

LEAP WIRELESS INTERNATIONAL INC
Form PRER14A
September 06, 2013
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14A
PROXY STATEMENT PURSUANT TO SECTION 14(a) OF THE
SECURITIES EXCHANGE ACT OF 1934

Filed by the Registrant Filed by a Party other than the Registrant

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Leap Wireless International, Inc.

(Name of Registrant as Specified in Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than Registrant)

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5887 Copley Drive

San Diego, California 92111

[] [] , 2013

Dear Fellow Stockholder,

On July 12, 2013, Leap Wireless International, Inc. (which we refer to as Leap) and AT&T Inc. (which we refer to as AT&T) entered into an Agreement and Plan of Merger (which we refer to as, as it may be amended from time to time, the merger agreement), providing for the acquisition of Leap by AT&T. Pursuant to the terms of the merger agreement, a wholly owned subsidiary of AT&T will be merged with and into Leap, with Leap surviving the merger as a wholly owned subsidiary of AT&T (which we refer to as the merger).

If the merger is completed, Leap stockholders will have the right to receive \$15.00 in cash, without interest, and one non-transferrable contingent value right (which we refer to as a CVR), for each share of common stock, par value \$0.0001 per share, of Leap (which we refer to as common stock) that they own immediately prior to the effective time of the merger. Each CVR gives Leap stockholders the right to a pro rata share of the net proceeds of the sale of the license granted to Leap by the Federal Communications Commission (which we refer to as the FCC) having the call sign WQJQ707.

You are invited to a special meeting of stockholders (which we refer to as the special meeting) to be held at [] on [] , 2013 at []. The special meeting is being held for you to consider and vote on the adoption of the merger agreement and related matters. **Whether or not you expect to attend the special meeting in person, please vote or otherwise submit a proxy to vote your common stock as promptly as possible so that your common stock may be represented and voted at the special meeting.** The transaction cannot be consummated unless Leap obtains the affirmative vote of the holders of a majority of the outstanding shares of common stock entitled to vote at the special meeting. Therefore, the failure of any Leap stockholder to vote will have the same effect as a vote by such stockholder AGAINST the transaction.

Our board of directors has unanimously determined that the merger agreement, the merger and the other transactions contemplated thereby are advisable and in the best interests of Leap and its stockholders and has unanimously approved the merger agreement and the merger. The board of directors unanimously recommends that you vote FOR the adoption of the merger agreement.

In addition, the Securities and Exchange Commission (which we refer to as the SEC) has adopted rules that require us to seek a non-binding, advisory vote with respect to certain compensation that may be paid to Leap s named executive officers by Leap based on or otherwise relating to the merger. **The board of directors unanimously recommends that you vote FOR the named executive officer merger-related compensation proposal described in the accompanying proxy statement.**

Finally, the board of directors unanimously recommends that you vote FOR the proposal to adjourn the special meeting, if necessary or appropriate, to solicit additional proxies.

The obligations of Leap and AT&T to complete the merger are subject to numerous conditions set forth in the merger agreement. The attached proxy statement provides you with detailed information about the special meeting, the merger agreement and the merger. We encourage you to read this document and the merger agreement carefully and in their entirety. You may also obtain more information about Leap from documents we have filed with the SEC.

Thank you in advance for your continued support and your consideration of this matter.

Sincerely,

S. Douglas Hutcheson

Chief Executive Officer

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Neither the Securities and Exchange Commission nor any state securities regulatory agency has approved or disapproved the merger, passed upon the merits or fairness of the merger or passed upon the adequacy or accuracy of the disclosure in this document. Any representation to the contrary is a criminal offense.

This proxy statement is dated [] [], 2013, and is first being mailed to stockholders on or about [] [], 2013.

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5887 Copley Drive

San Diego, California 92111

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

To be Held on [], 2013

[] [], 2013

Dear Stockholder,

You are invited to attend a special meeting of stockholders of Leap Wireless International, Inc. to be held at [], on [], 2013 at [], for the following purposes:

