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# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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## SCHEDULE TO

(Rule 14d-100)

### TENDER OFFER STATEMENT UNDER SECTION 14(d)(1) OR 13(e)(1) OF THE SECURITIES EXCHANGE ACT OF 1934

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## MERRIMACK PHARMACEUTICALS, INC.

(Name of Subject Company (Issuer) and Filing Person (Offeror))

**4.50% Convertible Senior Notes due 2020**

(Title of Class of Securities)

**590328AA8**

(CUSIP Number of Class of Securities)

**Richard Peters, M.D., Ph.D.  
Merrimack Pharmaceuticals, Inc.  
One Kendall Square, Suite B7201  
Cambridge, Massachusetts, 02139  
(617) 441-1000**

(Name, address, and telephone number of person authorized to receive notices and communications on behalf of filing persons)

#### *Copies to:*

**Michael J. Zeidel, Esq.  
Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square  
New York, New York 10036  
(212) 735-3000**

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#### CALCULATION OF FILING FEE

Transaction Valuation (1)	Amount of Filing Fee (2)
\$22,527,900	\$2,804.72

- (1) Calculated solely for purposes of determining the amount of the filing fee. The calculation of the Transaction Valuation assumes that all \$25,031,000 aggregate principal amount of the Company's 4.50% Convertible Senior Notes due 2020 are purchased at the tender offer price of \$900.00 per \$1,000 principal amount of such notes.
- (2) The amount of the filing fee, calculated in accordance with Rule 0-11 of the Securities Exchange Act of 1934, as amended, and the Fee Rate Advisory #1 for Fiscal Year 2018, equals \$124.50 for each \$1,000,000 of the value of the transaction.

- ☐ Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.
- ☐ Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

- ☐ third party tender offer subject to Rule 14d-1.  
☒ issuer tender offer subject to Rule 13e-4.  
☐ going private transaction subject to Rule 13e-3.  
☐ amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer: ☐

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This Tender Offer Statement on Schedule TO is filed by Merrimack Pharmaceuticals, Inc., a Delaware corporation (the “Company”), and relates to the Company’s offer to purchase (“Tender Offer”), upon the terms and subject to the conditions set forth in the attached Offer to Purchase dated October 13, 2017 (as it may be amended or supplemented from time to time, the “Offer to Purchase”) and the related Letter of Transmittal (as it may be amended or supplemented from time to time, the “Letter of Transmittal”), any and all of the outstanding \$25,031,000 million aggregate principal amount (which amount reflects the transactions contemplated by the Settlement Agreement (as defined herein)) of its 4.50% Convertible Senior Notes due 2020 (the “Notes”) for cash in an amount equal to \$900.00 per \$1,000 principal amount of Notes purchased (exclusive of accrued and unpaid interest).

The Company agreed to conduct the Tender Offer in connection with the settlement agreement (the “Settlement Agreement”) it entered into on October 6, 2017 with Wolverine Flagship Fund Trading Limited, 1992 MSF International Ltd. and 1992 Tactical Credit Master Fund, L.P. (collectively, the “Settlement Noteholders”) and Wells Fargo Bank, National Association (the “Trustee”) to resolve the lawsuit pending in the Court of Chancery in the State of Delaware captioned *Wells Fargo Bank, N.A., et al. v. Merrimack Pharmaceuticals, Inc.*, C.A. No. 2017-0199-JTL filed by the Settlement Noteholders and the Trustee. Pursuant to the Settlement Agreement, the Company purchased the \$35,760,000 aggregate principal amount of Notes owned by the Settlement Noteholders for \$32,528,190 in cash, which represents (a) \$900.00 per \$1,000 principal amount of Notes held by the Settlement Noteholders, plus (b) accrued and unpaid interest on the Notes held by the Settlement Noteholders through October 2, 2017.

Copies of the Offer to Purchase and Letter of Transmittal are filed with this Schedule TO as Exhibits (a)(1)(A) and (a)(1)(B), respectively. The Tender Offer will expire at 12:01 a.m., New York City time, on November 10, 2017, or any other date and time to which the Company extends the Tender Offer, unless earlier terminated. This Schedule TO is intended to satisfy the disclosure requirements of Rule 13e-4(c)(2) under the Securities Exchange Act of 1934 (the “Exchange Act”), as amended.

The information set forth in the Offer to Purchase and the Letter of Transmittal is incorporated by reference herein in response to Items 1 through 13 of Schedule TO, including as more specifically set forth below.

### **Item 1. Summary Term Sheet.**

The information set forth in the Offer to Purchase under the heading “Summary” and in the Letter of Transmittal is incorporated herein by reference.

### **Item 2. Subject Company Information.**

- (a) *Name and Address.* The name of the subject company is Merrimack Pharmaceuticals, Inc., a Delaware corporation. The Company’s principal executive offices are located at One Kendall Square, Suite B7201, Cambridge, Massachusetts 02139. The telephone number of its principal office is (617) 441-1000.
- (b) *Securities.* The securities that are the subject of the Tender Offer are the Company’s outstanding Notes. As of October 12, 2017, there was \$25,031,000 million aggregate principal amount of the Notes outstanding, which amount reflects the consummation of the purchase of the Notes from the Settlement Noteholders pursuant to the Settlement Agreement. The information set forth in the Offer to Purchase under the heading “Summary” is incorporated herein by reference.
- (c) *Trading Market and Price.* The information set forth in the Offer to Purchase under the heading “Market Price Information” is incorporated herein by reference.

### **Item 3. Identity and Background of Filing Person.**

- (a) *Name and Address.* The name of the filing person is Merrimack Pharmaceuticals, Inc., a Delaware corporation. The Company’s principal executive offices are located at One Kendall Square, Suite B7201, Cambridge, Massachusetts 02139. The telephone number of its principal office is (617) 441-1000. The filing person is the subject person.

The following persons are directors and executive officers of Merrimack Pharmaceuticals, Inc.

Name	Position
Richard Peters, M.D., Ph.D.	President, Chief Executive Officer and Director
Daryl C. Drummond, Ph.D.	Head of Research
Jean M. Franchi	Chief Financial Officer and Treasurer
Jeffrey A. Munsie	General Counsel, Head of Corporate Operations and Secretary
Thomas E. Needham, Jr.	Chief Business Officer
Sergio L. Santillana, M.D.	Chief Medical Officer
Gary L. Crocker	Chairman of the Board
John M. Dineen	Director
Vivian S. Lee, M.D., Ph.D.	Director
John Mendelsohn, M.D.	Director
Ulrik B. Nielsen, Ph.D.	Director
Michael E. Porter, Ph.D.	Director
James H. Quigley	Director
Russell T. Ray	Director

The business address and telephone number for all of the above directors and executive officers are c/o Merrimack Pharmaceuticals, Inc., One Kendall Square, Suite B7201, Cambridge, Massachusetts 02139 and (617) 441-1000.

#### Item 4. Terms of the Transaction.

- (a) *Material Terms.* The information set forth in the Offer to Purchase under the headings “Summary,” “The Terms of the Tender Offer,” “Certain Considerations,” “Source of Funds” and “Certain U.S. Federal Income Tax Consequences” is incorporated herein by reference.
- (b) *Purchases.* To the knowledge of the Company, based on reasonable inquiry, no Notes are owned by the Company or any executive officer, director or affiliate, associate or majority-owned subsidiary of any of the foregoing and therefore no Notes will be acquired from the Company or any executive officer, director or affiliate, associate or majority-owned subsidiary of the foregoing. The information set forth under the heading “Interest of Directors and Executive Officers; Transactions and Arrangements Concerning the Notes” is incorporated herein by reference.

#### Item 5. Past Contacts, Transactions, Negotiations and Agreements.

- (e) *Agreements Involving the Subject Company’s Securities.* The Company has entered into the following agreements (each of which is filed as an exhibit to this Schedule TO) in connection with the Notes:
- (1) Indenture, dated as of July 17, 2013, by and between the Company and Wells Fargo Bank, National Association, as trustee.
  - (2) First Supplemental Indenture, dated as of July 17, 2013, by and between the Company and Wells Fargo Bank, National Association, as trustee.
  - (3) Stipulation and Agreement of Settlement and Release, dated October 6, 2017, by and among the Company, Wells Fargo Bank, National Association, Wolverine Flagship Fund Trading Limited, 1992 MSF International Ltd (formerly known as Highbridge International LLC) and 1992 Tactical Credit Master Fund, L.P. (formerly known as Highbridge Tactical Credit & Convertibles Master Fund, L.P.).

The Information set forth in the Offer to Purchase under the heading “The Terms of the Tender Offer—Description of the Notes” is incorporated herein by reference. For information regarding the Settlement Agreement, see the discussion under “Item 1.01. Entry into a Material Definitive Agreement” on the Company’s Current Report on Form 8-K filed on October 10, 2017, which information is incorporated herein by reference. For information regarding the Company’s conversion agreements with certain holders of the Notes, see the discussion under “Note 10. Borrowings—Convertible Notes” of the Company’s quarterly report on Form 10-Q for the quarterly period ended June 30, 2017, which information is incorporated herein by reference. For information regarding the Company’s equity incentive plans, see the discussion under the heading “Executive Compensation” of the Company’s Definitive Proxy Statement for its 2017 annual meeting of stockholders, which information is incorporated herein by reference. The information set forth in the Offer to Purchase under the headings “Certain Considerations – Treatment of Notes Not Tendered in the Tender Offer” and “The Depositary and The Information Agent” is incorporated herein by reference.

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**Item 6. Purposes of the Transaction and Plans or Proposals.**

- (a) *Purposes.* The information set forth in the Offer to Purchase under the heading “The Terms of the Tender Offer—Purpose of the Tender Offer” is incorporated herein by reference.
- (b) *Use of Securities Acquired.* The information set forth in the Offer to Purchase under the heading “The Terms of the Tender Offer—Payment for Notes” is incorporated herein by reference.
- (c) *Plans.* At any given time, the Company may be evaluating or in discussions regarding one or more strategic transactions, although the Company currently has no material plans, proposals or negotiations described in Item 1006(c) of Regulation M-A under the Exchange Act to disclose at this time. The information set forth in the Offer to Purchase including in “Certain Considerations – Treatment of Notes Not Tendered in the Tender Offer” and “Source of Funds” (and the documents incorporated by reference therein) is incorporated herein by reference.

**Item 7. Source and Amount of Funds or Other Consideration.**

The information in the Offer to Purchase under the heading “Source of Funds” is incorporated herein by reference in response to Regulation M-A Items 7(a), (b) and (d).

**Item 8. Interest in Securities of the Subject Company.**

- (a) *Securities Ownership.* The information set forth in the Offer to Purchase under the heading “Interest of Directors and Executive Officers; Transactions and Arrangements Concerning the Notes” is incorporated herein by reference.
- (b) *Securities transactions.* The information set forth in the Offer to Purchase under the heading “Interest of Directors and Executive Officers; Transactions and Arrangements Concerning the Notes” is incorporated herein by reference.

**Item 9. Persons/Assets, Retained, Employed, Compensated or Used.**

- (a) *Solicitations or Recommendations.* The information set forth in the Offer to Purchase under the headings “Summary” and “The Depositary and The Information Agent” is incorporated herein by reference.

**Item 10. Financial Statements.**

- (a) *Financial Statements.* Not applicable.
- (b) *Pro Forma.* Not applicable.

**Item 11. Additional Information.**

- (a) *Agreements, Regulatory Requirements and Legal Proceedings.*
  - (1) Not applicable.
  - (2) Not applicable.
  - (3) Not applicable.
  - (4) Not applicable.
  - (5) The information set forth in the Offer to Purchase under the headings “Summary—Why is the Company making the Tender Offer?” and “The Terms of the Tender Offer—Purpose of the Tender Offer” is incorporated herein by reference.

(c) *Other Material Information.* The information contained in the Offer to Purchase and the Letter of Transmittal is incorporated herein by reference.

**Item 12. Exhibits.**

<u>Exhibit No.</u>	<u>Description</u>
(a)(1)(A)*	Offer to Purchase, dated October 13, 2017.
(a)(1)(B)*	Form of Letter of Transmittal.
(a)(5)	Press Release, dated October 13, 2017 (incorporated by reference to Exhibit 99.1 to the Company's Current Report on Form 8-K filed on October 13, 2017).
(d)(1)	Indenture, dated as of July 17, 2013, by and between the Company and Wells Fargo Bank, National Association, as trustee (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed on July 18, 2013).
(d)(2)	First Supplemental Indenture (including the Form of Note), dated as of July 17, 2013, by and between the Company and Wells Fargo Bank, National Association, as trustee (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed on July 18, 2013).
(d)(3)	1999 Stock Option Plan (incorporated by reference to Exhibit 10.1 to the Company's Registration Statement on Form S-1, as amended, filed on July 8, 2011).
(d)(4)	2008 Stock Incentive Plan (incorporated by reference to Exhibit 10.2 to the Company's Registration Statement on Form S-1, as amended, filed on July 8, 2011).
(d)(5)	2011 Stock Incentive Plan (incorporated by reference to Exhibit 10.3 to the Company's Registration Statement on Form S-1, as amended, filed on January 13, 2012).
(d)(6)	Form of Incentive Stock Option Agreement under 2011 Stock Incentive Plan (incorporated by reference to Exhibit 10.4 to the Company's Registration Statement on Form S-1, as amended, filed on January 13, 2012).
(d)(7)	Form of Non-Qualified Stock Option Agreement under 2011 Stock Incentive Plan (incorporated by reference to Exhibit 10.5 to the Company's Registration Statement on Form S-1, as amended, filed on January 13, 2012).
(d)(8)	Form of Conversion Agreement Related to 4.50% Convertible Senior Notes due 2020 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on April 14, 2016).
(d)(9)	Stipulation and Agreement of Settlement and Release, dated October 6, 2017, by and among the Company, Wells Fargo Bank, National Association, Wolverine Flagship Fund Trading Limited, 1992 MSF International Ltd (formerly known as Highbridge International LLC) and 1992 Tactical Credit Master Fund, L.P. (formerly known as Highbridge Tactical Credit & Convertibles Master Fund, L.P.) (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on October 10, 2017).
(g)	Not applicable.
(h)	Not applicable.

\* Filed herewith

**Item 13. Information Required by Schedule 13E-3.**

Not applicable.

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**SIGNATURE**

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

MERRIMACK PHARMACEUTICALS, INC.

By: /s/ Richard Peters, M.D., Ph.D.

Name: Richard Peters, M.D., Ph.D.

Title: President, Chief Executive  
Officer and Director

Dated: October 13, 2017

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**EXHIBIT INDEX**

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(g)	Not applicable.
(h)	Not applicable.

\* Filed herewith

## MERRIMACK PHARMACEUTICALS, INC.

**Offer to Purchase for Cash**  
**any and all outstanding**  
**4.50% Convertible Senior Notes due 2020**  
**(CUSIP No. 590328AA8; ISIN No. US590328AA86)**

The Tender Offer (as defined herein) will expire at 12:01 a.m., New York City time, on November 10, 2017, or any other date and time to which the Company extends such Tender Offer (such date and time, as it may be extended, the “**Expiration Date**”), unless earlier terminated, in the Company’s sole discretion. You must validly tender your Notes (as defined below) at or prior to the Expiration Date to be eligible to receive the Purchase Price (as defined below) for such Notes. The Purchase Price will be payable in cash. Tendered Notes may be validly withdrawn from the Tender Offer at any time at or prior to the Expiration Date. The Tender Offer is subject to the satisfaction or waiver of certain conditions as set forth under the heading “The Terms of the Tender Offer—Conditions to the Tender Offer.”

Upon the terms and subject to the conditions described in this Offer to Purchase (as it may be amended or supplemented from time to time, the “**Offer to Purchase**”) and the accompanying Letter of Transmittal (as it may be amended or supplemented from time to time, the “**Letter of Transmittal**”) and, together with this Offer to Purchase, the “**Offer Documents**”), Merrimack Pharmaceuticals, Inc., a Delaware corporation (the “**Company**,” “**we**,” “**us**,” or “**our**”), hereby offers to purchase any and all of the \$25,031,000 outstanding aggregate principal amount of its 4.50% Convertible Senior Notes due 2020 (the “**Notes**”) for cash in an amount equal to \$900.00 per \$1,000 principal amount of validly tendered and accepted Notes purchased (the “**Purchase Price**”), plus accrued and unpaid interest on such Notes, if any, from July 15, 2017, up to, but not including, the Settlement Date (as defined herein) (“**Accrued Interest**”). The Company refers to the offer to purchase the Notes as the “**Tender Offer**.” The Tender Offer is open to all registered holders (each individually, a “**Holder**” and, collectively, the “**Holders**”) of the Notes. The Tender Offer is subject to the satisfaction or waiver, in the Company’s sole discretion, of certain conditions as described herein. See “The Terms of the Tender Offer—Conditions to the Tender Offer.” The Tender Offer is not conditioned upon a minimum amount of Notes being tendered. The Tender Offer is being conducted in connection with the Settlement Agreement (as defined herein) between the Settlement Noteholders (as defined herein) and the Company. See “The Terms of the Tender Offer—Purpose of the Tender Offer.” **The Offer Documents contain important information that should be read before any decision is made with respect to the Tender Offer. In particular, see “Certain Considerations” beginning on page 22 for a discussion of certain factors you should consider in connection with the Tender Offer.**

Requests for additional copies of this Offer to Purchase or for copies of the related Letter of Transmittal and requests for assistance relating to the procedures for tendering Notes may be directed to Global Bondholder Services Corporation, which is serving as depositary and information agent in connection with the Tender Offer (the “**Depositary**,” the “**Information Agent**” or the “**Depositary and Information Agent**”) at the address and telephone number on the back cover page of this Offer to Purchase. Beneficial owners may contact their broker, dealer, commercial bank, trust company, custodian or other nominee for assistance regarding the Tender Offer.

**NONE OF THE COMPANY, ITS BOARD OF DIRECTORS, ITS OFFICERS, THE DEPOSITARY AND INFORMATION AGENT OR THE TRUSTEE UNDER THE INDENTURE GOVERNING THE NOTES (THE “TRUSTEE”), OR ANY OF THEIR RESPECTIVE AFFILIATES, IS MAKING ANY RECOMMENDATION AS TO WHETHER HOLDERS SHOULD TENDER ANY NOTES IN RESPONSE TO THE TENDER OFFER. HOLDERS MUST MAKE THEIR OWN DECISION AS TO WHETHER TO PARTICIPATE IN THE TENDER OFFER AND, IF SO, THE PRINCIPAL AMOUNT OF NOTES TO TENDER.**

**THIS TRANSACTION HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE “SEC”), NOR HAS THE SEC PASSED UPON THE FAIRNESS OR MERITS OF THIS TRANSACTION OR UPON THE ACCURACY OR ADEQUACY OF THIS OFFER TO PURCHASE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.**

Offer to Purchase dated October 13, 2017



The Tender Offer commenced on October 13, 2017 and will expire on the Expiration Date, unless earlier terminated by the Company. No tenders will be valid if submitted after the Expiration Date. If your Notes are held by a broker, dealer, commercial bank, trust company, custodian or other nominee (each, a “**Nominee**”), such Nominee may have an earlier deadline for accepting tenders. You should promptly contact such Nominee that holds your Notes to determine its deadline. The Tender Offer is open to all registered Holders of the Notes.

