outstanding principal amount at a rate of 6.5% per annum (to be increased to 7% as of October 1, 2016 with respect to the Modified Convertible Notes issued to Fireman), which will be payable 50% in cash and 50% in additional paid in kind (*PIK Notes*); provided, however, that we may, in our sole discretion, elect to pay 100% of such interest in cash. Beginning upon the date of issuance, the Modified Convertible Notes will be convertible by each of the holders into shares of Common Stock, cash, or a combination of cash and Common Stock, at our election.

If we elect to issue only shares of Common Stock upon conversion of the Modified Convertible Notes, each of the Modified Convertible Notes would be convertible, in whole but not in part, into a number of shares equal to the conversion amount divided by the market price. The conversion amount is (a) the product of (i) the market price, multiplied by (ii) the quotient of (A) the principal amount, divided by (B) the conversion price, minus (b) the aggregate optional prepayment amounts paid to the holder. The market price is the average of the closing prices for the Common Stock over the 20 trading day period immediately preceding the notice of conversion. If we elect to pay cash with respect to a conversion of the Modified Convertible Notes, the amount of cash to be paid per share will be equal to the conversion amount. We will have the right to prepay all or any portion of the principal amount of the Modified Convertible Notes at any time so long as it makes a pro rata prepayment on all of the Modified Convertible Notes.

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Registration Rights Agreement

At the Effective Time, we expect to enter into a registration rights agreement (the **Registration Rights Agreement**) with the Purchaser under the Stock Purchase Agreement and the holders of the Convertible Notes party to the Rollover Agreement. Pursuant to the Registration Rights Agreement, we will provide certain demand registration rights to register the shares of Common Stock issued in connection with the Rollover Agreement, and issuable upon conversion of the Modified Convertible Notes and Series A Preferred Stock, on registration statements on Form S-1 or Form S-3, subject to certain limitations as described therein, and will also provide certain piggy back registration rights.

Voting Agreement

On September 8, 2015, we entered into a voting agreement, with RG and Joseph M. Dahan, our Creative Director and Director, pursuant to which Mr. Dahan has agreed to vote all of the Common Stock he holds in a manner so as to facilitate consummation of the Merger. As of the date hereof, Mr. Dahan owns approximately 17% of our outstanding voting stock.

CIT Agreements

On September 11, 2015, we entered into (i) the A&R Revolving Credit Agreement (as defined below), (ii) the Reaffirmation and Amendment of Collateral Documents (as defined below), and (iii) the Reassignment and Termination Agreement (as defined below).

A portion of the proceeds of the Asset Sale (as defined below) were used to repay all of our indebtedness outstanding under the Term Loan Credit Agreement, dated September 30, 2013 (the **Term Loan Credit Agreement**), with Garrison Loan Agency Services LLC (**Garrison**), as administrative agent, collateral agent, lead arranger, documentation agent and syndication agent, and the lenders party thereto. As a result, the Term Loan Credit Agreement was paid in full and terminated on September 11, 2015.

In connection with the Asset Sale, on September 11, 2015, we, along with Hudson Clothing, LLC, our wholly-owned subsidiary (**Hudson** or the **Borrower**), as Administrative Borrower, and certain of our other subsidiaries party thereto, as Guarantors, entered into the Amended and Restated Revolving Credit Agreement (the **A&R Revolving Credit Agreement**) with CIT, as administrative agent and collateral agent, and the lenders party thereto. Among other things, the A&R Revolving Credit Agreement (i) amends and restates the Revolving Credit Agreement, dated as of September 30, 2013 (as amended by (a) Omnibus Amendment No. 1 to Revolving Credit Agreement and Guarantee and Collateral Agreement, dated as of December 20, 2013, (b) Amendment No. 2 to Revolving Credit Agreement, dated as of April 23, 2015, and (c) the CIT Forbearance Agreement (as defined below), by and among Hudson and Joe's Jeans Subsidiary Inc., as borrowers, us and certain of our other subsidiaries as a party thereto, as guarantors, CIT, and the lenders party thereto, and (ii) waives the Existing Defaults and Forbearance Defaults (each as defined under the Forbearance and Amendment No. 3 to Revolving Credit Agreement, dated June 26, 2015, between the Company and CIT (the **CIT Forbearance Agreement**)) and certain other defaults. Pursuant to a separate consent and agreement, CIT and the lenders consented to the Asset Sale.

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The A&R Revolving Credit Agreement provides for a revolving credit facility (the **Revolving Facility**) with up to \$10,000,000 of lender commitments (the **Revolving Commitment**). The Borrowers' actual maximum credit availability under the Revolving Facility varies from time to time and is equal to the lesser of (i) the Revolving Commitment minus an availability block of \$2.5 million, or \$7.5 million, and (ii) a calculated borrowing base, which is based on the value of the eligible accounts and eligible inventory minus the availability block of \$2.5 million minus reserves imposed by the revolving lenders, all as specified in the A&R Revolving Credit Agreement. The Revolving Facility provides for swingline loans, up to \$1 million sublimit, and letters of credit, up to \$1 million sublimit, within such credit availability limits. Proceeds from advances under the Revolving Facility may be used (i) to pay fees and e