1. To consider and vote on a proposal to adopt the Agreement and Plan of Merger, dated as of July 12, 2013 (as amended from time to time, the merger agreement), by and among Leap Wireless International, Inc., AT&T Inc., Mariner Acquisition Sub Inc., a wholly owned subsidiary of AT&T Inc. and Laser, Inc., the Stockholders Representative, a copy of which is included as Annex A to the proxy statement of which this notice forms a part, and pursuant to which AT&T will acquire Leap and, pursuant to the merger agreement, Leap stockholders will be entitled to receive \$15.00 in cash, without interest, and one non-transferable contingent value right for each share of common stock of Leap that they own immediately prior to the effective time of the merger (which proposal we refer to as the merger proposal);
2. To consider and vote on an advisory, non-binding proposal regarding certain compensation that may be paid to Leap s named executive officers by Leap based on or otherwise relating to the merger (which proposal we refer to as the advisory say-on-merger-pay proposal); and
3. To consider and vote on a proposal to approve one or more adjournments or postponements of the special meeting to a later date or time, if necessary or appropriate, including adjournments to permit further solicitation of proxies in favor of the proposal to adopt the merger agreement (which proposal we refer to as the adjournment proposal).

THE LEAP BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT YOU VOTE FOR THE MERGER PROPOSAL.

Your vote is very important, regardless of the number of shares of Leap common stock you own. We cannot consummate the merger unless the merger proposal is approved by the affirmative vote of the holders of at least a majority of outstanding shares of Leap common stock entitled to vote at the special meeting.

THE LEAP BOARD OF DIRECTORS ALSO UNANIMOUSLY RECOMMENDS THAT YOU VOTE FOR THE ADVISORY SAY-ON-MERGER-PAY PROPOSAL AND FOR THE ADJOURNMENT PROPOSAL.

Regardless of whether you plan to attend the special meeting in person, Leap requests that you complete, sign, date and return the enclosed proxy card or submit your proxy by telephone or the Internet prior to the special meeting to ensure that your shares will be represented at the special meeting. The failure to vote will have the same effect as a vote AGAINST the approval of the merger proposal. Leap encourages you to submit your proxy via the Internet. Properly executed proxy cards with no instructions indicated on the proxy card will be voted FOR the approval of the merger proposal, FOR the approval of the advisory say-on-merger-pay proposal and FOR the approval of the adjournment proposal. If you attend the special meeting, you may revoke your proxy and vote in person if you wish, even if you have previously returned your proxy card or submitted your proxy by telephone or the Internet. If your shares are held in the name of a broker, bank or other nominee, your shares will not be voted at the special meeting unless you instruct your brokerage firm, bank or other nominee how to vote your shares, and

you must obtain a legal proxy, executed in your favor, from the broker, bank or other nominee to be able to vote in

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person at the special meeting. The failure to instruct your brokerage firm, bank, or other nominee to vote your shares of our common stock FOR approval of the adoption of the merger agreement will have the same effect as voting AGAINST the approval of the merger proposal. Your prompt attention is greatly appreciated.

Under Delaware law, Leap stockholders who do not vote in favor of the merger proposal will have the right to seek appraisal of the fair value of their shares of Leap common stock as determined by the Delaware Court of Chancery if the merger is completed, but only if they submit a written demand for such an appraisal prior to the vote on the merger proposal and comply with the other Delaware law procedures explained in the accompanying proxy statement. Leap stockholders who do not vote in favor of the merger proposal and who submit a written demand for such an appraisal prior to the vote on the merger proposal and comply with the other Delaware law procedures will not receive the merger consideration.

By Order of the Board of Directors,

Leap Wireless International, Inc.

S. Douglas Hutcheson

Chief Executive Officer

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ADDITIONAL INFORMATION

This document incorporates important business and financial information about Leap from documents that are not included in or delivered with this document. See **Where You Can Find More Information** on page [1]. You can obtain documents incorporated by reference in this document by requesting them in writing or by telephone from

Leap Wireless International, Inc.

Attn: Corporate Secretary

5887 Copley Drive

San Diego, California 92111

telephone: (858) 882-6000

You will not be charged for any of these documents that you request. If you wish to request documents, you should do so by [1], 2013, in order to receive them before the special meeting.

For additional questions about the merger, assistance in submitting proxies or voting shares of common stock, or additional copies of the proxy statement or the enclosed proxy card, please contact our proxy solicitor:

Innisfree M&A Incorporated

501 Madison Avenue

New York, NY 10022

Banks and Brokers call collect: (212) 750-5833

All others call toll-free: (888) 750-5834

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SUMMARY

The following summary highlights information in this proxy statement and may not contain all of the information that is important to you. Accordingly, we encourage you to read carefully this entire proxy statement, its annexes and the documents referred to in this proxy statement. We sometimes make reference to Leap Wireless International, Inc. and its subsidiaries in this proxy statement by using the terms Leap, the Company, we, our or us. Each item in this summary includes a page reference directing you to a more complete description of the item in this proxy statement.