The Company will purchase any Notes that have been validly tendered at or prior to the Expiration Date and accepted for purchase, subject to all conditions to the Tender Offer having been either satisfied or waived by the Company, promptly following the Expiration Date (the date of such acceptance and purchase, the “**Settlement Date**”). The Settlement Date is expected to occur within three business days following the Expiration Date, assuming the conditions to the Tender Offer have been either satisfied or waived by the Company at or prior to the Expiration Date.

Subject to compliance with applicable law and the Settlement Agreement, the Company reserves the right, in its sole discretion, to: (1) extend the Expiration Date to a later date and time as announced by the Company; (2) waive or modify in whole or in part any or all of the conditions to the Tender Offer; (3) delay the acceptance for purchase of any Notes or delay the purchase of any Notes; or (4) otherwise modify or terminate the Tender Offer. In the event that the Tender Offer is terminated or otherwise not completed, the Purchase Price will not be paid or become payable to Holders of the Notes, without regard to whether such Holders have validly tendered their Notes (in which case, such tendered Notes will be promptly returned to Holders). The Company will publicly announce any extension, termination or amendment in the manner described under “The Terms of the Tender Offer–Announcements.” There can be no assurance that the Company will exercise its right to extend, terminate or amend the Tender Offer. See “The Terms of the Tender Offer–Expiration Date; Extension; Termination and Amendment.”

Notwithstanding any other provision of the Tender Offer, the Company’s obligation to accept for purchase, and to pay for, any Notes validly tendered pursuant to the Tender Offer is conditioned upon satisfaction or waiver of the General Conditions and the Settlement Condition (as defined herein). The Company expects to use the cash being released from an escrow account (the “Escrow Funds”) pursuant to the Settlement Agreement to finance its payment of the Purchase Price for all Notes validly tendered in the Tender Offer and accepted for purchase by us. The conditions to the Tender Offer are for the sole benefit of the Company and may be asserted by the Company in its sole discretion and may be waived by the Company in whole or in part, at any time and from time to time, in the sole discretion of the Company, regardless of whether any other condition of the Tender Offer is also waived. If the Tender Offer is terminated at any time, the Notes validly tendered and not previously accepted and purchased will be promptly returned to the tendering Holders. The Tender Offer is not conditioned upon a minimum amount of Notes being tendered. See “The Terms of the Tender Offer–Conditions to the Tender Offer.”

Withdrawal rights with respect to the Notes will terminate on the Expiration Date. Thereafter, tenders are irrevocable except that Notes not yet accepted for purchase may be withdrawn at any time after December 11, 2017 (40 business days after the commencement of the Tender Offer). For the withdrawal of a tendered Note to be valid, such withdrawal must comply with the procedures set forth in “The Terms of the Tender Offer–Withdrawal of Tenders.”

In the event that the Company modifies the Purchase Price and there are fewer than 10 business days remaining from and including the date of the announcement of such modification to and including the Expiration Date, the Company will extend the Expiration Date so that at least 10 business days remain until the Expiration Date.

See “Certain U.S. Federal Income Tax Considerations” for a discussion of certain tax matters that should be considered in evaluating the Tender Offer.

If you do not tender your Notes or if you tender Notes that are not accepted for purchase, you will continue to hold your Notes and they will remain outstanding. If the Company consummates the Tender Offer, the trading market for the Notes may be significantly more limited. For a discussion of this and other risks, see “Certain Considerations.”

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## IMPORTANT DATES

Holders of Notes should take note of the following dates in connection with the Tender Offer, which dates may be extended:

Date	Calendar Date and Time	Event
Expiration Date	12:01 a.m., New York City time, on November 10, 2017.	The last date and time for you to validly tender Notes.
Settlement Date	For Notes that have been validly tendered at or prior to the Expiration Date and that are accepted for purchase pursuant to the Tender Offer, settlement will occur on the Settlement Date, which is expected to occur within three business days following the Expiration Date, assuming the conditions to the Tender Offer have been either satisfied or waived by the Company at or prior to the Expiration Date.	The date you are paid the Purchase Price for all Notes that are validly tendered at or prior to the Expiration Date and that are accepted for purchase pursuant to the Tender Offer, plus Accrued Interest.

## IMPORTANT INFORMATION

The Notes are represented by one or more global certificates registered in the name of Cede & Co., the nominee of The Depository Trust Company (“**DTC**”), and held in book-entry form through DTC. DTC is the only registered holder of the Notes. DTC facilitates the clearance and settlement of securities transactions through electronic book-entry changes in accounts of DTC participants. DTC participants include securities brokers and dealers, banks, trust companies, clearing corporations and other organizations.

A beneficial owner whose Notes are held by a Nominee and who desires to tender such Notes in the Tender Offer must contact its Nominee and instruct such Nominee to tender its Notes on such beneficial owner’s behalf. Accordingly, beneficial owners wishing to participate in the Tender Offer should contact their Nominee as soon as possible in order to determine the time by which such owner must take action in order to so participate. See “The Terms of the Tender Offer–Procedure for Tendering Notes.”

DTC has authorized DTC participants that hold Notes on behalf of beneficial owners of Notes through DTC to tender their Notes as if they were Holders. To properly tender Notes, the Depository and Information Agent must receive, at or prior to the Expiration Date:

- a timely confirmation of book-entry transfer of such Notes according to the procedure for book-entry transfer described in this Offer to Purchase; and
- an Agent’s Message (as defined herein) through the automated tender offer program (“**ATOP**”) of DTC or a properly completed and duly executed Letter of Transmittal.

There are no guaranteed delivery procedures provided for by the Company in order to tender Notes in the Tender Offer. For more information regarding the procedures for tendering your Notes, see “The Terms of the Tender Offer–Procedure for Tendering Notes.”

You should read this Offer to Purchase, including the documents incorporated by reference herein, and the Letter of Transmittal carefully before making a decision to tender your Notes.

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**THIS OFFER TO PURCHASE AND RELATED DOCUMENTS DO NOT CONSTITUTE AN OFFER TO BUY OR THE SOLICITATION OF AN OFFER TO SELL NOTES IN ANY JURISDICTION OR IN ANY CIRCUMSTANCES IN WHICH SUCH OFFER OR SOLICITATION IS UNLAWFUL.**

Neither the delivery of this Offer to Purchase and any related documents nor any purchase of Notes by the Company will, under any circumstances, create any implication that the information contained in this Offer to Purchase or in any related document is current as of any time subsequent to the date of such information (or, in the case of a document incorporated by reference, the date of such document incorporated by reference).

No other person has been authorized to give any information or to make any representations with respect to the Tender Offer other than the information and representations contained or incorporated by reference in this Offer to Purchase or in the Letter of Transmittal, and, if given or made, such information or representations must not be relied upon as having been authorized.

From time to time after completion of the Tender Offer, the Company and/or its affiliates may purchase additional Notes through additional tender offers, exchange offers or otherwise. Any future purchases or exchanges may be on the same terms or on terms that are more or less favorable to Holders of Notes than the terms of the Tender Offer, and such differences may be material. Any future purchases or exchanges by the Company and/or its affiliates will depend on various factors existing at that time. There can be no assurance as to which, if any, of these alternatives (or combinations thereof) the Company and/or its affiliates may choose to pursue in the future. Pursuant to Rule 13e-4(f)(6) under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), neither the Company nor its affiliates may purchase any Notes other than pursuant to the Tender Offer until 10 business days after the Expiration Date (or any earlier date of termination) of the Tender Offer. The Notes mature on July 15, 2020, unless earlier repurchased or converted. See “The Terms of the Tender Offer–Description of the Notes.”

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In this Offer to Purchase, the Company has used the convention of referring to all Notes that have been validly tendered and not validly withdrawn as having been “validly tendered.” Any Notes validly withdrawn will be deemed to be not validly tendered for purposes of the Tender Offer.

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## SUMMARY

*The following summary highlights selected information from this Offer to Purchase and is provided solely for the convenience of Holders of the Notes. This summary is not intended to be complete and is qualified in its entirety by reference to, and should be read in conjunction with, the information appearing elsewhere or incorporated by reference in this Offer to Purchase. Each undefined capitalized term used in this Summary has the meaning set forth elsewhere in this Offer to Purchase. Holders are urged to read this Offer to Purchase, along with the Letter of Transmittal, in their entirety, including all documents incorporated by reference, before making a decision to tender Notes.*

### Who is offering to purchase the Notes?

Merrimack Pharmaceuticals, Inc., a Delaware corporation, is offering to purchase the Notes. See “The Company.”

### What securities are being sought in the Tender Offer?

We are offering to purchase, upon the terms and subject to the conditions set forth in this Offer to Purchase and the Letter of Transmittal, any and all of the \$25,031,000 outstanding aggregate principal amount of our Notes for cash in an amount equal to \$900.00 per \$1,000 principal amount of Notes purchased, plus Accrued Interest.

As of October 12, 2017, there was \$25,031,000 aggregate principal amount of the Notes outstanding, which amount reflects the consummation of the purchase of the Notes from the Settlement Noteholders pursuant to the Settlement Agreement.

### Why is the Company making the Tender Offer?

The Company agreed to conduct the Tender Offer in connection with the settlement agreement (the “**Settlement Agreement**”) it entered into on October 6, 2017 with Wolverine Flagship Fund Trading Limited, 1992 MSF International Ltd. and 1992 Tactical Credit Master Fund, L.P. (collectively, the “**Settlement Noteholders**”) and Wells Fargo Bank, National Association (the “**Trustee**”) to resolve the lawsuit pending in the Court of Chancery in the State of Delaware captioned *Wells Fargo Bank, N.A., et al. v. Merrimack Pharmaceuticals, Inc.*, C.A. No. 2017-0199-JTL (the “**Delaware Action**”) filed by the Settlement Noteholders and the Trustee. Pursuant to the Settlement Agreement, the Company purchased the \$35,760,000 aggregate principal amount of Notes owned by the Settlement Noteholders for \$32,528,190 in cash, which represents (a) \$900.00 per \$1,000 principal amount of Notes held by the Settlement Noteholders, plus (b) accrued and unpaid interest on the Notes held by the Settlement Noteholders through October 2, 2017. The Delaware Action was filed on March 15, 2017. All of the Notes validly tendered and accepted for purchase in the Tender Offer will be retired and canceled. All the Notes purchased pursuant to the Settlement Agreement were cancelled.

### Will I receive interest on my Notes purchased pursuant to the Tender Offer?

Yes. Holders will receive Accrued Interest to, but not including, the Settlement Date in respect of their Notes that are accepted for purchase.

### How will the Company fund the purchase of the Notes?

We expect to use available cash, including cash being released from an escrow account pursuant to the Settlement Agreement, to finance our payment of the Purchase Price for all Notes validly tendered in the Tender Offer and accepted for purchase by us. The Tender Offer is not conditioned on the receipt of financing.

### What is the purchase price for the Notes?

The Purchase Price for each \$1,000 principal amount of Notes validly tendered and accepted for purchase shall be an amount equal to \$900.00, payable to Holders who validly tender their Notes on or prior to the Expiration Date. In addition, each Holder will receive Accrued Interest on such \$1,000 principal amount of Notes validly tendered and accepted for purchase.

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**What aggregate principal amount of Notes is being sought in the Tender Offer?**

Upon the terms and subject to the conditions of the Tender Offer, we will purchase any and all of our \$25,031,000 aggregate principal amount of outstanding Notes validly tendered prior to 12:01 a.m., New York City time, on November 10, 2017.

**Will all of the Notes that I validly tender in the Tender Offer, and do not validly withdraw, be purchased?**

Upon the terms and subject to the conditions of the Tender Offer, we will purchase all of the Notes that you validly tender pursuant to the Tender Offer and do not validly withdraw.

**May I tender only a portion of the Notes that I own?**

Yes. You do not have to tender all of the Notes that you own in order to participate in the Tender Offer, except that Notes must be tendered in denominations of \$1,000 and any multiple thereof. Holders who do not tender all of their Notes must ensure that they retain a principal amount of Notes equal to or greater than \$1,000.

**Will the Company purchase additional Notes after the Expiration Date of the Tender Offer?**

From time to time after completion of the Tender Offer, we and/or our affiliates may purchase additional Notes through additional tender offers, exchange offers or otherwise. Any future purchases or exchanges may be on the same terms or on terms that are more or less favorable to Holders of Notes than the terms of the Tender Offer, and such differences may be material. Any future purchases or exchanges by us and/or our affiliates will depend on various factors existing at that time. There can be no assurance as to which, if any, of these alternatives (or combinations thereof) we and/or our affiliates may choose to pursue in the future. Pursuant to Rule 13e-4(f)(6) under the Exchange Act, neither we nor our affiliates may purchase any Notes other than pursuant to the Tender Offer until 10 business days after the Expiration Date (or any earlier date of termination) of the Tender Offer.

**When does the Tender Offer expire?**

The Tender Offer will expire at 12:01 a.m., New York City time, on November 10, 2017, unless extended or earlier terminated by us. If a Nominee holds your Notes, such Nominee may have an earlier deadline for accepting tenders. You should promptly contact such Nominee that holds your Notes to determine its deadline.

If we are required by applicable law to make an announcement relating to an extension of the Expiration Date for the Tender Offer, an amendment or termination of the Tender Offer, acceptance of the Notes for purchase, or otherwise, we will do so as promptly as practicable and, in the case of an extension of the Expiration Date, no later than 9:00 a.m., New York City time, on the first business day after the previously scheduled Expiration Date. Unless otherwise specified in this Offer to Purchase or required by applicable law, we may choose to issue an announcement of this type in any reasonable manner, but we will have no obligation to do so other than by issuing a press release or a notice sent via DTC.

**Under what circumstances can the Tender Offer be extended, amended or terminated?**

Subject to applicable law and the Settlement Agreement, we may extend the Tender Offer, at any time or from time to time, for any reason, in our sole discretion. Subject to applicable law and the Settlement Agreement, we also expressly reserve the right, at any time or from time to time, to amend the terms of the Tender Offer in any respect prior to the Expiration Date. If the Tender Offer is terminated, no Notes will be accepted for purchase and any Notes that have been tendered will be returned to the Holders promptly after the termination. For more information regarding our right to extend, amend or terminate the Tender Offer, see “The Terms of the Tender Offer—Expiration Date; Extension; Termination and Amendment.”

**When will I receive payment for my validly tendered Notes?**

The Settlement Date is expected to occur within three business days following the Expiration Date, assuming the conditions to the Tender Offer, including, but not limited to the Settlement Condition, have been either satisfied or waived by us at or prior to the Expiration Date.

Upon satisfaction or waiver by us of the conditions to the Tender Offer, we will (1) accept for purchase Notes validly tendered, and (2) promptly pay the Purchase Price for all Notes accepted for purchase by us. Payment of the Purchase Price will be made with respect to Notes accepted for purchase on the Settlement Date, together with Accrued Interest.

### **What will happen to Notes the Company purchases in the Tender Offer?**

All of the Notes purchased in the Tender Offer will be retired and canceled.

### **What are the significant conditions to the Tender Offer?**

Notwithstanding any other provision of the Tender Offer, our obligation to accept for purchase, and to pay for, any Notes validly tendered pursuant to the Tender Offer is conditioned upon satisfaction or waiver of the General Conditions (as defined herein) and the Settlement Condition. The conditions to the Tender Offer are for our sole benefit and may be asserted by us in our sole discretion and may be waived by us in whole or in part, at any time and from time to time, in our sole discretion, regardless of whether any other condition of the Tender Offer is also waived, at or prior to the Expiration Date. If the Tender Offer is terminated at any time, the Notes validly tendered and not previously accepted and purchased will be promptly returned to the tendering Holders. The Tender Offer is not conditioned upon a minimum amount of Notes being tendered. See “The Terms of the Tender Offer—Conditions to the Tender Offer.”

### **How do I tender my Notes?**

If you desire to tender Notes for which you are the beneficial owner that are held through a Nominee, you should contact such Nominee promptly and instruct the Nominee to tender such Notes on your behalf. To properly tender Notes, the Depository must receive, on or prior to the Expiration Date:

- a timely confirmation of book-entry transfer of such Notes according to the procedure for book-entry transfer described in this Offer to Purchase; and
- an Agent’s Message through DTC’s ATOP or a properly completed and duly executed Letter of Transmittal.

We are not providing for procedures for tenders of Notes to be made by guaranteed delivery. Accordingly, you must allow sufficient time for the necessary tender procedures to be completed during the normal business hours of DTC on or prior to the Expiration Date. If you hold your Notes through a Nominee, you should keep in mind that such entity may require you to take action with respect to the Tender Offer a number of days before the Expiration Date in order for such entity to tender Notes on your behalf on or prior to the Expiration Date. Tenders not completed prior to 12:01 a.m., New York City time, on November 10, 2017, will be disregarded and of no effect (unless the Tender Offer has been extended and such tenders are completed prior to the expiration of the extended Tender Offer).

See “The Terms of the Tender Offer—Procedure for Tendering Notes.” For further information, call the Depository at its telephone number set forth on the back cover of this Offer to Purchase or consult your Nominee for assistance.

### **Once I have tendered the Notes, can I change my mind?**

Tendered Notes may be validly withdrawn at any time at or prior to the Expiration Date. Thereafter, tenders are irrevocable except that Notes not yet accepted for purchase may be withdrawn at any time after December 11, 2017 (40 business days after the commencement of the Tender Offer). For the withdrawal of a tendered Note to be valid, such withdrawal must comply with the procedures set forth in “The Terms of the Tender Offer—Withdrawal of Tenders.”

To validly withdraw Notes, Holders must deliver a written or facsimile notice of withdrawal, or a properly transmitted “Request Message” through ATOP, with the required information (as set forth below under “The Terms of the Tender Offer—Withdrawal of Tenders”) at or prior to the Expiration Date. Notes validly withdrawn prior to the Expiration Date may be tendered and delivered again prior to the Expiration Date in accordance with the procedures set forth in this Offer to Purchase.



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**What are the U.S. federal income tax considerations applicable to me if I validly tender my Notes?**

For a discussion of certain U.S. federal income tax considerations applicable to the disposition of Notes pursuant to the Tender Offer, see “Certain U.S. Federal Income Tax Considerations.”

**Is the Company making any recommendation about the Tender Offer?**

None of us, our Board of Directors, our officers, the Depositary and Information Agent or the Trustee, or any of their respective affiliates, is making any recommendation as to whether you should tender your Notes pursuant to this Offer to Purchase. Holders should determine whether to tender their Notes pursuant to this Offer to Purchase based upon, among other things, their own assessment of the current market value of the Notes, liquidity needs and investment objectives.

**What happens to Notes that are not accepted for purchase?**

We will return any tendered Notes that we do not accept for purchase to their tendering Holder without expense. Notes not tendered and Notes otherwise not purchased pursuant to the Tender Offer will remain outstanding. If the Tender Offer is consummated, the aggregate principal amount of Notes that remain outstanding will be reduced. This may adversely affect the liquidity of and, consequently, the market price for the Notes that remain outstanding after consummation of the Tender Offer. See “Certain Considerations.”

**What if I choose not to tender my Notes?**

Your rights and our obligations under the Notes that remain outstanding after the consummation of the Tender Offer will not change as a result of the Tender Offer. Although Notes not purchased in the Tender Offer will remain outstanding following consummation of the Tender Offer, the purchase of the Notes may result in a smaller trading market for the remaining outstanding Notes, which may cause the market for such Notes to be less liquid and more sporadic, and market prices for such Notes may fluctuate significantly depending on the volume of trading of the Notes. See “Certain Considerations.”

**Who can I contact for more information?**

Global Bondholder Services Corporation is serving as both the Depositary and the Information Agent in connection with the Tender Offer. Beneficial owners may contact their Nominee for assistance regarding the Tender Offer. Requests for additional copies of this Offer to Purchase or for copies of the related Letter of Transmittal and requests for assistance relating to the procedure for tendering Notes may be directed to the Information Agent at the address and telephone number on the back cover page of this Offer to Purchase.

**Who is the trustee of the Notes?**

Wells Fargo Bank, National Association is the Trustee with respect to the Notes under the Indenture (as defined herein) governing the Notes.

**Will I be charged any brokerage commissions if I decide to tender my Notes?**

No brokerage commissions or fees are payable by Holders to us or the Depositary and Information Agent. If your Notes are held through a broker or other Nominee who tenders the Notes on your behalf, such Nominee may charge you a commission for doing so. You should consult with your Nominee to determine whether any charges will apply. See “The Terms of the Tender Offer—Payment for Notes.”

**What is the amount of currently outstanding Notes?**

As of October 12, 2017, there was \$25,031,000 aggregate principal amount of the Notes outstanding, which amount reflects the consummation of the purchase of the Notes from the Settlement Noteholders pursuant to the Settlement Agreement.

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**What is the conversion rate of the Notes?**

Subject to the terms and conditions of the Indenture governing the Notes, the Notes are convertible into cash, shares of our common stock or a combination of cash and shares of our common stock at a conversion rate (subject to adjustment) of 23.5210 shares of common stock per \$1,000 principal amount of Notes, which is equal to a conversion price of approximately \$42.52 per share of our common stock. On or after April 15, 2020, a holder may convert any of its Notes at any time prior to the close of business on the scheduled trading day immediately preceding the maturity date regardless of the foregoing conditions.

The initial conversion rate of the Notes was 160.0000 shares of the Company's common stock per \$1,000 principal amount of Notes, which was equivalent to an initial conversion price of \$6.25 per share of common stock. As a result of the special dividend that was payable on May 26, 2017 to stockholders of record as of the close of business on May 17, 2017, the conversion rate of the Notes was adjusted from 160.0000 shares of the Company's common stock per \$1,000 principal amount of Notes to 235.2112 shares of the Company's common stock per \$1,000 principal amount of Notes, which was equal to a conversion price of approximately \$4.25 per share of our common stock. As a result of a one-for-ten reverse stock split of the Company's common stock effected on September 6, 2017, the conversion rate of the Notes was further adjusted from 235.2112 shares of the Company's common stock per \$1,000 principal amount of Notes to 23.5210 shares of the Company's common stock per \$1,000 principal amount of Notes, which is equal to a conversion price of approximately \$42.52 per share of our common stock. The conversion rate will be subject to further adjustment in some events, but will not be adjusted for any accrued and unpaid interest. In addition, following certain corporate events that occur prior to the maturity date, the Company will increase the conversion rate for a holder who elects to convert its Notes in connection with such a corporate event in certain circumstances.

Our common stock is currently traded on the Nasdaq Global Market under the symbol "MACK." The closing price of our common stock on October 11, 2017 was \$14.21 per share.

**Do Holders have any rights to require the Company to repurchase the Notes?**

If we undergo a Fundamental Change (as defined in the Indenture), subject to certain conditions, holders may require us to repurchase for cash all or part of their Notes in principal amounts of \$1,000 or an integral multiple thereof. The fundamental change repurchase price will be equal to 100% of the principal amount of the Notes to be repurchased, plus accrued and unpaid interest to, but excluding, the fundamental change repurchase date.

## ADDITIONAL INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the SEC. Our SEC filings are available to the public over the Internet at the SEC's website at <http://www.sec.gov>. Copies of certain information filed by us with the SEC are also available on our website at <http://www.merrimack.com>. Our website is not a part of this Offer to Purchase and is not incorporated by reference in this Offer to Purchase. You may also read and copy any document we file at the SEC's Public Reference Room, 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the Public Reference Room.

The Information Agent will provide without charge to each person to whom this Offer to Purchase is delivered upon the request of such person, a copy of any or all of the documents incorporated herein by reference, other than exhibits to such documents (unless such exhibits are specifically incorporated by reference into such documents). Requests for such documents should be directed to the Information Agent at its telephone number and address set forth on the back cover of this Offer to Purchase. The information relating to the Company contained in this Offer to Purchase does not purport to be complete and should be read together with the information contained in the incorporated documents and reports.

In addition, any questions and requests for assistance or requests for additional copies of this Offer to Purchase or the Letter of Transmittal should be directed to the Information Agent at the address listed on the back cover of this Offer to Purchase.

### **Incorporation by Reference**

The SEC allows us to incorporate by reference much of the information we file with the SEC, which means that we can disclose important information to you by referring you to those publicly available documents. The information that we incorporate by reference in this Offer to Purchase is considered to be part of this Offer to Purchase. Because we are incorporating by reference future filings with the SEC, this Offer to Purchase is continually updated and those future filings may modify or supersede some of the information included or incorporated in this Offer to Purchase. This means that you must look at all of the SEC filings that we incorporate by reference to determine if any of the statements in this Offer to Purchase or in any document previously incorporated by reference have been modified or superseded. This Offer to Purchase incorporates by reference the documents listed below and any future filings we make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, or the Exchange Act (in each case, other than those documents or the portions of those documents not deemed to be filed) until the offering of the securities under the registration statement is terminated or completed:

- Our Annual Report on Form 10-K for the fiscal year ended December 31, 2016, filed on March 1, 2017, and amended by Amendment No. 1 on Form 10-K/A, filed on May 1, 2017;
- Our Quarterly Reports on Form 10-Q for the quarterly periods ended March 31, 2017 and June 30, 2017, filed on May 10, 2017 and August 9, 2017, respectively; and
- Our Current Reports on Form 8-K filed on January 9, 2017, January 20, 2017, February 2, 2017, February 7, 2017, March 1, 2017, March 30, 2017, April 5, 2017, April 7, 2017, May 25, 2017, June 16, 2017, July 14, 2017, August 14, 2017, September 6, 2017, September 15, 2017, October 10, 2017 and October 13, 2017.

Any statement contained in any document incorporated by reference into this Offer to Purchase shall be deemed to be modified or superseded to the extent that an inconsistent statement is made in this Offer to Purchase. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Offer to Purchase.

You can obtain any of the documents incorporated by reference in this Offer to Purchase from the SEC's website at the address or website set forth above. You may also request a copy of these filings, at no cost, by writing or telephoning the Information Agent at its address and telephone number set forth on the back cover of this Offer to Purchase.

## FORWARD-LOOKING STATEMENTS

This Offer to Purchase contains forward-looking statements that involve substantial risks and uncertainties. All statements, other than statements of historical facts, contained in this Offer to Purchase, including statements regarding our strategy, future operations, future financial position, future revenues, projected costs, prospects, plans and objectives of management, are forward-looking statements. The words “anticipate,” “believe,” “estimate,” “expect,” “intend,” “may,” “plan,” “predict,” “project,” “target,” “potential,” “will,” “would,” “could,” “should,” “continue” and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words.

The forward-looking statements in this Offer to Purchase include, among other things, statements about:

- our plans to develop and commercialize our clinical stage product candidates and diagnostics;
- our ongoing and planned discovery programs, preclinical studies and clinical trials;
- the timing of the completion of our clinical trials and the availability of results from such trials;
- our ability to establish and maintain collaborations for our product candidates;
- our receipt of payments related to the milestone events under the asset purchase and sale agreement with Ipsen S.A or under the license and collaboration agreement between Baxalta Incorporated, Baxalta US Inc., Baxalta GmbH and Ipsen S.A., when expected or at all;
- the timing of and our ability to obtain and maintain regulatory approvals for our product candidates;
- the rate and degree of market acceptance and clinical utility of our products;
- our intellectual property position;
- our commercialization, marketing and manufacturing capabilities and strategy;
- the potential advantages of our systems biology approach to drug research and development;
- the potential use of our systems biology approach in fields other than oncology;
- the outcome of litigation against us; and
- our estimates regarding expenses, future revenues, capital requirements and needs for additional financing.

We may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements, and you should not place undue reliance on our forward-looking statements. Actual results or events could differ materially from the plans, intentions and expectations disclosed in the forward-looking statements we make. We have included important factors in the cautionary statements included in this Offer to Purchase, particularly in the section captioned “Certain Considerations,” that could cause actual results or events to differ materially from the forward-looking statements that we make. Our forward-looking statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, joint ventures, collaborations or investments that we may make.

You should read this Offer to Purchase completely and with the understanding that our actual future results may be materially different from what we expect. We do not assume any obligation to update any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law.

The forward-looking statements in this Offer to Purchase are excluded from the safe harbor protection provided by Section 27A of the Securities Act and Section 21E of the Securities Exchange Act of 1934.

## THE COMPANY

We are a biopharmaceutical company based in Cambridge, Massachusetts that is outthinking cancer to ensure that patients and their families live fulfilling lives. The Company's mission is to transform cancer care through the smart design and development of targeted solutions based on a deep understanding of cancer pathways and biological markers. All of the Company's product candidates, including three in clinical studies and several others in preclinical development, fit into the Company's strategy of (1) understanding the biological problems the Company is trying to solve, (2) designing specific solutions and (3) developing those solutions for biomarker-selected patients. This three-pronged strategy seeks to ensure optimal patient outcomes.

On April 3, 2017, the Company completed the previously announced transaction (the "**Asset Sale**") with Ipsen S.A. ("**Ipsen**"). Pursuant to the Asset Purchase and Sale Agreement, dated as of January 7, 2017 (the "**Asset Sale Agreement**"), between the Company and Ipsen, the Company sold to Ipsen its right, title and interest in the non-cash assets, equipment, inventory, contracts and intellectual property primarily related to or used in the Company's business operations and activities involving or relating to developing, manufacturing and commercializing ONIVYDE, the Company's first commercial product, and MM-436. The Company received \$575.0 million in cash, subject to a working capital adjustment, and is eligible to receive up to \$450.0 million in additional regulatory approval-based milestone payments. The Company also retained the right to receive net milestone payments of up to \$33.0 million that may become payable pursuant to the license and collaboration agreement with Baxalta Incorporated, Baxalta US Inc. and Baxalta GmbH for the ex-U.S. development and commercialization of ONIVYDE.

The Company's non-commercial assets, including its clinical and preclinical development programs, were not included in the Asset Sale and remain assets of the Company. As of the closing of the Asset Sale, the Company's most advanced programs are as follows:

- MM-121 (seribantumab), a fully human monoclonal antibody that binds to the ErbB3 (HER3) receptor and targets heregulin positive cancers. The Company is currently conducting the Phase 2 randomized SHERLOC clinical trial evaluating MM-121 in heregulin positive non-small cell lung cancer patients in combination with docetaxel or pemetrexed and plans to initiate the Phase 2 randomized SHERBOC clinical trial in 2017 in heregulin positive, hormone receptor positive, ErbB2 (HER2) negative, metastatic breast cancer patients;
- MM-141 (istiratumab), a fully human bispecific tetravalent monoclonal antibody designed to block tumor survival signals by targeting receptor complexes containing the insulin-like growth factor 1 ("**IGF-1**") receptor and ErbB3 (HER3) cell surface receptors. The Company is currently conducting the Phase 2 randomized CARRIE clinical trial evaluating MM-141 in previously untreated metastatic pancreatic cancer patients with high levels of free IGF-1 in combination with nab-paclitaxel and gemcitabine; and
- MM-310, an antibody-directed nanotherapeutic ("**ADN**") that contains a novel prodrug of the highly potent chemotherapy docetaxel and targets the ephrin receptor A2 ("**EphA2**") receptor, which is highly expressed in most solid tumor types. MM-310 was designed to improve the therapeutic window of docetaxel in major oncology indications, such as prostate, ovarian, bladder, gastric, pancreatic and lung cancers. The Company initiated a Phase 1 clinical trial to evaluate safety and preliminary activity of MM-310 in the first quarter of 2017.

In addition to its clinical-stage programs, the Company has several product candidates in preclinical development and a discovery effort advancing additional candidate medicines.

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## **DIVIDEND POLICY**

We have never declared or paid cash dividends on our common stock, and we do not expect to pay any regular cash dividends on our common stock in the foreseeable future. However, on April 5, 2017, the Company announced that its Board of Directors authorized and declared a special cash dividend of \$140.0 million on the Company's common stock. The special dividend was payable on May 26, 2017 to stockholders of record as of the close of business on May 17, 2017. The special dividend resulted in a decrease to additional paid-in capital. In addition, the terms of any future debt agreements may preclude us from paying dividends. As a result of (a) the amount that the Company paid pursuant to the Settlement Agreement, (b) the amount that the Company expects to pay to acquire the Notes in this Tender Offer and (c) other costs and expenses incurred by the Company related to the Delaware Action, the Company will have exhausted the full amount of the Escrow Funds and does not intend to declare an additional special dividend with respect to any portion of the Escrow Funds.

## Description of the Notes

The Notes were issued pursuant to the First Supplemental Indenture, dated as of July 17, 2013 (the “**First Supplemental Indenture**”), to the Indenture, dated as of July 17, 2013 (the “**Base Indenture**” and, together with the First Supplemental Indenture, the “**Indenture**”), between the Company and Wells Fargo Bank, National Association, as trustee (the “**Trustee**”). The following description of the Notes and any other description of the Notes contained in this Offer to Purchase, the Letter of Transmittal or in any other document related to the Tender Offer are qualified in their entirety by reference to the Indenture. Copies of the Indenture are available from the Information Agent at the address and telephone numbers set forth on the back cover of this Offer to Purchase. Such material may also be accessed electronically at the SEC’s website located at [www.sec.gov](http://www.sec.gov).

The terms and conditions governing the Notes, including the covenants and other protective provisions contained in the Indenture, will remain unchanged by the Tender Offer. No amendments to the Indenture are being sought in connection with the Tender Offer.

As of October 12, 2017, there was \$25,031,000 aggregate principal amount of the Notes outstanding, which amount reflects the consummation of the purchase of the Notes from the Settlement Noteholders pursuant to the Settlement Agreement.

The Notes are general unsecured obligations of the Company and rank senior in right of payment to all of our indebtedness that is expressly subordinated in right of payment to the notes. The Notes rank equal in right of payment with all of our liabilities that are not so subordinated. The Notes effectively rank junior to any of our secured indebtedness to the extent of the value of the assets securing such indebtedness. The Notes rank structurally junior to all indebtedness and other liabilities (including trade payables) of our subsidiaries. The Notes are obligations exclusively of the Company and not of any of our subsidiaries.

The Notes mature on July 15, 2020, unless earlier repurchased or converted. The repurchase and conversion provisions of the Notes are as follows:

### *Conversion Rights*

Holders may convert their Notes at their option at any time prior to the close of business on the business day immediately preceding April 15, 2020 only under the following circumstances: (1) during any calendar quarter commencing after September 30, 2013 (and only during such calendar quarter), if the last reported sale price of the common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each applicable trading day; (2) during the five business day period after any five consecutive trading day period (the “**measurement period**”) in which the trading price (as defined in the Notes) per \$1,000 principal amount of Notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price of the Company’s common stock and the conversion rate on each such trading day; or (3) upon the occurrence of specified corporate events set forth in the Indenture. On or after April 15, 2020 until the close of business on the business day immediately preceding the maturity date of the Notes, holders may convert their Notes at any time, regardless of the foregoing circumstances at a conversion rate of 23.5210 shares of common stock per \$1,000 principal amount of Notes, which is equal to a conversion price of approximately \$42.52 per share of our common stock. Upon any conversion of the Notes, the Notes may be settled, at the Company’s election, in cash, shares of the Company’s common stock or a combination of cash and shares of the Company’s common stock, as described in the Indenture governing the Notes.

The initial conversion rate of the Notes was 160.0000 shares of the Company’s common stock per \$1,000 principal amount of Notes, which was equivalent to an initial conversion price of \$6.25 per share of common stock. As a result of the special dividend that was payable on May 26, 2017 to stockholders of record as of the close of business on May 17, 2017, the conversion rate of the Notes was adjusted from 160.0000 shares of the Company’s common stock per \$1,000 principal amount of Notes to 235.2112 shares of the Company’s common stock per \$1,000 principal amount of Notes, which was equal to a conversion price of approximately \$4.25 per share of our common stock. As a result of a one-for-ten reverse stock split of the Company’s common stock effected on September 6,

2017, the conversion rate of the Notes was further adjusted from 235.2112 shares of the Company's common stock per \$1,000 principal amount of Notes to 23.5210 shares of the Company's common stock per \$1,000 principal amount of Notes, which is equal to a conversion price of approximately \$42.52 per share of our common stock. The conversion rate will be subject to further adjustment in some events, but will not be adjusted for any accrued and unpaid interest. In addition, following certain corporate events that occur prior to the maturity date, the Company will increase the conversion rate for a holder who elects to convert its Notes in connection with such a corporate event in certain circumstances.

### **Principal Terms of the Tender Offer**

Upon the terms and subject to the conditions described in the Offer Documents, the Company hereby offers to purchase for cash any and all of the outstanding \$25,031,000 aggregate principal amount of its Notes.

Subject to the terms and conditions of the Tender Offer, the consideration for each \$1,000 principal amount of Notes validly tendered and accepted for purchase pursuant to the Tender Offer will be the Purchase Price. In addition to the Purchase Price, all Holders of Notes accepted for purchase pursuant to the Tender Offer will, on the Settlement Date, also receive Accrued Interest.