The Companies (Page [1])

Leap Wireless International, Inc. Leap is a Delaware corporation organized in 1998. We are a wireless communications carrier that offers digital wireless services in the U.S. under the Cricket® brand. Our Cricket service offerings provide customers with unlimited nationwide wireless services for a flat rate without requiring a fixed-term contract or a credit check. Leap common stock is listed on the NASDAQ Global Select Market (which we refer to as NASDAQ) under the symbol LEAP. Our principal executive offices are located at 5887 Copley Drive, San Diego, CA 92111. Our telephone number is (858) 882-6000. Leap's home page on the Internet is www.leapwireless.com. The information provided on Leap's website is not part of this proxy statement and is not incorporated herein by reference.

Laser, Inc. Laser, Inc., a Delaware corporation and currently an indirect wholly owned subsidiary of Leap, was formed on July 11, 2013, in connection with the execution of the merger agreement. Laser, Inc. is the Stockholders Representative under the merger agreement and is expected to be the Stockholders Representative party to a CVR Agreement to be entered into at the effective time of the merger (which we refer to as the CVR Agreement). The Stockholders Representative has not undertaken any activities to date, except for activities incidental to its formation and activities undertaken in connection with the execution of the agreement and related transactions. The principal executive offices of the Stockholders Representative are located at c/o Leap Wireless International, Inc. 5887 Copley Drive, San Diego, CA 92111, and its telephone number is (858) 882-6000. Upon completion of the merger, it is currently anticipated that the equity interests of the Stockholders Representative will pass in equal parts to S. Douglas Hutcheson, John D. Harkey, Jr., and Mark H. Rachesky, M.D., each of whom currently serves as a Leap director, or their successors, and that these three individuals will be appointed as directors of the Stockholders Representative. Dr. Rachesky serves as chairman of the Leap board and Mr. Hutcheson also currently serves as chief executive officer of Leap. As the expected directors of the Stockholders Representative, Mr. Hutcheson, Mr. Harkey and Dr. Rachesky will be responsible for managing the maintenance and disposition of the 700 MHz License.

AT&T Inc. AT&T is a Delaware corporation organized in 1983. AT&T's principal executive offices are located at 208 S. Akard St., Dallas, Texas 75202, its telephone number is (210) 821-4105, and its home page on the Internet is www.att.com. AT&T is a holding company whose subsidiaries and affiliates operate in the communications services industry in both the United States and internationally, providing wireless and wireline telecommunications services and equipment. The information provided on AT&T's website is not part of this proxy statement and is not incorporated herein by reference.

Mariner Acquisition Sub Inc. Mariner Acquisition Sub Inc., a Delaware corporation, was formed solely for the purpose of facilitating AT&T's acquisition of Leap. Mariner Acquisition Sub Inc. has not carried on any activities to date, except for activities incidental to its formation and activities undertaken in connection with the merger and related transactions. Upon consummation of the proposed merger, Mariner Acquisition Sub Inc. will merge with and into Leap and will cease to exist. Mariner Acquisition Sub Inc.'s principal executive offices are located at c/o AT&T Inc., 208 S. Akard St., Dallas, Texas 75202, and its telephone number is (210) 821-4105.

The Merger (Page [1])

The Agreement and Plan of Merger, dated July 12, 2013 (which we refer to, as it may be amended from time to time, as the merger agreement), by and among Leap, AT&T, the Stockholders Representative, and Merger Sub, provides that Merger Sub will merge with and into Leap (which we refer to as the merger). As a result of the merger, Leap will become a wholly owned subsidiary of AT&T. Upon completion of the merger, shares of Leap common stock will no longer be listed on any stock exchange or quotation system. If the merger agreement is adopted and the merger is completed, each outstanding share of Leap common stock (other than shares of Leap common stock held by Leap, AT&T or Merger Sub or any other direct or indirect subsidiary of AT&T, or by any holder who has properly exercised appraisal rights of such shares in accordance with Section 262 of the General Corporation Law of the State of Delaware (which we refer to as the DGCL) as described in this proxy statement) will be converted into the right to receive \$15.00 in cash, without interest, less any applicable withholding taxes (which we refer to as the

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per share cash merger consideration), and one CVR (which we refer to collectively along with the per share cash merger consideration as the aggregate consideration). The merger agreement is attached to this proxy statement as Annex A. We urge you to read carefully the merger agreement in its entirety as it is the legal document governing the merger.