The Tender Offer commenced on October 13, 2017 and will expire on the Expiration Date, unless earlier terminated by the Company. No tenders will be valid if submitted after the Expiration Date. If a Nominee holds your Notes, such Nominee may have an earlier deadline for accepting the tenders. You should promptly contact such Nominee that holds your Notes to determine its deadline. The Tender Offer is open to all registered Holders of the Notes.

The Company will purchase any Notes that have been validly tendered at or prior to the Expiration Date and accepted for purchase, subject to all conditions to the Tender Offer having been either satisfied or waived by the Company, promptly following the Expiration Date. The Settlement Date is expected to occur within three business days following the Expiration Date, assuming the conditions to the Tender Offer have been either satisfied or waived by the Company at or prior to the Expiration Date.

Subject to compliance with applicable law and the Settlement Agreement, the Company reserves the right, in its sole discretion, to: (1) extend the Expiration Date to a later date and time as announced by the Company; (2) waive or modify in whole or in part any or all of the conditions to the Tender Offer; (3) delay the acceptance for purchase of any Notes or delay the purchase of any Notes; or (4) otherwise modify or terminate the Tender Offer. In the event that the Tender Offer is terminated or otherwise not completed, the Purchase Price will not be paid or become payable to Holders of the Notes, without regard to whether such Holders have validly tendered their Notes (in which case, such tendered Notes will be promptly returned to Holders at our expense). The Company will publicly announce any extension, termination or amendment in the manner described under "–Announcements." There can be no assurance that the Company will exercise its right to extend, terminate or amend the Tender Offer. See "–Expiration Date; Extension; Termination and Amendment."

Notwithstanding any other provision of the Tender Offer, the Company's obligation to accept for purchase, and to pay for, any Notes validly tendered pursuant to the Tender Offer is conditioned upon satisfaction or waiver of the General Conditions. The Company expects to use the Escrow Funds to finance its payment of the Purchase Price for all Notes validly tendered in the Tender Offer and accepted for purchase by us. The obligation of the Company to consummate the Tender Offer is subject to the General Conditions and the Settlement Condition. The conditions to the Tender Offer are for the sole benefit of the Company and may be asserted by the Company in its sole discretion and may be waived by the Company in whole or in part, at any time and from time to time, in the sole discretion of the Company, regardless of whether any other condition of the Tender Offer is also waived, at or prior to the Expiration Date. If the Tender Offer is terminated at any time, the Notes validly tendered and not previously accepted and purchased will be promptly returned to the tendering Holders. The Tender Offer is not conditioned upon a minimum amount of Notes being tendered. See "–Conditions to the Tender Offer."

Withdrawal rights with respect to the Notes will terminate on the Expiration Date. Thereafter, tenders are irrevocable except that Notes not yet accepted for purchase may be withdrawn at any time after December 11, 2017 (40 business days after the commencement of the Tender Offer). For the withdrawal of a tendered Note to be valid, such withdrawal must comply with the procedures set forth in "–Withdrawal of Tenders." In the event that the



Company modifies the Purchase Price and there are fewer than 10 business days remaining from and including the date of the announcement of such modification to and including the Expiration Date of the Tender Offer, the Company will extend the Expiration Date so that at least 10 business days remain until the Expiration Date.

**NONE OF THE COMPANY, ITS BOARD OF DIRECTORS, ITS OFFICERS, THE DEPOSITARY AND THE INFORMATION AGENT OR THE TRUSTEE, OR ANY OF THEIR RESPECTIVE AFFILIATES, IS MAKING ANY RECOMMENDATION AS TO WHETHER HOLDERS SHOULD TENDER ANY NOTES IN RESPONSE TO THE TENDER OFFER. HOLDERS MUST MAKE THEIR OWN DECISION AS TO WHETHER TO PARTICIPATE IN THE TENDER OFFER AND, IF SO, THE PRINCIPAL AMOUNT OF NOTES TO TENDER.**

#### **Payment for Notes**

Payment pursuant to the Tender Offer will be made by the deposit of the Purchase Price for all Notes validly tendered in the Tender Offer and accepted for purchase by us, plus Accrued Interest on such Notes, in immediately available funds by the Company on the Settlement Date with the Depositary, which will act as agent for tendering Holders for the purpose of receiving payment from the Company and transmitting such payment to tendering Holders. For purposes of the Tender Offer, the Company will be deemed to have accepted for purchase validly tendered Notes if, as and when the Company gives oral (confirmed in writing) or written notice thereof to the Depositary and Information Agent.

The Company expressly reserves the right, in its sole discretion and subject to Rule 14e-1(c) under the Exchange Act, to delay acceptance for purchase of, or payment for, Notes if any of the conditions to the Tender Offer shall not have been satisfied or waived, or in order to comply, in whole or in part, with any applicable law. See “–Conditions to the Tender Offer.” In all cases, payment by the Depositary to Holders or beneficial owners of the Purchase Price and Accrued Interest for Notes purchased pursuant to the Tender Offer will be made only after timely receipt by the Depositary prior to the Expiration Date for such Tender Offer of (1) timely confirmation of a book-entry transfer of such Notes into the Depositary’s account at DTC pursuant to the procedures set forth under “–Procedure for Tendering Notes” and (2) a properly completed and duly executed Letter of Transmittal (or manually signed facsimile thereof) or a properly transmitted Agent’s Message, along with any other documents required by the Letter of Transmittal.

If any tendered Notes are not purchased pursuant to the Tender Offer for any reason, such Notes not purchased will be returned promptly, without expense, to the tendering Holder (or, in the case of Notes tendered by book-entry transfer, such Notes will be promptly credited to the account maintained at DTC from which Notes were delivered) after the expiration or termination of the Tender Offer.

Holders whose Notes are accepted for purchase pursuant to the Tender Offer will be entitled to receive the Purchase Price plus Accrued Interest. Under no circumstances will any additional interest be payable because of any delay in the transmission of funds to the Holders of purchased Notes or otherwise.

All Notes validly tendered and accepted for purchase in the Tender Offer will be retired and canceled.

Tendering Holders of Notes purchased in the Tender Offer will not be obligated to pay brokerage commissions or fees to the Company or the Depositary and Information Agent or, except as otherwise provided in Instruction 7 of the Letter of Transmittal, transfer taxes with respect to the purchase of any Notes in the Tender Offer. If your Notes are held through a broker or other Nominee who tenders the Notes on your behalf, such broker or Nominee may charge you a commission for doing so. You should consult with your broker or Nominee to determine whether any charges will apply.

The Notes may be tendered and accepted for purchase only in principal amounts equal to minimum denominations of \$1,000 and integral multiples of \$1,000 in excess thereof. Holders who do not tender all of their Notes must ensure that they retain a principal amount of Notes equal to or greater than \$1,000.

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## Purpose of the Tender Offer

The Company agreed to conduct the Tender Offer in connection with the Settlement Agreement it entered into on October 6, 2017 with the Settlement Noteholders and the Trustee to resolve the Delaware Action filed by the Settlement Noteholders and the Trustee. Pursuant to the Settlement Agreement, the Company purchased the \$35,760,000 aggregate principal amount of Notes owned by the Settlement Noteholders for \$32,528,190 in cash, which represents (a) \$900.00 per \$1,000 principal amount of Notes held by the Settlement Noteholders, plus (b) accrued and unpaid interest on the Notes held by the Settlement Noteholders through October 2, 2017. The Delaware Action was filed on March 15, 2017. All of the Notes validly tendered and accepted for purchase in the Tender Offer will be retired and canceled. All the Notes purchased pursuant to the Settlement Agreement were cancelled.

**From time to time after completion of the Tender Offer, the Company and/or its affiliates may purchase additional Notes through additional tender offers, exchange offers or otherwise. Any future purchases or exchanges may be on the same terms or on terms that are more or less favorable to Holders of Notes than the terms of the Tender Offer, and such differences may be material. Any future purchases or exchanges by the Company and/or its affiliates will depend on various factors existing at that time. There can be no assurance as to which, if any, of these alternatives (or combinations thereof) the Company and/or its affiliates may choose to pursue in the future. Pursuant to Rule 13e-4(f)(6) under the Exchange Act, neither the Company nor its affiliates may purchase any Notes other than pursuant to the Tender Offer until 10 business days after the Expiration Date (or any earlier date of termination) of the Tender Offer.**

## Conditions to the Tender Offer

Notwithstanding any other provision of this Offer to Purchase, and in addition to (and not in limitation of) the Company's right to extend and amend the Tender Offer at any time, in the Company's sole discretion, the Company will not be required to accept for purchase, or to pay for, Notes validly tendered pursuant to the Tender Offer and may terminate, extend or amend the Tender Offer, and may (subject to Rule 14e-1(c) under the Exchange Act, which requires that an offeror pay the consideration offered or return the securities deposited by or on behalf of the Holders thereof promptly after the termination or withdrawal of a tender offer) postpone the acceptance for purchase of, and payment for, Notes so tendered, if at or prior to the Expiration Date:

- the Settlement Condition has not been satisfied, or
- one or more of the General Conditions have not been satisfied.

The “**Settlement Condition**” shall be deemed to be satisfied if pursuant to the Settlement Agreement: (i) the parties to the Settlement Agreement sign and file the Dismissal and the Trustee Dismissal (each as defined in the Settlement Agreement) with the Delaware Court of Chancery and (ii) the Delaware Court of Chancery enters a dismissal of the Delaware Action on its docket.

All the “General Conditions” shall be deemed to be satisfied if on or after the date of this Offer to Purchase and at or prior to the Expiration Date:

- there shall not have been instituted or threatened or be pending any action, proceeding or investigation (whether formal or informal), or there shall not have been any material adverse development to any action or proceeding currently instituted, threatened or pending, before or by any court, governmental, regulatory or administrative agency or instrumentality, or by any other person, in connection with the Tender Offer that, in our reasonable judgment would or might prohibit, prevent, restrict or delay consummation of the Tender Offer;
- no order, statute, rule, regulation, executive order, stay, decree, judgment or injunction shall have been proposed, enacted, entered, issued, promulgated, enforced or deemed applicable by any court or governmental, regulatory or administrative agency or instrumentality that, in our reasonable judgment would or might prohibit, prevent, restrict or delay consummation of the Tender Offer;

- the Trustee shall not have objected in any respect to or taken action that could, in our reasonable judgment, adversely affect the consummation of the Tender Offer or conflict with our obligations under the indenture or shall not have taken any action that challenges the validity or effectiveness of the procedures used by us in the making of the Tender Offer or the acceptance of, or payment for, some or all of the Notes pursuant to the Tender Offer;
- there has not occurred (a) any general suspension of, or limitation on prices for, trading in securities in the securities or financial markets, (b) a material impairment in the trading market for debt securities, (c) a declaration of a banking moratorium or any suspension of payments in respect to banks in the United States or other major financial markets, (d) any limitation (whether or not mandatory) by any government or governmental, administrative or regulatory authority or agency, domestic or foreign, or other event that, in our reasonable judgment, might affect the extension of credit by banks or other lending institutions, (e) a commencement of a war, armed hostilities, terrorist acts or other national or international calamity directly or indirectly involving the United States or (f) in the case of any of the foregoing existing on the date hereof, in the reasonable judgment of the Company, a material acceleration or worsening thereof; or
- a tender or exchange tender offer for any or all of our shares of common stock, or any merger, acquisition, business combination, strategic transaction or other similar transaction with or involving us or any subsidiary, has not been proposed, announced or made by us or any person or has not been publicly disclosed.

The foregoing conditions are for the Company's sole benefit and may be asserted by the Company in its sole discretion or may be waived by the Company in whole or in part, at any time and from time to time, in the Company's sole discretion, regardless of whether any other condition of the Tender Offer is also waived, at or prior to the Expiration Date. If any condition to the Tender Offer is not satisfied or waived by the Company prior to the Expiration Date, the Company reserves the right, in its sole discretion, subject to applicable law and the Settlement Agreement:

- to terminate the Tender Offer and return any tendered Notes;
- to waive all unsatisfied conditions and accept for purchase Notes that are validly tendered prior to the Expiration Date;
- to extend the Tender Offer and retain the Notes that have been tendered during the period for which the Tender Offer is extended; or
- to otherwise amend the Tender Offer.

The failure by the Company at any time to exercise any of the foregoing rights will not be deemed a waiver of any other right and each right will be deemed an ongoing right that may be asserted at any time and from time to time. The Tender Offer is not conditioned upon a minimum amount of Notes being tendered.

#### **Procedure for Tendering Notes**

**The method of delivery of Notes and Letters of Transmittal, any required signature guarantees and all other required documents, including delivery through DTC and any acceptance of an Agent's Message transmitted through ATOP, is at the election and risk of the person tendering Notes and delivering Letters of Transmittal or transmitting an Agent's Message and, except as otherwise provided in the Letter of Transmittal, delivery will be deemed made only when actually received by the Depositary. DELIVERY OF DOCUMENTS TO DTC DOES NOT CONSTITUTE DELIVERY TO THE DEPOSITARY. If delivery is by mail, it is suggested that Holders use properly insured, registered mail with return receipt requested and that the mailing be made sufficiently in advance of the Expiration Date to permit delivery to the Depositary at or prior to such time. Holders desiring to tender Notes must allow sufficient time for completion of the ATOP procedures during normal business hours of DTC. Manually signed facsimile copies of the Letter of Transmittal, properly completed and duly executed, will be accepted for purchase. In no event shall the Holder send any documents or Notes to the Company.**

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### *Tender of Notes Held Through a Nominee*

To effectively tender Notes that are held of record by a Nominee, the beneficial owner thereof must timely instruct such Nominee to tender the Notes on the beneficial owner's behalf. Any beneficial owner of Notes held of record by DTC or its Nominee, through authority granted by DTC, may direct the DTC participant through which such beneficial owner's Notes are held in DTC to tender Notes on such beneficial owner's behalf.

### *Tender of Notes Held Through DTC*

To effectively tender Notes that are held through DTC, DTC participants should either (1) properly complete and duly execute the Letter of Transmittal, together with any other documents required by the Letter of Transmittal, and mail or deliver the Letter of Transmittal (or a manually signed facsimile thereof) and such other documents to the Depository or (2) electronically transmit their acceptance through ATOP (and thereby tender the Notes), for which the transaction will be eligible, followed by a properly transmitted Agent's Message delivered to the Depository. Upon receipt of such Holder's acceptance through ATOP, DTC will edit and verify the acceptance and send an Agent's Message to the Depository for its acceptance. Delivery of tendered Notes must be made to the Depository pursuant to the book-entry delivery procedures set forth below.

Except as provided below, unless the Notes being tendered are deposited with the Depository at or prior to the Expiration Date (accompanied by a properly completed and duly executed Letter of Transmittal or a properly transmitted Agent's Message, as applicable), the Company may, at its option, treat such tender as defective for purposes of the right to receive the Purchase Price for the Notes being tendered. Payment for tendered Notes will be made only against deposit of the tendered Notes and delivery of all other required documents.

In order to validly tender Notes at or prior to the Expiration Date with respect to Notes transferred pursuant to ATOP, a DTC participant using ATOP must also properly transmit an Agent's Message. Pursuant to authority granted by DTC, any DTC participant that has Notes credited to its DTC account at any time (and thereby held of record by DTC's nominee) may directly instruct the Depository to tender Notes at or prior to the Expiration Date as though it were the registered Holder thereof by so transmitting an Agent's Message.

### *Book-Entry Delivery and Tender of Notes Through ATOP*

Promptly after commencement of the Tender Offer, the Depository will establish one or more new accounts (or utilize existing accounts) with respect to the Notes at DTC for purposes of the Tender Offer (to the extent such arrangements have not been made previously by the Depository). Any financial institution that is a participant in DTC may make book-entry delivery of the Notes credited to such participant's DTC account by causing DTC to transfer such Notes into the Depository's account or accounts at DTC in accordance with DTC's procedures for such transfer. Although delivery of Notes may be effected through book-entry transfer into the Depository's account at DTC, the Letter of Transmittal (or manually signed facsimile thereof), with any required signature guarantees, or (in connection with a book-entry transfer) an Agent's Message in lieu of the Letter of Transmittal, and any other required documents, must, in any case, be transmitted to and received by the Depository at or prior to the Expiration Date. Delivery of documents to DTC does not constitute delivery to the Depository. The confirmation of a book-entry transfer into the Depository's account at DTC as described above is referred to herein as a **"Book-Entry Confirmation."**

The term **"Agent's Message"** means a message transmitted by DTC to, and received by, the Depository and forming a part of the Book-Entry Confirmation, which states that DTC has received an express acknowledgment from the tendering participant stating (1) the aggregate principal amount of Notes to be tendered by such participant, (2) that such participant has received copies of the Offer Documents and agrees to be bound by the terms and conditions of the Tender Offer as described herein and in the Letter of Transmittal and (3) that the Company may enforce the terms and conditions of the Letter of Transmittal against such tendering participant.

**THE NOTES AND EITHER THE LETTER OF TRANSMITTAL OR AGENT'S MESSAGE SHOULD BE SENT ONLY TO THE DEPOSITORY, AND NOT TO THE COMPANY OR DTC (OR ANY OTHER BOOK-ENTRY TRANSFER FACILITY).**

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### *Signature Guarantees*

Signatures on all Letters of Transmittal or a notice of withdrawal, as the case may be, must be guaranteed by a firm that is a member of a registered national notes exchange or the Financial Industry Regulatory Authority, or by a commercial bank or trust company having an office or a correspondent in the United States that is a participant in an approved Signature Guarantee Medallion Program (each of the foregoing, an “**Eligible Institution**”) unless the Notes tendered or withdrawn thereby, as the case may be, are tendered or withdrawn (1) by a registered Holder of Notes (or by a participant in DTC whose name appears on a security position listing as the owner of such Notes) or (2) for the account of an Eligible Institution.

### *General*

Only Holders are authorized to tender their Notes. The procedures by which Notes may be tendered by beneficial owners that are not Holders will depend upon the manner in which the Notes are held. Therefore, to effectively tender Notes that are held through a Nominee, the beneficial owner thereof must timely instruct such Nominee to tender the Notes on the beneficial owner’s behalf according to the procedures described above. DTC has authorized DTC participants that hold Notes on behalf of beneficial owners of Notes through DTC to tender their Notes as if they were the Holders.

The tender of Notes by a Holder (and the acceptance of such tender by the Company) pursuant to the procedures set forth above will constitute a binding agreement between such Holder and us in accordance with the terms and subject to the conditions set forth herein and in the Letter of Transmittal.