The Contingent Value Rights (Page [1])

In the merger, holders of record of Leap common stock and certain holders of Leap options, restricted stock and stock units will receive the right to receive one CVR for each share of Leap common stock on the terms of the CVR Agreement. No CVR is transferrable, except (i) by operation of law; (ii) by will or intestacy (upon the death of the holder of the CVR); (iii) by instrument to an inter vivos or testamentary trust in which the CVRs are to be passed to beneficiaries upon the death of the trustee; (iv) pursuant to a court order; or (v) if the holder is a partnership or limited liability company, a distribution by the transferring partnership or limited liability company to its partners or members, as applicable. The CVRs provide Leap stockholders the right to a pro rata share of the net proceeds from the sale of Leap's 700 MHz A-Block Chicago spectrum license granted by the Federal Communications Commission (which we refer to as the FCC) having the call sign WQJQ707 (which we refer to as the 700 MHz License). Leap will create a wholly owned subsidiary (which we refer to as Licenseco), and transfer the 700 MHz License to Licenseco prior to the effective time of the merger.

Each CVR will entitle its holder to receive a *pro rata* share of the net proceeds resulting from the future sale of the 700 MHz License. The proceeds paid to the CVR holders (which we refer to as the Distributable Proceeds) will equal the difference between:

the cash proceeds received by Leap or any of its affiliates from the sale of the 700 MHz License or Licenseco or any Licenseco entity; and

all fees, expenses and other amounts incurred or spent by Leap and its affiliates in accordance with the CVR Agreement, including:

after the effective time of the merger with respect to the 700 MHz License or Licenseco entities, the payments and costs due to the rights agent, fees and expenses paid to the Stockholders Representative or its legal or financial advisors in connection with the sale of the 700 MHz License and any amounts otherwise paid or incurred by the Stockholders Representative (including any compensation paid to directors, officers, employees or contractors of the Stockholders Representative, including possible performance-based compensation), any filing fees incurred by Leap and its affiliates in connection with maintaining the 700 MHz License or the Licenseco entities or in connection with the direct or indirect sale of the 700 MHz License, any amounts reasonably incurred following consultation with the Stockholders Representative by Leap and its affiliates in connection with maintaining the 700 MHz License after the effective time of the merger or as required by law, amounts paid to outside advisors previously approved by the Stockholders Representative in connection with the CVRs after the effective time, the amounts reasonably incurred by AT&T and its affiliates after reasonable advance notice to the Stockholders Representative as expenses with respect to actions taken in connection with obtaining regulatory approval for the sale of the 700 MHz License and up to \$10,000,000 for amounts previously advanced to Licenseco to pay operating expenses and other expenses reasonably related to the sale of the 700 MHz License; and

between the date of the merger agreement and the effective time of the merger agreement with respect to the 700 MHz License, the establishment of Licenseco and the transfer of the 700 MHz License to it, the issuance of the CVRs and any amounts otherwise paid by Leap or any of its affiliates to, paid by or incurred by the Stockholders Representative.

Distributable Proceeds shall be reduced by (i) an amount equal to the product of (A) (x) the excess of the cash proceeds directly or indirectly received by the Leap or its affiliates with respect to the 700 MHz License or Licenseco over (y) the tax basis of the 700 MHz License immediately prior to the effective time of the merger and without giving effect to any election under Section 338(g) of the Code made by AT&T or any of its affiliates and (B) an assumed tax rate of 38.5%, and (ii) the amount of unsatisfied contingent liabilities related to the 700 MHz License, Licenseco, the sale agreement or the transactions contemplated by the CVR Agreement.

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Proceeds that were not Distributable Proceeds because of clause (ii) in the preceding sentence prior to the end of the two-year period shall become Distributable Proceeds promptly upon satisfaction or elimination of an unsatisfied contingent liability except to the extent used to satisfy the liability or to the extent of other unsatisfied contingent liabilities.