Notwithstanding any other provision hereof, payment of the Purchase Price, plus Accrued Interest, for Notes validly tendered and accepted for purchase pursuant to the Offer will, in all cases, be made only after timely receipt (*i.e.*, at or prior to the Expiration Date) by the Depositary of a Book-Entry Confirmation (as defined above) of the transfer of such Notes into the Depositary’s account at DTC, as described above, and a Letter of Transmittal (or manually signed facsimile thereof) with respect to such Notes, properly completed and duly executed, with any required signature guarantees and any other documents required by the Letter of Transmittal, or, in the case of a book-entry transfer, a properly transmitted Agent’s Message in lieu of the Letter of Transmittal.

The Company, in its sole discretion, will determine all questions as to the form of documents and validity, eligibility (including time of receipt), acceptance for purchase and withdrawal of validly tendered Notes, and such determinations will be final and binding. The Company reserves the absolute right to reject any and all tenders of Notes that it determines are not in proper form or where the acceptance for purchase of, or payment for, such Notes may, in the Company’s opinion, be unlawful. The Company also reserves the absolute right in its sole discretion to waive any of the conditions of the Tender Offer or any defect or irregularity in the tender of Notes of any particular Holder, regardless of whether similar conditions, defects or irregularities are waived in the case of other Holders. The Company’s interpretation of the terms and conditions of the Tender Offer will be final and binding.

Any defect or irregularity in connection with tenders of Notes must be cured within such time as the Company determines, unless waived by the Company. Tenders of Notes shall not be deemed to have been made until all defects or irregularities have been waived or cured. None of the Company, the Depositary and Information Agent, the Trustee or any other person will be under any duty to give notification of any defects or irregularities in tenders or notices of withdrawal or will incur any liability for failure to give any such notification. If the Company waives its right to reject a defective tender of Notes, the Holder will be entitled to the Purchase Price, plus Accrued Interest.

### *No Guaranteed Delivery*

**The Company is not providing for procedures for tenders of Notes to be made by guaranteed delivery. Accordingly, Holders must allow sufficient time for the necessary tender procedures to be completed during the normal business hours of DTC on or prior to the Expiration Date. If a Holder holds Notes through a Nominee, such Holder should keep in mind that such entity may require the Holder to take action with respect to the Tender Offer a number of days before the Expiration Date in order for such entity to tender Notes on such Holder’s behalf on or prior to the Expiration Date. Tenders not completed prior to 12:01 a.m., New York City time, on November 10, 2017, will be disregarded and of no effect (unless the Tender Offer has been extended and such tenders are completed prior to the expiration of the extended Tender Offer).**

Holders must tender their Notes in accordance with the procedures set forth in this section.

### *No Appraisal Rights*

There are no appraisal or similar statutory rights available to the Holders in connection with the Tender Offer.

### *No Alternative, Conditional or Contingent Tenders*

No alternative, conditional or contingent tenders of Notes will be accepted for purchase pursuant to the Tender Offer. All questions as to the form of all documents and acceptance of all tenders of Notes will be determined by the Company, in its sole discretion, the determination of which shall be conclusive and binding.

### *Representations, Warranties and Undertakings*

A tender of Notes under the procedures described above will constitute your acceptance of the terms and conditions of the Tender Offer. In addition, by tendering Notes pursuant to this Offer to Purchase (including by accepting the Tender Offer through ATOP), the Holder is deemed to represent, warrant and undertake to the Company and the Depositary that:

- the tendering Holder has received the Offer Documents and agrees to be bound by all the terms and conditions of the Tender Offer;
- the Notes are, at the time of acceptance, and will continue to be, until the payment on the Settlement Date, or the termination or withdrawal of the Tender Offer, or, in the case of Notes in respect of which the tender has been withdrawn, the date on which such tender is validly withdrawn, held by such Holder;
- the tendering Holder acknowledges that all authority conferred or agreed to be conferred pursuant to these representations, warranties and undertakings and every obligation of the tendering Holder shall be binding upon the successors, assigns, heirs, executors, administrators, trustee in bankruptcy and legal representatives of the tendering Holder and shall not be affected by, and shall survive, the death or incapacity of the tendering Holder;
- the tendering Holder has full power and authority to tender, sell, assign and transfer the tendered Notes;
- the Notes will, on the Settlement Date, be transferred by such tendering Holder to the Company in accordance with the terms of the Tender Offer, and the Company will acquire good, marketable and unencumbered title thereto, with full title guarantee free and clear of all liens, restrictions, charges and encumbrances, not subject to any adverse claim or right, and together with all rights attached thereto; and
- the tendering Holder will, upon request, execute and deliver any additional documents deemed by the Depositary or the Company to be necessary or desirable to complete the sale, assignment and transfer of the Notes tendered.

By tendering Notes as set forth herein, and subject to and effective upon acceptance for purchase of, and payment for, the Notes tendered therewith, a tendering Holder (1) irrevocably sells, assigns and transfers to, or upon the order of, the Company all right, title and interest in and to all the Notes tendered thereby and accepted for purchase pursuant to the terms hereof, (2) waives any and all other rights with respect to the Notes (including, without limitation, the tendering Holder's waiver of any existing or past defaults or events of default and their consequences in respect of the Notes and the Indenture under which such Notes were issued), (3) releases and discharges the Company from any and all claims such Holder may have now, or may have in the future, arising out of, or related to, such Notes, including, without limitation, any claims that such Holder is entitled to receive additional principal or interest payments with respect to such Notes or to participate in any repurchase, redemption or defeasance of the Notes and any claims in connection with, relating to or arising out of the Asset Sale, and (4) irrevocably constitutes and appoints the Depositary as the true and lawful agent and attorney-in-fact of such Holder (with full knowledge that the Depositary also acts as the agent of the Company) with respect to any such tendered Notes, with full power of substitution and resubstitution (such power of attorney being deemed to be an irrevocable power coupled with an interest) to (a) transfer ownership of such Notes on the account books maintained by DTC, together with all

accompanying evidences of transfer and authenticity, to, or upon the order of, the Company, (b) present such Notes for transfer on the relevant security register, and (c) receive all benefits or otherwise exercise all rights of beneficial ownership of such Notes (except that the Depositary will have no rights to, or control over, funds from the Company, except as agent for the tendering Holders, for the Purchase Price, plus any Accrued Interest, of Notes tendered pursuant to the Tender Offer, as determined pursuant to the terms of this Offer to Purchase, for any tendered Notes that are purchased by the Company).

**By tendering Notes pursuant to the Tender Offer, the Holder will be deemed to have agreed that the delivery and surrender of the Notes is not effective, and the risk of loss of the Notes does not pass to the Depositary, until receipt by the Depositary and, in the case of Notes tendered through DTC's ATOP, of a properly transmitted Agent's Message together with all accompanying evidences of authority and any other required documents in form satisfactory to the Company.**

### **Withdrawal of Tenders**

Withdrawal rights with respect to the Notes will terminate on the Expiration Date. Thereafter, tenders are irrevocable except that Notes not yet accepted for purchase may be withdrawn at any time after December 11, 2017 (40 business days after the commencement of the Tender Offer).

For a withdrawal of Notes to be valid, the Depositary must timely receive a written or facsimile notice of withdrawal at one of its addresses set forth on the last page of this document, or a properly transmitted "Request Message" through ATOP must be received by the Depositary, in each case prior to the Expiration Date. The withdrawal notice must:

- specify the name of the person that tendered the Notes to be withdrawn and, if different, the record holder of such Notes (or, in the case of Notes tendered by book entry transfer, the name of the DTC participant for whose account such Notes were tendered and such participant's account number at DTC to be credited with the withdrawn Notes);
- contain a description(s) of the Notes to be withdrawn, including the CUSIP number(s), and the aggregate principal amount represented by such Notes to be withdrawn;
- be signed by the Holder of such Notes in the same manner as the original signature on the Letter of Transmittal by which such Notes were tendered (including any required signature guarantees), if any (or, in the case of Notes tendered by a DTC participant through ATOP, be signed by such participant in the same manner as the participant's name is listed on the applicable Agent's Message), or be accompanied by documents of transfer sufficient to have the Trustee register the transfer of the Notes into the name of the person withdrawing such Notes; and
- if the Letter of Transmittal was executed by a person other than the Holder, be accompanied by a properly completed irrevocable proxy that authorizes such person to effect such revocation on behalf of such Holder.

If the Notes to be withdrawn have been delivered or otherwise identified to the Depositary, a signed notice of withdrawal is effective immediately upon proper written or facsimile notice of withdrawal, even if physical release is not yet effected by the Depositary. Any Notes validly withdrawn will be deemed to be not validly tendered for purposes of the Tender Offer.

Holders may not rescind their withdrawal of tendered Notes and any Notes validly withdrawn will thereafter be deemed not validly tendered for purposes of the Tender Offer. Validly withdrawn Notes may, however, be validly tendered again by following one of the procedures described above under "–Procedure for Tendering Notes" at any time prior to the Expiration Date.

Holders may accomplish valid withdrawals of Notes only in accordance with the foregoing procedures.

If a beneficial owner tendered its Notes through a Nominee and wishes to withdraw its Notes, it will need to make arrangements for withdrawal with its Nominee. The ability of a beneficial owner to withdraw a tender of its Notes will depend upon the terms of the arrangements it has made with its Nominee and, if its Nominee is not the DTC participant tendering those Notes, the arrangements between its Nominee and such DTC participant, including any arrangements involving intermediaries between its Nominee and such DTC participant.

Through DTC, the Depositary will return to tendering Holders all Notes in respect of which it has received valid withdrawal instructions at or prior to the Expiration Date promptly after it receives such instructions.

All questions as to the form and validity (including time of receipt) of a notice of withdrawal will be determined by the Company in its sole discretion, which determination shall be final and binding. None of the Company, the Depositary and Information Agent, the Trustee or any other person will be under any duty to give notification of any defects or irregularities in any notice of withdrawal or will incur any liability for failure to give any such notification.

If the Company extends the Tender Offer, is delayed in its acceptance for purchase of Notes, or is unable to accept for purchase Notes under the Tender Offer for any reason, then, without prejudice to the Company's rights under the Tender Offer, the Depositary may, subject to applicable law, retain tendered Notes on the Company's behalf, and such Notes may not be withdrawn except to the extent tendering Holders are entitled to withdrawal rights as described in this section.

### **Acceptance of Notes for Purchase; Accrual of Interest**

#### *Acceptance of Notes for Purchase*

The Company will be deemed to have accepted for purchase pursuant to the Tender Offer and thereby have purchased validly tendered Notes pursuant to the Tender Offer if, as and when the Company gives oral or written notice to the Depositary of the Company's acceptance of such Notes for purchase pursuant to the Tender Offer. The Company will announce acceptance for purchase of the Notes. In all cases, payment for Notes purchased pursuant to the Tender Offer will be made by deposit of cash relating to the Purchase Price for all Notes validly tendered in the Tender Offer and accepted for purchase by the Company, plus the Accrued Interest, with the Depositary, which will act as agent for tendering Holders for the purpose of receiving payments from the Company and transmitting such payments to such Holders.

On the Settlement Date, the Company will settle all Notes accepted for purchase. The Company expects such date to be within three business days following the Expiration Date.

Subject to applicable law (including Rule 13e-4(f)(5) under the Exchange Act, which requires that the Company pay the consideration offered or return the Notes deposited by or on behalf of Holders promptly after the termination or withdrawal of the Tender Offer), the Company expressly reserves the right, in its sole discretion, to delay acceptance for purchase of, or payment for, Notes in order to comply, in whole or in part, with any applicable law. See "—Conditions to the Tender Offer." In all cases, payment by the Depositary to Holders of consideration for Notes accepted for purchase pursuant to the Tender Offer will be made only after receipt by the Depositary prior to the Expiration Date of:

- confirmation of a book-entry transfer of such Notes into the Depositary's account at DTC pursuant to the procedures set forth under "Procedure for Tendering Notes"; and
- a duly completed Agent's Message through the facilities of DTC or a properly completed and duly executed Letter of Transmittal (or a manually signed facsimile thereof), along with any other documents required by the Letter of Transmittal.

If the Tender Offer is terminated or withdrawn, or the Notes are not accepted for purchase, no consideration will be paid or payable to Holders of those Notes. If any tendered Notes are not purchased pursuant to the Tender Offer for any reason, Notes tendered by book-entry transfer will be credited to the account maintained at DTC from which those Notes were delivered promptly following the Expiration Date or termination of the Tender Offer.

If the Company is delayed in its acceptance for purchase of, or payment for, any tendered Notes or is unable to accept for purchase or pay for any tendered Notes pursuant to the Tender Offer for any reason, then, without prejudice to the Company's rights hereunder, but subject to applicable law, tendered Notes may be retained by the



Depository on behalf of the Company (subject to Rules 13e-4(5)(f) and 14e-1 under the Exchange Act, which requires that the Company pay the consideration offered or return the Notes deposited by or on behalf of the Holders promptly after the termination or withdrawal of the Tender Offer).

All Notes validly tendered and accepted for purchase in the Tender Offer will be retired and canceled.

Holders will not be obligated to pay brokerage fees or commissions or, except as otherwise provided in Instruction 7 of the Letter of Transmittal, transfer taxes with respect to the Company's purchase of the Notes pursuant to the Tender Offer. However, if you hold Notes through a broker or bank, you should consult that institution as to whether it charges any service fees. The Company will pay certain fees and expenses of the Depository and the Information Agent in connection with the Tender Offer. See "The Depository and the Information Agent."

#### *Accrual of Interest*

Holders who tender Notes that are accepted for purchase pursuant to the Tender Offer will receive Accrued Interest.

**Under no circumstances will any additional interest be payable because of any delay in the transmission of funds to the Holders of purchased Notes or otherwise.**

#### **Expiration Date; Extension; Termination and Amendment**

The Tender Offer will expire on the Expiration Date, unless earlier terminated by the Company. The Company reserves the right, in its sole discretion, to extend the Expiration Date. In addition, subject to applicable law and the Settlement Agreement, the Company expressly reserves the right, in its sole discretion, to terminate or withdraw the Tender Offer at any time and from time to time. If the Tender Offer is terminated at any time, the Notes tendered and not previously accepted and purchased will be promptly returned to the tendering Holders. There can be no assurance that the Company will exercise its right to extend, terminate or amend the Tender Offer. Irrespective of any amendment to the Tender Offer, all Notes previously tendered pursuant to the Tender Offer and not accepted for purchase will remain subject to the Tender Offer and may be accepted for purchase thereafter for purchase by the Company, except when such acceptance is prohibited by law.

The Company will publicly announce any extension, termination or amendment in the manner described under "–Announcements."

If the Company makes a material change in the terms of the Tender Offer or the information concerning the Tender Offer or waives a material condition of the Tender Offer, the Company will disseminate additional materials and extend the Tender Offer to the extent required by law. In the event of a termination of the Tender Offer, none of the Purchase Price will be paid or become payable on Notes. In any such event, any Notes previously tendered pursuant to the Tender Offer will be returned to the tendering Holders in accordance with Rule 13e-4(f)(5) under the Exchange Act.

#### **Additional Terms of the Tender Offer**

- All communications, payments, notices, certificates or other documents to be delivered to or by a Holder will be delivered by or sent to or by it at the Holder's own risk.
- By submitting a valid electronic acceptance instruction or Letter of Transmittal, a Holder will be deemed to have given the representations, warranties and undertakings of the Holder set forth above in "–Procedure for Tendering Notes–Representations, Warranties and Undertakings" and in the Letter of Transmittal.
- All acceptances of tendered Notes by the Company shall be deemed to be made on the terms set out in this Offer to Purchase (and shall be deemed to be given in writing even if submitted electronically).
- The Company may in its sole discretion elect to treat as valid a tender instruction in respect of which the relevant Holder does not fully comply with all the requirements of these terms.

- Unless waived by the Company, any irregularities in connection with tenders of Notes must be cured within such time as the Company shall determine. None of the Company, the Depositary and Information Agent, the Trustee or any other person shall be under any duty to give notification of any defects or irregularities in such tenders of Notes, nor will any of such entities incur any liability for failure to give such notifications. Tenders of Notes may be deemed not to have been made until such irregularities have been cured or waived.
- None of the Company, the Depositary or the Trustee shall accept any responsibility for failure of delivery of a notice, communication or electronic acceptance instruction.
- Any rights or claims that a Holder may have against the Company in respect of any tendered Notes or the Tender Offer, other than rights or claims under federal securities laws, shall be extinguished or otherwise released upon the payment to such Holder of the Purchase Price, plus Accrued Interest, for such Notes, as determined pursuant to the terms of the Tender Offer.
- Without limiting the manner in which the Company may choose to make any public announcement, the Company shall have no obligation to publish, advertise or otherwise communicate any such public announcement other than by issuing a press release or giving notice to the Depositary.
- The contract constituted by the Company's acceptance for purchase in accordance with the terms of this Offer to Purchase of all Notes validly tendered (or defectively tendered, if such defect has been waived by the Company) shall be governed by, and construed in accordance with, the law of the State of New York.

## **Announcements**

If the Company is required by applicable law to make an announcement relating to an extension of the Expiration Date for the Tender Offer, an amendment or termination of the Tender Offer, acceptance of the Notes for purchase, or otherwise, the Company will do so as promptly as practicable and, in the case of an extension of the Expiration Date, no later than 9:00 a.m., New York City time, on the first business day after the previously scheduled Expiration Date. Unless otherwise specified in this Offer to Purchase or required by applicable law, the Company may choose to issue an announcement of this type in any reasonable manner, but it will have no obligation to do so other than by issuing a press release or a notice sent via DTC.

## CERTAIN CONSIDERATIONS

*In deciding whether to participate in the Tender Offer, each Holder should consider carefully, in addition to the other information contained in or incorporated by reference in this Offer to Purchase and in the related Letter of Transmittal, the risks described under the caption “Risk Factors” in the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2016, as may be updated by the Company from time to time in Quarterly Reports on Form 10-Q and other public filings, and the following:*

### **Position of the Company and Other Parties Concerning the Tender Offer**

None of the Company, its Board of Directors, its officers, the Depositary and Information Agent or the Trustee makes any recommendation to any Holder whether to tender or refrain from tendering any or all of such Holder’s Notes, and none of them has authorized any person to make any such recommendation. If anyone makes any recommendation or representation or gives any such information, Holders should not rely upon that recommendation, representation or information as having been authorized by the Company, the Depositary and Information Agent or the Trustee. Holders are urged to evaluate carefully all information in the Offer Documents, consult their own investment and tax advisors and make their own decisions whether to tender Notes, and, if so, the principal amount of Notes to tender.

### **By Tendering Notes, You Will Lose the Rights Associated with Those Notes**

If you validly tender and do not validly withdraw Notes in the Tender Offer and we accept them for exchange, you will lose your rights as a Holder, which are described in the section of this Offer to Purchase entitled “Description of Notes,” with respect to those Notes. For example, for the Notes you tender you will lose the right to convert those Notes at a conversion rate of 23.5210 shares of our common stock per \$1,000 principal amount of Notes (equivalent to a conversion price of approximately \$42.52 per share of our common stock) beginning on April 15, 2020 at any time prior to the close of business on the scheduled trading day immediately preceding the maturity date.