The Stockholders Representative that is a party to the merger agreement will also be the Stockholders Representative for purposes of the CVR Agreement as contemplated by the merger agreement. The merger agreement appoints, authorizes, and empowers the Stockholders Representative to be the exclusive representative, agent, and attorney-in-fact for the CVR holders. The Stockholders Representative has the power to make all decisions and to act on behalf of and as agent for the CVR holders. Under the CVR Agreement, the Stockholders Representative has two years from the effective time of the merger to enter into a definitive agreement relating to the sale of the 700 MHz License and one year thereafter to complete the transaction.

The adoption of the merger agreement constitutes the appointment of the Stockholders Representative and ratifies the Stockholders Representative's authority by each stockholder and future CVR holder. All decisions of the Stockholders Representative shall be final and binding on all of the CVR holders, and no CVR holder has the right to object to or dissent from such decision. The Form of CVR Agreement is attached to this proxy statement as Annex C. We urge you to read carefully the CVR Agreement in its entirety to fully understand your rights as a CVR holder.

There can be no assurance that any payment will be made under the CVRs. There are numerous risks and uncertainties associated with receiving payment under the CVRs, including the possibility that interference and interoperability issues relating to the 700 MHz License will not be resolved, that relief from FCC interim construction benchmarks will not be obtained and that the 700 MHz License will not be sold for a value sufficient to generate a payment to CVR holders, or not sold at all. See The Merger Background of the 700 MHz License on page [1]. In addition, the CVRs are not freely transferable. Also, the tax consequences regarding the receipt of the CVRs are uncertain. See The Merger Material U.S. Federal Income Tax Consequences of the Merger on page [1].

The following table illustrates the undiscounted future value of the aggregate consideration (including the CVRs) assuming the distributable proceeds for the 700 MHz License are between zero and approximately \$400,000,000. For simplicity, this table assumes that there are 84,626,847 shares of Leap common stock outstanding (which represents the number of shares of Leap common stock outstanding, plus the number of shares of common stock subject to issuance pursuant to outstanding stock options, restricted shares and stock unit awards and shares of common stock available for issuance under Leap's employee stock purchase plan, in each case as of August 30, 2013, the most recent practicable date before the filing of this proxy statement). The following table does not take into account the time value of money. The tax basis in the illustration below represents the tax basis in the 700 MHz License as of [], 2013 and the fees, expenses and liabilities are for illustrative purposes only.

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Illustrative Cash Proceeds (Gross) from Sale of 700 MHz License (\$mm)	Illustrative Sum of All Fees, Expenses and Other Amounts Incurred in Accordance with the CVR Agreement (\$mm)	Illustrative Taxes (Assumes Tax Basis of \$182 million and Stipulated Tax Rate of 38.5%) (\$mm)	Illustrative Unsatisfied Contingent Liabilities (\$mm)	Illustrative Distributable Proceeds (\$mm)	Illustrative Proceeds to each CVR Holder (\$ per CVR)	Per Share Cash Merger Consideration (\$)	Illustrative Total Dollar Amount of Aggregate Consideration (\$)
\$0	9	0	1	0	0.00	15.00	15.00
\$75	9	0	1	65	0.77	15.00	15.77
\$150	9	0	1	140	1.65	15.00	16.65
\$225	9	17	1	198	2.34	15.00	17.34
\$300	9	45	1	245	2.89	15.00	17.89
\$375	9	74	1	291	3.44	15.00	18.44
\$450	9	103	1	337	3.98	15.00	18.98
\$525	9	132	1	383	4.53	15.00	19.53

For further information on the potential value of the CVR, see The Merger Opinion of Leap's Financial Advisor Valuation Analyses Potential Value Outcomes for CVR Structure on page [1]. The payment ultimately received from the sale of the 700 MHz License (if any) and the value of the 700 MHz License are each subject to numerous risks and uncertainties. See The Merger Background of the 700 MHz License on page [1].

The Special Meeting (Page [1])

Date, Time and Place. The special meeting will be held at [1], on [1], 2013 at [1].

Purpose. You will be asked to consider and vote upon (1) the adoption of the merger agreement (which we refer to as the merger proposal), (2) on an advisory (non-binding) basis, the compensation to be paid to Leap's named executive officers that is based on or otherwise relates to the merger (which we refer to as the advisory say-on-merger-pay proposal), and (3) the adjournment or postponement of the special meeting to a later date, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the special meeting to adopt the merger agreement (which we refer to as the adjournment proposal, and collectively with the merger proposal and advisory say-on-merger-pay proposal, the proposals).

Record Date and Quorum. You are entitled to vote at the special meeting if you owned shares of Leap common stock at the close of business on [1], 2013, the record date for the special meeting (which we refer to as the record date). You will have one vote for each share of Leap common stock that you owned on the record date. As of the record date, there were [1] shares of Leap common stock issued and outstanding and entitled to vote at the special meeting. The presence at the special meeting, in person or by proxy, of the holders of [1] shares of Leap common stock (a majority of Leap common stock issued, outstanding and entitled to vote at the special meeting) constitutes a quorum for the purpose of considering the proposals.

Vote Required. The merger proposal requires the affirmative vote of the holders of outstanding shares of Leap common stock (which we refer to as common stock) representing at least a majority of the common stock entitled to vote on the matter. The approval of the advisory say-on-merger-pay proposal requires the affirmative vote of the holders of at least a majority of the shares of Leap common stock present in person or represented by proxy at the special meeting and entitled to vote on the matter. In connection with the merger agreement, MHR Fund Management LLC and related entities entered into a voting agreement with Leap and AT&T, which is described in more detail below, pursuant to which they agreed to vote shares of our common stock representing approximately 29.8% of the common stock in favor of the adoption of the merger agreement. If there are insufficient votes at the time of the special meeting, or any adjournment or postponement thereof, to approve the merger proposal, then Leap may, and AT&T may require Leap to, adjourn or postpone the special meeting for a period required by law of not more than ten calendar days. The approval of the adjournment proposal to adjourn the special meeting, if necessary or appropriate, for the purpose of soliciting additional proxies requires the affirmative vote of the holders of at least a majority of the shares of Leap common stock casting votes at the special meeting (excluding abstentions).

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Recommendation of the Leap Board (Page [1])

The Leap board of directors (which we refer to as the Leap board) unanimously determined that the merger and the other transactions contemplated by the merger agreement are fair to, advisable and in the best interests of Leap and its stockholders. The Leap board unanimously recommends that Leap stockholders vote **FOR** the merger proposal, **FOR** the advisory say-on-merger-pay proposal and **FOR** the adjournment proposal.

You should read The Merger Reasons for the Merger; Recommendation of the Leap Board, beginning on page [1], for a more detailed discussion of these and other factors that the Leap board considered in deciding to recommend the adoption of the merger agreement.

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Opinion of Leap's Financial Advisor (Page [1])

In connection with the merger, Leap's financial advisor, Lazard Frères & Co. LLC (which we refer to as "Lazard"), delivered an opinion, dated July 12, 2013, to the Leap board as to the fairness, from a financial point of view and as of such date, to holders of shares of Leap common stock (other than holders who are entitled to and properly demand an appraisal of their shares of Leap common stock) of the aggregate consideration to be paid to such holders in the merger. The full text of Lazard's written opinion is attached to this proxy statement as Annex D and sets forth, among other things, the procedures followed, assumptions made, matters considered and qualifications and limitations on the scope of review undertaken by Lazard in connection with its opinion.

Lazard's engagement and its opinion were for the benefit of the Leap board (in its capacity as such) and Lazard's opinion was rendered to the Leap board in connection with its evaluation of the merger. Lazard's opinion did not address the relative merits of the merger as compared to any other transaction or business strategy in which Leap might engage or the merits of the underlying decision by Leap to engage in the merger. Lazard's opinion was not intended to and does not constitute a recommendation to any stockholder as to how such stockholder should vote or act with respect to the merger or any matter relating thereto.

Treatment of Options and Other Equity Awards (Page [1])

Each outstanding option, whether vested or unvested, that was granted under one of Leap's stock plans and that has an exercise price equal to or below the per share cash merger consideration will be cancelled and will entitle the holder to receive (1) cash equal to the product of the total number of shares underlying the option multiplied by the difference, if any, of the per share cash merger consideration and the exercise price per share underlying each option, less any applicable withholding taxes and (2) one CVR for each share underlying the option. Holders of an outstanding option, whether vested or unvested, with an exercise price greater than the per share cash merger consideration, will have the opportunity to exercise such option prior to the effective time of the merger by providing Leap with a notice of exercise and, for each share underlying the option, a cash amount equal to the difference of the exercise price underlying the option less the per share cash merger consideration. Each option that is so exercised will be settled at the effective time of the merger and the holder will receive one CVR in respect of each share underlying the option and, to the extent the option is not exercised prior to the effective time of the merger, the option will be cancelled at the effective time of the merger for no consideration to the holder.

Each outstanding share of restrict