### **The Tender Offer May Adversely Affect the Market Value of the Notes and Reduce the Liquidity of any Trading Market for the Notes**

All Notes validly tendered and accepted for purchase in the Tender Offer will be retired and canceled. The Notes are not listed on any national or regional securities exchange or quoted on any automated quotation system. To our knowledge, the Notes are traded infrequently in transactions arranged through brokers, and reliable market quotations for the Notes are not always available. In addition to the \$35,760,000 aggregate principal amount of Notes that the Company agreed to purchase from the Settlement Noteholders, to the extent that Notes are purchased pursuant to the Tender Offer, the trading market for the Notes that remain outstanding will likely become further limited or cease altogether. A bid for a debt security with a smaller outstanding principal amount available for trading (a smaller “float”) may be lower than a bid for a comparable debt security with a greater float. Therefore, the market price for and liquidity of Notes not tendered or tendered but not purchased may be affected adversely to the extent that the principal amount of Notes purchased pursuant to the Tender Offer reduces the float. The reduced float may also tend to make the trading price more volatile.

Holders of Notes not tendered and purchased in the Tender Offer may attempt to obtain quotations for their Notes from their brokers; however, there can be no assurance that an active trading market will exist for the Notes, including following consummation of the Tender Offer. The extent of the market for the Notes following consummation of the Tender Offer will depend upon a number of factors, including the size of the float, the number of Holders remaining at such time, the principal amount of Notes held by such Holders and the interest in maintaining a market in the Notes on the part of securities firms.

### **Withdrawal Rights**

Withdrawal rights with respect to the Notes will terminate on the Expiration Date. Thereafter, tenders are irrevocable except that Notes not yet accepted for purchase may be withdrawn at any time after December 11, 2017 (40 business days after the commencement of the Tender Offer).

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**Conditions to the Consummation of the Tender Offer**

The consummation of the Tender Offer is subject to the satisfaction or waiver of several conditions, including, but not limited to, the Settlement Condition. See “The Terms of the Tender Offer—Conditions to the Tender Offer.” In addition, subject to applicable law and the Settlement Agreement, the Company may terminate the Tender Offer at any time prior to the Expiration Date in its sole discretion. There can be no assurance that such conditions will be met, that the Company will not terminate the Tender Offer or that, in the event that the Tender Offer is not consummated, the market value and liquidity of the Notes will not be materially adversely affected.

In addition, subject to applicable law and the Settlement Agreement, the Company may terminate the Tender Offer at any time prior to the Expiration Date in its sole discretion. There can be no assurance that such conditions will be met, that the Company will not terminate the Tender Offer or that, in the event that the Tender Offer is not consummated, the market value and liquidity of the Notes will not be materially adversely affected.

**Treatment of Notes Not Tendered in the Tender Offer**

Notes not tendered and purchased in the Tender Offer will remain outstanding. The terms and conditions in the Indenture, including the covenants and other protective provisions contained in the Indenture, will remain unchanged. No amendments to the Indenture are being sought.

From time to time after completion of the Tender Offer, the Company and/or its affiliates may purchase additional Notes through additional tender offers, exchange offers or otherwise. Any future purchases or exchanges may be on the same terms or on terms that are more or less favorable to Holders of Notes than the terms of the Tender Offer. Any future purchases or exchanges by the Company and/or its affiliates will depend on various factors existing at that time. There can be no assurance as to which, if any, of these alternatives (or combinations thereof) the Company and/or its affiliates may choose to pursue in the future. Pursuant to Rule 13e-4(f)(6) under the Exchange Act, neither the Company nor its affiliates may purchase any Notes other than pursuant to the Tender Offer until 10 business days after the Expiration Date (or any earlier date of termination) of the Tender Offer.

**Certain U.S. Federal Income Tax Considerations**

See “Certain U.S. Federal Income Tax Considerations” for a discussion of certain tax matters that should be considered in evaluating the Tender Offer.

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## SOURCE OF FUNDS

The Company would need approximately \$22,527,900 to purchase all of the Notes outstanding as of October 13, 2017, based on the purchase price of \$900.00 per \$1,000 principal amount of Notes. As of June 30, 2017, the Company had approximately \$135.5 million in cash and cash equivalents, not including the Escrow Funds. The Company expects to use the Escrow Funds to finance its payment of the Purchase Price for all Notes validly tendered in the Tender Offer and accepted for purchase by the Company. The Offer is not conditioned upon the receipt of financing.

**INTEREST OF DIRECTORS AND EXECUTIVE OFFICERS;  
TRANSACTIONS AND ARRANGEMENTS CONCERNING THE NOTES**

The following table lists the names of all directors and executive officers of the Company. The business address of the Company and of each of the persons listed in the table below is c/o Merrimack Pharmaceuticals, Inc., One Kendall Square, Suite B7201, Cambridge, Massachusetts 02139.

<b>Name</b>	<b>Position</b>
Richard Peters, M.D., Ph.D.	President, Chief Executive Officer and Director
Daryl C. Drummond, Ph.D.	Head of Research
Jean M. Franchi	Chief Financial Officer and Treasurer
Jeffrey A. Munsie	General Counsel, Head of Corporate Operations and Secretary
Thomas E. Needham, Jr.	Chief Business Officer
Sergio L. Santillana, M.D.	Chief Medical Officer
Gary L. Crocker	Chairman of the Board
John M. Dineen	Director
Vivian S. Lee, M.D., Ph.D.	Director
John Mendelsohn, M.D.	Director
Ulrik B. Nielsen, Ph.D.	Director
Michael E. Porter, Ph.D.	Director
James H. Quigley	Director
Russell T. Ray	Director

To the Company's knowledge, based on reasonable inquiry, neither the Company nor any of our executive officers, directors or affiliates, associates or majority-owned subsidiaries of the foregoing, has any beneficial interest in any outstanding Notes. To the Company's knowledge, the Company will not acquire any Notes from any of its executive officers, directors or affiliates, associates or majority-owned subsidiaries of the foregoing pursuant to the Tender Offer.

Except for the entry by the Company into the Settlement Agreement, to the Company's knowledge, based on reasonable inquiry, no executive officer or director of the Company and no affiliate, associate or majority-owned subsidiary of the Company has engaged in any transaction in the Notes during the 60 days preceding the date of this Offer to Purchase.

## MARKET PRICE INFORMATION

The Notes are not listed on any national or regional securities exchange or quoted on any automated quotation system. To our knowledge, the Notes are traded infrequently in transactions arranged through brokers, and reliable market quotations for the Notes are not always available. To the extent that the Notes are traded, prices of the Notes may fluctuate greatly depending on the trading volume and the balance between buy and sell orders.

The Notes are convertible into cash and shares of our common stock in the circumstances and during the periods specified in the Indenture governing the Notes. Our common stock is traded on the Nasdaq Global Market under the symbol “MACK.” The table below sets forth the high and low sales prices of our common stock during the indicated time periods.

	<b>Closing Sales Price(1)</b>	
	<b>High</b>	<b>Low</b>
<b><i>Year Ended December 31, 2015</i></b>		
First Quarter	\$124.80	\$ 87.80
Second Quarter	\$136.70	\$107.60
Third Quarter	\$122.40	\$ 77.85
Fourth Quarter	\$100.20	\$ 75.70
<b><i>Year Ended December 31, 2016</i></b>		
First Quarter	\$ 87.50	\$ 52.70
Second Quarter	\$ 86.80	\$ 52.90
Third Quarter	\$ 63.50	\$ 44.50
Fourth Quarter	\$ 66.80	\$ 40.80
<b><i>Year Ended December 31, 2017</i></b>		
First Quarter	\$ 40.90	\$ 29.75
Second Quarter	\$ 39.20	\$ 11.60
Third Quarter	\$ 14.90	\$ 11.60
Fourth Quarter (up to October 11, 2017)	\$ 15.09	\$ 13.10

(1) The closing sales prices of our common stock presented in this table have been adjusted for the one-for-ten reverse stock split of our common stock, which became effective for trading purposes on September 6, 2017.

The closing price of our common stock on the Nasdaq Global Market on October 11, 2017 was \$14.21 per share. As of October 11, 2017, there were approximately 13,332,967 shares of our common stock outstanding.

**We urge you to obtain more current market price information for our Notes and common stock during the tender offer period.**

As of October 12, 2017, there was \$25,031,000 aggregate principal amount of the Notes outstanding, which amount reflects the consummation of the purchase of the Notes from the Settlement Noteholders pursuant to the Settlement Agreement.

## CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS

The following is a discussion of certain U.S. federal income tax considerations generally applicable to the surrender of Notes for purchase pursuant to the Tender Offer. This discussion is for general information only and does not purport to consider all aspects of U.S. federal income taxation that might be relevant to holders of the Notes. This discussion is based upon current provisions of the Internal Revenue Code of 1986, as amended (the “**Code**”), the U.S. Treasury Regulations promulgated thereunder (the “**Treasury Regulations**”) and published administrative and judicial interpretations thereof, all as in effect as of the date hereof and all of which are subject to change or differing interpretation. Any such change or differing interpretation, which may or may not be retroactive, could alter the U.S. federal income tax considerations described herein. This summary is limited to holders of the Notes who hold their Notes as “capital assets” within the meaning of section 1221 of the Code (generally, property held for investment). For purposes of this discussion, “**holder**” means either a U.S. Holder (as defined below) or a Non-U.S. Holder (as defined below) or both, as the context may require.

This discussion does not address all of the U.S. federal income tax considerations that may be relevant to holders in light of their particular circumstances or to holders that may be subject to special treatment under U.S. federal income tax laws, such as:

- banks or other financial institutions,
- tax-exempt organizations (including private foundations),
- retirement plans,
- controlled foreign corporations or passive foreign investment companies,
- S corporations, partnerships or other pass-through entities and their owners,
- insurance companies,
- mutual funds,
- brokers or dealers in securities,
- traders in securities that elect to use a mark-to-market method of accounting for their securities,
- holders that are subject to the alternative minimum tax provisions of the Code or the Medicare contribution tax on net investment income,
- certain expatriates or former long-term residents of the United States,
- U.S. Holders that have a functional currency other than the U.S. dollar,
- personal holding companies,
- regulated investment companies,
- real estate investment trusts, and
- holders that hold the Notes as part of a hedge, conversion or constructive sale transaction, straddle, wash sale, or other risk-reduction transaction.

If a partnership (including any entity or arrangement treated as a partnership for U.S. federal income tax purposes) is the beneficial owner of Notes, the tax treatment of a partner in the partnership generally will depend on the status of the partner, the activities of the partnership, and certain determinations made at the partner level. A beneficial owner that is a partnership and partners in such a partnership are urged to consult their own tax advisors regarding the U.S. federal income tax considerations of the Tender Offer applicable to them.



This discussion does not address U.S. federal taxes (including any U.S. federal estate, gift, alternative minimum or Medicare taxes) other than income taxes, tax considerations arising under the laws of any foreign, state or local jurisdiction, or any potential tax considerations relating to the Foreign Account Tax Compliance Act.

**THIS DISCUSSION IS INCLUDED FOR GENERAL INFORMATION PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR AN INDIVIDUAL ANALYSIS OF THE TAX CONSIDERATIONS RELATING TO THE TENDER OFFER. WE URGE HOLDERS TO CONSULT THEIR OWN TAX ADVISORS REGARDING THE PARTICULAR U.S. FEDERAL, STATE, LOCAL, AND FOREIGN TAX CONSIDERATIONS RELATING TO THE TENDER OFFER IN LIGHT OF THEIR OWN SITUATION.**

### ***U.S. Holders***

The following discussion applies only to U.S. Holders of the Notes. As used in this discussion, a “**U.S. Holder**” is a beneficial owner of a Note that, for U.S. federal income tax purposes, is:

- an U.S. citizen or individual resident of the United States,
- a corporation created in or organized under the laws of the United States, any state thereof or the District of Columbia,
- an estate the income of which is subject to U.S. federal income tax regardless of its source, or
- a trust if it (1) is subject to the primary supervision of a court within the United States and one or more United States persons (as defined in the Code) have the authority to control all substantial decisions of the trust or (2) has a valid election in effect under applicable Treasury Regulations to be treated as a United States person.

*Surrender of Notes for Purchase.* The exchange of Notes for cash pursuant to the Tender Offer will be a taxable transaction for U.S. federal income tax purposes. In general, a U.S. Holder that receives cash in exchange for the surrender of Notes pursuant to the Tender Offer will recognize taxable gain or loss equal to the difference, if any, between (1) such U.S. Holder’s amount realized (generally, the amount of cash received pursuant to the Tender Offer, excluding any amounts attributable to Accrued Interest) and (2) such U.S. Holder’s adjusted tax basis in the Notes exchanged therefor. A U.S. Holder’s adjusted tax basis in a Note will generally be equal to such U.S. Holder’s purchase price for the Note, increased, if applicable, by any market discount previously included in such U.S. Holder’s income with respect to such Note, and decreased (but not below zero) by the amount of any cash payments previously made on the Note to such U.S. Holder (other than payments of stated interest) and by any amortizable bond premium that the U.S. Holder has previously amortized.

Subject to the market discount rules discussed below, any gain or loss recognized generally will be capital gain or loss and will be long-term capital gain or loss provided that the U.S. Holder has held the Note for more than one year at the time of the consummation of the Tender Offer. In the case of a Note that has been held for one year or less, such gain or loss will be short-term capital gain or loss. Short-term capital gain is generally subject to tax at ordinary income tax rates. The deductibility of capital losses is subject to limitations. Any cash received attributable to Accrued Interest that has not previously been included in the U.S. Holder’s income will be taxable as ordinary interest income.

*Market Discount.* In general, a Note has “market discount” if its principal amount exceeds the U.S. Holder’s tax basis in the Note immediately after its acquisition by the U.S. Holder, unless a statutorily defined *de minimis* exception applies. Gain recognized by a U.S. Holder with respect to a Note acquired with market discount will generally be subject to tax as ordinary income to the extent of the market discount accrued during the period the Note was held by such U.S. Holder, unless the U.S. Holder previously had elected to include market discount in income as it accrued for U.S. federal income tax purposes. The amount of market discount that has accrued is determined on a ratable basis, unless the U.S. Holder has elected to determine the amount of accrued market discount using a constant-yield method. *Information Reporting and Backup Withholding.* Payments to a U.S. Holder for the surrender of Notes pursuant to the Tender Offer generally will be subject to information reporting on IRS Form 1099 unless the U.S. Holder is an exempt recipient (such as a corporation). In addition, such payments generally will be subject to backup withholding (currently imposed at a rate of 28%) unless the U.S. Holder (1) is a

corporation or other exempt recipient and, when required, demonstrates this fact or (2) provides its taxpayer identification number and satisfies certain certification requirements. A U.S. Holder that does not provide its correct taxpayer identification number may be subject to penalties imposed by the IRS. Backup withholding is not an additional tax. The amount of any backup withholding may be allowed as a credit against the U.S. Holder's U.S. federal income tax liability and may entitle the U.S. Holder to a refund, provided that the required information is furnished to the IRS in a timely manner. Holders should consult their own tax advisors regarding the application of backup withholding in their particular circumstances and the availability of, and procedure for obtaining, an exemption from backup withholding.

### **Non-U.S. Holders**

The following discussion applies only to Non-U.S. Holders of the Notes. As used in this discussion, a **"Non-U.S. Holder"** is a beneficial owner of a Note that for U.S. federal income tax purposes is an individual, corporation, estate, or trust, in each case, that is not a U.S. Holder.

*Surrender of Notes for Purchase.* Subject to the discussions below regarding Accrued Interest, USRPHCs (as defined below) and backup withholding, a Non-U.S. Holder generally will not be subject to U.S. federal income or withholding tax on any gain realized on the Non-U.S. Holder's receipt of cash for Notes pursuant to the Tender Offer. Any gain realized by the Non-U.S. Holder would be subject to U.S. federal income tax, however, if: (i) in the case of an individual Non-U.S. Holder, the Non-U.S. Holder is present in the United States for 183 days or more in the taxable year of the Tender Offer and certain other conditions are satisfied; or (ii) the gain is effectively connected with the conduct by the Non-U.S. Holder of a trade or business in the United States and, if required by an applicable income tax treaty with the United States, is attributable to a permanent establishment or fixed base maintained by the Non-U.S. Holder in the United States. In the case of gain realized by an individual Non-U.S. Holder described in clause (i), the Non-U.S. Holder would be subject to U.S. federal income tax at a flat rate of 30%, or a lower rate provided by an applicable income tax treaty, on such gain, which gain may be offset by certain U.S. source capital losses, even though the Non-U.S. Holder is not considered a resident of the United States. In the case of gain described in clause (ii), the Non-U.S. Holder would be subject to U.S. federal income tax on such gain at graduated rates generally in the same manner as if the Non-U.S. Holder were a U.S. Holder (unless an applicable income tax treaty provides otherwise), and corporate Non-U.S. Holders may also be subject to a branch profits tax at a rate of 30% (or a lower rate provided by an applicable income tax treaty).

Any amount received with respect to the Notes that is attributable to Accrued Interest generally will not be subject to U.S. federal income or withholding tax, provided that such interest is not effectively connected with the Non-U.S. Holder's conduct of a U.S. trade or business (or, if required by an applicable income tax treaty with the United States, is not attributable to a permanent establishment or fixed base maintained by the Non-U.S. Holder in the United States) and: (i) the Non-U.S. Holder does not actually or constructively own 10% or more of the total combined voting power of all our classes of stock that are entitled to vote; (ii) the Non-U.S. Holder is not a bank that received the Note on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of its trade or business; (iii) the Non-U.S. Holder is not a "controlled foreign corporation" related to us within the meaning of the Code; and (iv) the Non-U.S. Holder properly certifies the Non-U.S. Holder's non-U.S. status on IRS Form W-8BEN, IRS Form W-8BEN-E or other applicable form.

If a Non-U.S. Holder does not qualify for an exemption from withholding tax on Accrued Interest under the preceding paragraph and the interest is not effectively connected with the Non-U.S. Holder's conduct of a U.S. trade or business (or, if required by an applicable income tax treaty with the United States, such interest is not attributable to a permanent establishment or fixed base maintained by the Non-U.S. Holder in the United States), such interest generally will be subject to withholding of U.S. federal income tax at a 30% rate unless such Non-U.S. Holder is able to claim (on IRS Form W-8BEN, IRS Form W-8BEN-E, or other applicable form) and establish a valid exemption from or reduction of withholding tax under an income tax treaty.

If Accrued Interest paid to a Non-U.S. Holder is effectively connected with the Non-U.S. Holder's conduct of a U.S. trade or business (and, if required by an applicable income tax treaty with the United States, such interest is attributable to a permanent establishment or fixed base maintained by the Non-U.S. Holder in the United States), then, although exempt from U.S. withholding tax (provided the Non-U.S. Holder provides appropriate certification on IRS Form W-8ECI), the Non-U.S. Holder will be subject to U.S. federal income tax on that Accrued Interest generally in the same manner as if the Non-U.S. Holder were a U.S. Holder. In addition, if the Non-U.S. Holder is a corporation, the Accrued Interest may be subject to a branch profits tax at a rate of 30% or lower applicable treaty rate.

Even if a Non-U.S. Holder satisfies the requirements described above to otherwise avoid U.S. federal income or withholding taxes, under section 897 of the Code, gain recognized by a Non-U.S. Holder on the surrender of Notes pursuant to the Tender Offer may (subject to certain exceptions) be subject to U.S. federal income tax at rates generally applicable to U.S. persons if we are or have been a “United States real property holding corporation” “USRPHC” within the meaning of the Code. We believe that we are not and do not anticipate becoming a USRPHC U.S. federal income tax purposes.

*Information Reporting and Backup Withholding.* Payments of Accrued Interest to a Non-U.S. Holder pursuant to the Tender Offer, and any amounts withheld from such payments, generally will be subject to information reporting on IRS Form 1042-S. Generally, neither information reporting on IRS Form 1099 nor backup withholding (which would currently be imposed at a rate of 28%) will apply to the payments received by a Non-U.S. Holder for the surrender of the Notes (including Accrued Interest) if such Non-U.S. Holder certifies, under penalties of perjury, that it is not a U.S. person by properly completing an IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, or such Non-U.S. Holder otherwise establishes an exemption from such information reporting and backup withholding. Backup withholding is not an additional tax. The amount of any backup withholding may be allowed as a credit against the Non-U.S. Holder’s U.S. federal income tax liability and may entitle the Non-U.S. Holder to a refund, provided that the required information is furnished to the IRS in a timely manner. Holders should consult their own tax advisors regarding the application of backup withholding in their particular circumstances and the availability of, and procedure for obtaining, an exemption from backup withholding.

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## THE DEPOSITARY AND THE INFORMATION AGENT

The Company has retained Global Bondholder Services Corporation to act as the Depositary and Information Agent, for the Tender Offer.

The Depositary and Information Agent do not assume any responsibility for the accuracy or completeness of the information concerning the Tender Offer or the Company contained in this Offer to Purchase or related documents or for any failure by the Company to disclose events that may have occurred and may affect the significance or accuracy of such information.

The Company's officers and employees (who will not be specifically compensated for such services), the Depositary and Information Agent may contact Holders regarding the Tender Offer and may request brokers, dealers and other nominees to forward this Offer to Purchase and related materials to beneficial owners of Notes. The Company will also pay brokerage houses and other custodians, nominees and fiduciaries the reasonable out-of-pocket expenses incurred by them in forwarding copies of this Offer to Purchase and related documents to the beneficial owners of the Notes and in handling or forwarding tenders of Notes by their customers.

The expenses of soliciting tenders of the Notes will be borne by the Company. However, if a tendering Holder handles the transaction through its broker, dealer, commercial bank, trust company or other custodial entity, such Holder may be required to pay brokerage fees or commissions of that entity.

## MISCELLANEOUS

The Company is not aware of any jurisdiction where the making of the Tender Offer is not in compliance with the laws of such state. If the Company becomes aware of any jurisdiction where the making of the Tender Offer would not be in compliance with such laws, the Company will make a good faith effort to comply with any such state laws or may seek to have such state laws declared inapplicable to the Tender Offer. If, after such good faith effort, the Company cannot comply with any such applicable state laws, the Tender Offer will not be made to the Holders residing in each such state.

In order to tender Notes, a Holder should send or deliver a properly completed and signed Letter of Transmittal and any other required documents to the Depositary at one of its addresses set forth below or tender pursuant to DTC's ATOP. Questions or requests for assistance relating to the procedures for tendering Notes or for additional copies of the Offer Documents may be directed to the Information Agent at its telephone number and address set forth below.

*The Depositary for the Tender Offer is:*  
**Global Bondholder Services Corporation**

*By facsimile:*  
*(For Eligible Institutions only)*  
(212) 430-3775  
Confirmation:  
(212) 430-3774

*By Mail, Overnight Courier or Hand:*  
Global Bondholder Services Corp.  
Attn: Corporate Action  
65 Broadway, Suite 404  
New York, New York 10006  
(212) 430-3774

*The Information Agent for the Tender Offer is:*  
**Global Bondholder Services Corporation**

65 Broadway, Suite 404  
New York, New York 10006  
Banks and Brokers call: (212) 430-3774  
Toll free: (866) 470-4200  
Email: [contact@gbsc-usa.com](mailto:contact@gbsc-usa.com)

You may contact your broker, dealer, commercial bank or trust company or other nominee for assistance concerning the Tender Offer or requests for additional copies of the Offer Documents.

MERRIMACK PHARMACEUTICALS, INC.

## LETTER OF TRANSMITTAL

**Offer to Purchase for Cash  
any and all outstanding  
4.50% Convertible Senior Notes due 2020  
(CUSIP No. 590328AA8; ISIN No. US590328AA86)**

**Pursuant to the Offer to Purchase dated October 13, 2017**

The Tender Offer (as defined herein) will expire at 12:01 a.m., New York City time, on November 10, 2017, or any other date and time to which the Company extends such Tender Offer (such date and time, as it may be extended, the “**Expiration Date**”), unless earlier terminated, in the Company’s sole discretion. You must validly tender your Notes (as defined below) at or prior to the Expiration Date to be eligible to receive the Purchase Price (as defined below) for such Notes. The Purchase Price will be payable in cash. Tendered Notes may be validly withdrawn from the Tender Offer at any time on or prior to the Expiration Date. The Tender Offer is subject to the satisfaction or waiver of certain conditions as set forth under the heading “The Terms of the Tender Offer—Conditions to the Tender Offer,” including the General Conditions and the Settlement Condition (as defined in the Offer to Purchase).

The Depositary and Information Agent for the Offer is:

**Global Bondholder Services Corporation**

*By Mail, Overnight Courier or Hand:  
(Registered or Certified Mail Recommended):*

Global Bondholder Services Corp.  
Attn: Corporate Action  
65 Broadway, Suite 404  
New York, New York 10006

*By facsimile  
(for Eligible Institutions only):*

(212) 430-3775  
Confirmation:  
(212) 430-3774

Banks and Brokers Call Collect: (212) 430-3774

All Others, Call Toll Free: (866) 470-4200

Email: [contact@gbsc-usa.com](mailto:contact@gbsc-usa.com)

**DELIVERY OF THIS LETTER OF TRANSMITTAL OTHER THAN AS SET FORTH ABOVE WILL NOT CONSTITUTE A VALID DELIVERY. THIS LETTER OF TRANSMITTAL NEED NOT BE COMPLETED BY HOLDERS TENDERING NOTES (AS DEFINED HEREIN) BY ATOP (AS HEREINAFTER DEFINED).**

The instructions contained herein and in the Offer to Purchase, dated October 13, 2017 (the “**Offer to Purchase**”) should be read carefully before this Letter of Transmittal is completed and signed. All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Offer to Purchase. To the extent there are any conflicts between the terms and conditions of the Letter of Transmittal and the terms and conditions of the Offer to Purchase, the terms and conditions of the Offer to Purchase shall control.

Requests for additional copies of this Letter of Transmittal or for copies of the related Offer to Purchase and requests for assistance relating to the procedures for tendering Notes may be directed to Global Bondholder Services Corporation, which is serving as depositary and information agent in connection with the Tender Offer (the “**Depositary**,” the “**Information Agent**” or the “**Depositary and Information Agent**”) at the address and telephone number on the front and back cover page of this Letter of Transmittal. Beneficial owners may contact their broker, dealer, commercial bank, trust company, custodian or other nominee (each, a “**Nominee**”) for assistance regarding the Tender Offer.

This Letter of Transmittal and the instructions hereto (as it may be amended or supplemented from time to time, the “**Letter of Transmittal**”), the Offer to Purchase (as it may be amended or supplemented from time to time, the “**Offer to Purchase**” and, together with this Letter of Transmittal, the “**Offer Documents**”) constitute an offer by Merrimack Pharmaceuticals, Inc., a Delaware corporation (the “**Company**”), on the terms and subject to the conditions set forth in the Offer Documents, to purchase any and all of its outstanding 4.50% Convertible Senior Notes due 2020 (the “**Notes**”) for cash in an amount equal to \$900.00 per \$1,000 principal amount of validly tendered and accepted Notes (the “**Purchase Price**”), plus accrued and unpaid interest on such Notes, if any, from July 15, 2017, up to, but not including, the Settlement Date (as defined below) (“**Accrued Interest**”), subject to any required withholding taxes. The Company refers to the offer to purchase the Notes as the “**Tender Offer**.”

Only Notes validly tendered and not validly withdrawn prior to 12:01 a.m., New York City time, on the Expiration Date and accepted for purchase will be purchased in the Tender Offer (the date of such acceptance and purchase, the “**Settlement Date**”). The Company’s offer to purchase any Notes validly tendered and not validly withdrawn in the Tender Offer is not subject to any minimum tender condition. However, the Offer is subject to the satisfaction or waiver, in the Company’s sole discretion, of certain conditions, including the Settlement Condition, described under “The Terms of the Tender Offer—Conditions to the Tender Offer” in the Offer to Purchase.

The Notes may be tendered and accepted for purchase only in principal amounts equal to minimum denominations of \$1,000 and integral multiples of \$1,000 in excess thereof. Holders who do not tender all of their Notes must ensure that they retain a principal amount of Notes equal to or greater than \$1,000. No alternative, conditional or contingent tenders will be accepted.

The Tender Offer is open to all registered holders (individually, a “**Holder**” and, collectively, the “**Holders**”) of the Notes. The Notes are represented by one or more global certificates registered in the name of Cede & Co., the nominee of The Depository Trust Company (“**DTC**”), and held in book-entry form through DTC. DTC is the only registered holder of the Notes. DTC facilitates the clearance and settlement of securities transactions through electronic book-entry changes in accounts of DTC participants. DTC participants include securities brokers and dealers, banks, trust companies, clearing corporations and other organizations.

DTC participants that wish to effectively tender Notes that are held through DTC should either (1) properly complete and duly execute this Letter of Transmittal, together with any other documents required by this Letter of Transmittal, and mail or deliver this Letter of Transmittal (or a manually signed facsimile thereof) and such other documents to the Depository or (2) electronically transmit their acceptance through the automated tender offer program (“**ATOP**”) (and thereby tender the Notes), for which the transaction will be eligible, followed by a properly transmitted Agent’s Message delivered to the Depository. Upon receipt of such Holder’s acceptance through ATOP, DTC will edit and verify the acceptance, execute a book-entry delivery to the Depository’s account at DTC and send an Agent’s Message to the Depository for its acceptance. The confirmation of a book-entry transfer into the Depository’s account at DTC as described above is referred to herein as a “**Book-Entry Confirmation**.” The term “**Agent’s Message**” means a message transmitted by DTC to, and received by, the Depository and forming a part of the Book-Entry Confirmation, which states that DTC has received an express acknowledgment from the tendering participant stating (1) the aggregate principal amount of Notes to be tendered by such participant, (2) that such participant has received copies of the Offer Documents and agrees to be bound by the terms and conditions of the Tender Offer as described herein and in the Letter of Transmittal and (3) that the Company may enforce the terms and conditions of the Letter of Transmittal against such tendering participant.

A beneficial owner whose Notes are held by a Nominee and who desires to tender such Notes in the Tender Offer must contact its Nominee and instruct such Nominee to tender its Notes on such beneficial owner’s behalf. Accordingly, beneficial owners wishing to participate in the Tender Offer should contact their Nominee as soon as possible in order to determine the time by which such owner must take action in order to so participate. Any beneficial owner of Notes held of record by DTC or its Nominee, through authority granted by DTC, may direct the DTC participant through which such beneficial owner’s Notes are held in DTC to tender Notes on such beneficial owner’s behalf. See below for more information.

If the Tender Offer is terminated or withdrawn, or the Notes are not accepted for purchase, no consideration will be paid or payable to Holders of those Notes. If any tendered Notes are not purchased pursuant to the Tender Offer for any reason, such Notes not purchased will be returned promptly, without expense, to the tendering Holder (or, in the case of Notes tendered by book-entry transfer, such Notes will be promptly credited to the account maintained at DTC from which Notes were delivered) after the expiration or termination of the Tender Offer.

The Tender Offer is made upon the terms and subject to the conditions set forth in the Offer Documents. Holders should carefully review such information.

**THE OFFER TO PURCHASE AND RELATED DOCUMENTS DO NOT CONSTITUTE AN OFFER TO BUY OR THE SOLICITATION OF AN OFFER TO SELL NOTES IN ANY JURISDICTION OR IN ANY CIRCUMSTANCES IN WHICH SUCH OFFER OR SOLICITATION IS UNLAWFUL.**

If you desire to tender Notes for which you are the beneficial owner that are held through a Nominee, you should contact such Nominee promptly and instruct the Nominee to tender such Notes on your behalf. The instructions included with this Letter of Transmittal must be followed.

Holders who wish to tender their Notes using this Letter of Transmittal must:

- complete the section below entitled “Method of Delivery”;
- complete the box below entitled “Description of Notes Tendered” and sign where indicated under “Please Sign Here”; and
- complete the enclosed IRS Form W-9 or an appropriate IRS Form W-8, as described below.

**NONE OF THE COMPANY, ITS BOARD OF DIRECTORS, ITS OFFICERS, THE DEPOSITARY AND INFORMATION AGENT OR THE TRUSTEE UNDER THE INDENTURE GOVERNING THE NOTES (THE “TRUSTEE”), OR ANY OF THEIR RESPECTIVE AFFILIATES, MAKES ANY RECOMMENDATION TO ANY HOLDER WHETHER TO TENDER OR REFRAIN FROM TENDERING ANY OR ALL OF SUCH HOLDER’S NOTES, AND NONE OF THEM HAS AUTHORIZED ANY PERSON TO MAKE ANY SUCH RECOMMENDATION. IF ANYONE MAKES ANY RECOMMENDATION OR REPRESENTATION OR GIVES ANY SUCH INFORMATION, HOLDERS SHOULD NOT RELY UPON THAT RECOMMENDATION, REPRESENTATION OR INFORMATION AS HAVING BEEN AUTHORIZED BY THE COMPANY, THE DEPOSITARY AND INFORMATION AGENT OR THE TRUSTEE. HOLDERS ARE URGED TO EVALUATE CAREFULLY ALL INFORMATION IN THE OFFER DOCUMENTS, CONSULT THEIR OWN INVESTMENT AND TAX ADVISORS AND MAKE THEIR OWN DECISION AS TO WHETHER TO PARTICIPATE IN THE TENDER OFFER, AND, IF SO, THE PRINCIPAL AMOUNT OF NOTES TO TENDER.**

**THE COMPANY IS NOT PROVIDING FOR PROCEDURES FOR TENDERS OF NOTES TO BE MADE BY GUARANTEED DELIVERY. ACCORDINGLY, HOLDERS MUST ALLOW SUFFICIENT TIME FOR THE NECESSARY TENDER PROCEDURES TO BE COMPLETED DURING THE NORMAL BUSINESS HOURS OF DTC ON OR PRIOR TO THE EXPIRATION DATE. IF A HOLDER HOLDS NOTES THROUGH A NOMINEE, SUCH HOLDER SHOULD KEEP IN MIND THAT SUCH ENTITY MAY REQUIRE THE HOLDER TO TAKE ACTION WITH RESPECT TO THE TENDER OFFER A NUMBER OF DAYS BEFORE THE EXPIRATION DATE IN ORDER FOR SUCH ENTITY TO TENDER NOTES ON SUCH HOLDER’S BEHALF ON OR PRIOR TO THE EXPIRATION DATE. TENDERS NOT COMPLETED PRIOR TO 12:01 A.M., NEW YORK CITY TIME, ON NOVEMBER 10, 2017, WILL BE DISREGARDED AND OF NO EFFECT (UNLESS THE TENDER OFFER HAS BEEN EXTENDED AND SUCH TENDERS ARE COMPLETED PRIOR TO THE EXPIRATION OF THE EXTENDED TENDER OFFER).**



**METHOD OF DELIVERY**

Name of Tendering Institution: \_\_\_\_\_  
DTC Participant Number: \_\_\_\_\_  
Account Number: \_\_\_\_\_  
Transaction Code Number: \_\_\_\_\_

**DESCRIPTION OF NOTES TENDERED**

Name(s) and Address(es) of Holder(s) (Please fill in, if blank)	Principal Amount of Notes Tendered*
	CUSIP No. 590328AA8* \$ _____ ISIN No. US590328AA86*

\* *Must be tendered in minimum denominations of \$1,000 and in integral multiples of \$1,000 in excess thereof.*

The names and addresses of the Holders should be printed exactly as they appear on a security position listing showing such participant as the owner of the Notes. No alternative, conditional or contingent tenders will be accepted.

If you do not wish to tender your Notes, you do not need to return this Letter of Transmittal or take any other action.

**NOTE: SIGNATURES MUST BE PROVIDED BELOW.**  
**PLEASE READ THE ACCOMPANYING INSTRUCTIONS CAREFULLY.**

Ladies and Gentlemen:

By execution hereof, the undersigned acknowledges receipt of this Letter of Transmittal (this “**Letter of Transmittal**”) and the Offer to Purchase, dated October 13, 2017 (the “**Offer to Purchase**” and, together with this Letter of Transmittal, as amended and supplemented from time to time, the “**Offer Documents**”), constituting an offer (the “**Tender Offer**”) by Merrimack Pharmaceuticals, Inc., a Delaware corporation (the “**Company**”), on the terms and subject to the conditions set forth in the Offer Documents, to purchase any and all of its outstanding 4.50% Convertible Senior Notes due 2020 (the “**Notes**”) for cash in an amount equal to \$900.00 per \$1,000 principal amount of validly tendered and accepted Notes (the “**Purchase Price**”), plus accrued and unpaid interest on such Notes, if any, from July 15, 2017, up to, but not including, the Settlement Date (as defined in this Letter of Transmittal) (“**Accrued Interest**”), subject to any required withholding taxes.

Upon the terms and subject to the conditions of the Tender Offer, the undersigned hereby tenders to the Company the principal amount of Notes indicated above in the box captioned “**Description of Notes Tendered.**”

Subject to, and effective upon, the acceptance for purchase of, and payment for, the principal amount of Notes tendered with this Letter of Transmittal, the undersigned hereby (1) irrevocably sells, assigns and transfers to, or upon the order of, the Company all right, title and interest in and to all the Notes tendered thereby and accepted for purchase pursuant to the terms hereof, (2) waives any and all other rights with respect to the Notes (including, without limitation, the tendering registered holder’s (individually, a “**Holder**” and, collectively, the “**Holders**”) waiver of any existing or past defaults and their consequences in respect of the Notes and the indenture under which such Notes were issued), (3) releases and discharges the Company from any and all claims such Holder may have now, or may have in the future, arising out of, or related to, such Notes, including, without limitation, any claims that such Holder is entitled to receive additional principal or interest payments with respect to such Notes or to participate in any repurchase, redemption or defeasance of the Notes and any claims in connection with, relating to or arising out of the Asset Sale (as defined in the Offer to Purchase), and (4) irrevocably constitutes and appoints Global Bondholder Services Corporation, which is serving as depository and information agent in connection with the Tender Offer (the “**Depository**”) as the true and lawful agent and attorney-in-fact of such Holder (with full knowledge that the Depository also acts as the agent of the Company) with respect to any such tendered Notes, with full power of substitution and resubstitution (such power of attorney being deemed to be an irrevocable power coupled with an interest) to (a) transfer ownership of such Notes on the account books maintained by The Depository Trust Company (“**DTC**”), together with all accompanying evidences of transfer and authenticity, to, or upon the order of, the Company, (b) present such Notes for transfer on the relevant security register, and (c) receive all benefits or otherwise exercise all rights of beneficial ownership of such Notes (except that the Depository will have no rights to, or control over, funds from the Company, except as agent for the tendering Holders, for the Purchase Price, plus any Accrued Interest, of Notes tendered pursuant to the Tender Offer, as determined pursuant to the terms of the Offer to Purchase, for any tendered Notes that are purchased by the Company).

The undersigned understands and acknowledges that the Tender Offer will expire at 12:01 a.m., New York City time, on November 10, 2017, or any other date and time to which the Company extends such Tender Offer (such date and time, as it may be extended, the “**Expiration Date**”), unless earlier terminated. The undersigned understands and acknowledges that, in order to receive the Purchase Price offered for the Notes, the undersigned must have validly tendered and not validly withdrawn Notes prior to 12:01 a.m., New York City time, on the Expiration Date. The undersigned understands and acknowledges that tenders are irrevocable except that Notes not yet accepted for purchase may be withdrawn at any time after December 11, 2017 (40 business days after the commencement of the Tender Offer).

Unless otherwise indicated herein under “Special Payment Instructions,” the undersigned hereby requests that checks for payment of the Purchase Price for validly tendered and accepted Notes and any Accrued Interest to be issued in connection with the Tender Offer be issued to the order of the undersigned. Similarly, unless otherwise indicated herein under “Special Delivery Instructions,” the undersigned hereby requests that any Notes representing

principal amounts not accepted for purchase be credited to such DTC participant's account. In the event that the "Special Payment Instructions" box or the "Special Delivery Instructions" box is, or both are, completed, the undersigned hereby requests that any Notes representing principal amounts not accepted for purchase be credited to the account of, and checks for payment of the Purchase Price for validly tendered and accepted Notes and any Accrued Interest be issued in the name(s) of and be delivered to, the person(s) at the addresses so indicated, as applicable.

The undersigned recognizes that the Company has no obligation pursuant to the "Special Payment Instructions" box or "Special Delivery Instructions" box to transfer any Notes from the name of the Holder(s) thereof if the Company does not accept for purchase any of the principal amount of such Notes so tendered.

Withdrawal rights with respect to the Notes will terminate on the Expiration Date. Thereafter, tenders are irrevocable except that Notes not yet accepted for purchase may be withdrawn at any time after December 11, 2017 (40 business days after the commencement of the Tender Offer). If any tendered Notes are not purchased pursuant to the Tender Offer for any reason, such Notes not purchased will be returned promptly, without expense, to the tendering Holder (or, in the case of Notes tendered by book-entry transfer, such Notes will be promptly credited to the account maintained at DTC from which Notes were delivered) after the expiration or termination of the Tender Offer.

For a withdrawal of Notes to be valid, the Depositary must timely receive a written or facsimile notice of withdrawal at one of its the address(es) set forth on the front and back cover of this document, or a properly transmitted "Request Message" through the automated tender offer program ("**ATOP**") must be received by the Depositary, in each case prior to the Expiration Date. The withdrawal notice must:

- specify the name of the person that tendered the Notes to be withdrawn and, if different, the record holder of such Notes (or, in the case of Notes tendered by book-entry transfer, the name of the DTC participant for whose account such Notes were validly tendered and such participant's account number at DTC to be credited with the withdrawn Notes);
- contain a description(s) of the Notes to be withdrawn, including the CUSIP number(s), and the aggregate principal amount represented by such Notes to be withdrawn;
- be signed by the Holder of such Notes in the same manner as the original signature on the Letter of Transmittal by which such Notes were tendered (including any required signature guarantees), if any (or, in the case of Notes tendered by a DTC participant through ATOP, be signed by such participant in the same manner as the participant's name is listed on the applicable Agent's Message), or be accompanied by documents of transfer sufficient to have the Trustee register the transfer of the Notes into the name of the person withdrawing such Notes; and
- if the Letter of Transmittal was executed by a person other than the Holder, be accompanied by a properly completed irrevocable proxy that authorizes such person to effect such revocation on behalf of such Holder.

The undersigned understands that tenders of Notes pursuant to any of the procedures described in the Offer Documents and acceptance thereof by the Company will constitute a binding agreement between the undersigned and the Company upon the terms and subject to the conditions of the Tender Offer, which agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

The undersigned hereby represents, warrants and undertakes to the Company and the Depositary that:

- the undersigned has received the Offer Documents and agrees to be bound by all the terms and conditions of the Tender Offer;
- the Notes are, at the time of acceptance, and will continue to be, until the payment on the Settlement Date, or the termination or withdrawal of the Tender Offer, or, in the case of Notes in respect of which the tender has been withdrawn, the date on which such tender is validly withdrawn, held by the undersigned;

- the undersigned acknowledges that all authority conferred or agreed to be conferred pursuant to these representations, warranties and undertakings and every obligation of the undersigned shall be binding upon the successors, assigns, heirs, executors, administrators, trustee in bankruptcy and legal representatives of the undersigned and shall not be affected by, and shall survive, the death or incapacity of the undersigned;
- the undersigned has full power and authority to tender, sell, assign and transfer the tendered Notes;
- the Notes will, on the Settlement Date, be transferred by the undersigned to the Company in accordance with the terms of the Tender Offer, and the Company will acquire good, marketable and unencumbered title thereto, with full title guarantee free and clear of all liens, restrictions, charges and encumbrances, not subject to any adverse claim or right, and together with all rights attached thereto; and
- the undersigned will, upon request, execute and deliver any additional documents deemed by the Depositary or the Company to be necessary or desirable to complete the sale, assignment and transfer of the Notes tendered.

For purposes of the Tender Offer, the undersigned understands that the Company will be deemed to have accepted for purchase validly tendered Notes, or defectively tendered Notes with respect to which the Company has waived all defects, if, as and when the Company gives oral or written notice thereof to the Depositary.

The undersigned understands that, except as set forth in the Offer to Purchase, the Company will not be required to accept for purchase any of the Notes tendered.

The undersigned understands that the delivery and surrender of the Notes is not effective, and the risk of loss of the Notes does not pass to the Depositary, until receipt by the Depositary and, in the case of Notes tendered through DTC's ATOP, of a properly transmitted Agent's Message together with all accompanying evidences of authority and any other required documents in form satisfactory to the Company.

**PLEASE SIGN HERE**  
**(Please Complete and Return With the Attached Form W-9 (or IRS Form W-8, As Applicable) Unless an Agent's Message is Delivered through the Facilities of DTC)**

This Letter of Transmittal must be signed by the Holder, exactly as his, her, its or their name(s) appear(s) as a DTC participant on a security position listing showing such Holder as the owner of the Notes. If signature is by a trustee, executor, administrator, guardian, attorney-in-fact, officer or other person acting in a fiduciary or representative capacity, such person must set forth his or her full title below under "Capacity" and submit evidence satisfactory to the Company of such person's authority to so act. Certain signatures must be guaranteed by a Medallion Signature Guarantor. See Instruction 1 below.

X \_\_\_\_\_  
\_\_\_\_\_

X \_\_\_\_\_  
\_\_\_\_\_

**(Signature(s) of Holder(s) or Authorized Signatory)**

Date: \_\_\_\_\_, 2017

Name(s):	_____
Capacity (Full Title):	_____
Social Security Number or Employer Identification Number:	_____
Address:	_____
	<b>(Include Zip Code)</b>
Area Code and Telephone Number:	_____

**PLEASE COMPLETE IRS FORM W-9 HEREIN (OR IRS FORM W-8, AS APPLICABLE)  
AND SIGNATURE GUARANTEE, IF REQUIRED (See Instruction 3 below)**

**Certain Signatures Must be Guaranteed by a Medallion Signature Guarantor**

Authorized Signature:

Name of Signatory:

Title:

Name of Medallion Signature Guarantor:

Address:

Area Code and Telephone Number:

Date: \_\_\_\_\_, 2017

**(Please Print)**

**(Include Zip Code)**

**SPECIAL PAYMENT INSTRUCTIONS (See  
Instructions 3, 4, 5 and 6)**

To be completed ONLY if checks for payment of the Purchase Price for validly tendered and accepted Notes and any Accrued Interest are to be issued to someone other than the person or persons whose signature(s) appear(s) within this Letter of Transmittal or issued to an address different from that shown in the box entitled "Description of Notes Tendered" within this Letter of Transmittal.

Issue checks for payment of the Purchase Price for validly tendered and accepted Notes and any Accrued Interest to:

Name \_\_\_\_\_

**(Please Print)**

Address \_\_\_\_\_

**(Including Zip Code)**

\_\_\_\_\_

**(Taxpayer Identification Number or  
Social Security Number)  
(See IRS Form W-9 herein or IRS  
Form W-8, as applicable)**

**SPECIAL DELIVERY INSTRUCTIONS (See  
Instructions 3, 4, 5 and 6)**

To be completed ONLY if Notes not accepted for purchase are to be credited to the account of someone other than the person or persons whose signature(s) appear(s) within this Letter of Transmittal.

Credit the Notes not accepted for purchase to:

Name \_\_\_\_\_

**(Please Print)**

Address \_\_\_\_\_

**(Including Zip Code)**

\_\_\_\_\_

**(Taxpayer Identification Number or  
Social Security Number)  
(Also Provide IRS Form W-9 or the Appropriate  
IRS Form W-8)**

DTC Account Number: \_\_\_\_\_

## INSTRUCTIONS

### Forming Part of the Terms and Conditions of the Tender Offer

**1. Guarantee of Signatures.** All signatures on this Letter of Transmittal must be guaranteed by a firm that is a member of a registered national notes exchange or the Financial Industry Regulatory Authority, or by a commercial bank or trust company having an office or a correspondent in the United States that is a participant in an approved Signature Guarantee Medallion Program (each of the foregoing being an “**Eligible Institution**”) unless (i) this Letter of Transmittal is signed by the registered Holder(s) of Notes (which term, for purposes of this document, shall include any participant in the DTC system whose name appears on a security position listing as the owner of Notes) tendered hereby or (ii) such Notes are tendered for the account of an Eligible Institution. See Instruction 4.

**2. Delivery of Letter of Transmittal.** This Letter of Transmittal is to be completed, or an electronic confirmation pursuant to DTC’s ATOP (together with a Book-Entry Confirmation) is to be transmitted, by Holders for tenders made pursuant to the procedures for tenders by book-entry transfer set forth in the Offer to Purchase under the caption “The Terms of the Tender Offer–Procedure for Tendering Notes.” A properly completed and duly executed Letter of Transmittal (or manually signed facsimile) or an electronic confirmation pursuant to the DTC’s ATOP system (together with a Book-Entry Confirmation), and any other required documents, must be received by the Depositary at its address set forth on the front and back cover of this Letter of Transmittal at or prior to the Expiration Date. Delivery of documents to DTC or the Trustee does not constitute delivery to the Depositary.

**THE METHOD OF DELIVERY OF NOTES AND LETTERS OF TRANSMITTAL, ANY REQUIRED SIGNATURE GUARANTEES AND ALL OTHER REQUIRED DOCUMENTS, INCLUDING DELIVERY THROUGH DTC AND ANY ACCEPTANCE OF AN AGENT’S MESSAGE TRANSMITTED THROUGH ATOP, IS AT THE ELECTION AND RISK OF THE PERSON TENDERING NOTES AND DELIVERING THIS LETTER OF TRANSMITTAL OR TRANSMITTING AN AGENT’S MESSAGE AND, EXCEPT AS OTHERWISE PROVIDED IN THIS LETTER OF TRANSMITTAL, DELIVERY WILL BE DEEMED MADE ONLY WHEN ACTUALLY RECEIVED BY THE DEPOSITARY. DELIVERY OF DOCUMENTS TO DTC OR THE TRUSTEE DOES NOT CONSTITUTE DELIVERY TO THE DEPOSITARY. IF DELIVERY IS BY MAIL, IT IS SUGGESTED THAT HOLDERS USE PROPERLY INSURED, REGISTERED MAIL WITH RETURN RECEIPT REQUESTED AND THAT THE MAILING BE MADE SUFFICIENTLY IN ADVANCE OF THE EXPIRATION DATE, TO PERMIT DELIVERY TO THE DEPOSITARY AT OR PRIOR TO SUCH TIME. HOLDERS DESIRING TO TENDER NOTES MUST ALLOW SUFFICIENT TIME FOR COMPLETION OF THE ATOP PROCEDURES DURING NORMAL BUSINESS HOURS OF DTC. MANUALLY SIGNED FACSIMILE COPIES OF THE LETTER OF TRANSMITTAL, PROPERLY COMPLETED AND DULY EXECUTED, WILL BE ACCEPTED FOR PURCHASE. IN NO EVENT SHALL THE HOLDER SEND ANY DOCUMENTS OR NOTES TO THE COMPANY.**

No alternative, conditional or contingent tenders will be accepted for purchase pursuant to the Tender Offer.

The Notes may be tendered and accepted for purchase only in principal amounts equal to minimum denominations of \$1,000 and integral multiples of \$1,000 in excess thereof. Holders who do not tender all of their Notes must ensure that they retain a principal amount of Notes equal to or greater than \$1,000.

By execution and delivery of this Letter of Transmittal (or a manually signed facsimile hereof) or by electronic confirmation pursuant to DTC’s ATOP (together with the Book-Entry Confirmation), all tendering Holders of Notes waive any right to receive any notice of the acceptance of their Notes for payment. The entire aggregate principal amount represented by the Notes delivered to the Depositary will be deemed to have been tendered. If any tendered Notes are not purchased pursuant to the Tender Offer for any reason, such Notes not purchased will be returned promptly, without expense, to the tendering Holder (or, in the case of Notes tendered by book-entry transfer, such Notes will be promptly credited to the account maintained at DTC from which Notes were delivered) after the expiration or termination of the Tender Offer.



Notes tendered may only be withdrawn pursuant to the procedure and subject to the terms set forth under the caption “The Terms of the Tender Offer–Withdrawal of Tenders” in the Offer to Purchase and as described herein.

**3. Withdrawal of Tenders.** Withdrawal rights with respect to the Notes will terminate on the Expiration Date. Thereafter, tenders are irrevocable, except that Notes not yet accepted for purchase may be withdrawn at any time after December 11, 2017 (40 business days after the commencement of the Tender Offer).

For a withdrawal of Notes to be valid, the Depositary must timely receive a written or facsimile notice of withdrawal at one of its addresses set forth on the front and back cover of this Letter of Transmittal, or a properly transmitted “Request Message” through ATOP must be received by the Depositary, in each case prior to the Expiration Date. The withdrawal notice must:

- specify the name of the person that tendered the Notes to be withdrawn and, if different, the record holder of such Notes (or, in the case of Notes tendered by book entry transfer, the name of the DTC participant for whose account such Notes were validly tendered and such participant’s account number at DTC to be credited with the withdrawn Notes);
- contain a description(s) of the Notes to be withdrawn, including the CUSIP number(s), and the aggregate principal amount represented by such Notes to be withdrawn;
- be signed by the Holder of such Notes in the same manner as the original signature on the Letter of Transmittal by which such Notes were tendered (including any required signature guarantees), if any (or, in the case of Notes tendered by a DTC participant through ATOP, be signed by such participant in the same manner as the participant’s name is listed on the applicable Agent’s Message), or be accompanied by documents of transfer sufficient to have the Trustee register the transfer of the Notes into the name of the person withdrawing such Notes; and
- if the Letter of Transmittal was executed by a person other than the Holder, be accompanied by a properly completed irrevocable proxy that authorizes such person to effect such revocation on behalf of such Holder.

If the Notes to be withdrawn have been delivered or otherwise identified to the Depositary, a signed notice of withdrawal is effective immediately upon proper written or facsimile notice of withdrawal, even if physical release is not yet effected by the Depositary. Any Notes validly withdrawn will be deemed to be not validly tendered for purposes of the Tender Offer.

Holders may not rescind their withdrawal of tendered Notes, and any Notes validly withdrawn will thereafter be deemed not validly tendered for purposes of the Tender Offer. Validly withdrawn Notes may, however, be validly tendered again by following one of the procedures described in the Offer to Purchase under the caption “The Terms of the Tender Offer–Procedure for Tendering Notes” at any time prior to the Expiration Date.

Holders may accomplish valid withdrawals of Notes only in accordance with the foregoing procedures.

If a beneficial owner tendered its Notes through a Nominee and wishes to withdraw its Notes, it will need to make arrangements for withdrawal with its Nominee. The ability of a beneficial owner to withdraw a tender of its Notes will depend upon the terms of the arrangements it has made with its Nominee and, if its Nominee is not the DTC participant tendering those Notes, the arrangements between its Nominee and such DTC participant, including any arrangements involving intermediaries between its Nominee and such DTC participant.

Through DTC, the Depositary will return to tendering Holders all Notes in respect of which it has received valid withdrawal instructions at or prior to the Expiration Date promptly after it receives such instructions.

All questions as to the form and validity (including time of receipt) of a notice of withdrawal will be determined by the Company in its sole discretion, which determination shall be final and binding. None of the Company, the Depositary and Information Agent, the Trustee or any other person will be under any duty to give notification of any defects or irregularities in any notice of withdrawal or will incur any liability for failure to give any such notification.

If the Company is delayed in its acceptance for purchase of, or payment for, any Notes or is unable to accept for purchase or pay for any Notes pursuant to the Tender Offer for any reason, then, without prejudice to the Company's rights hereunder, but subject to applicable law, tendered Notes may be retained by the Depositary on behalf of the Company (subject to Rules 13e-4(f)(5) and Rule 14e-1 under the Exchange Act, which require that the Company pay the consideration offered or return the Notes deposited by or on behalf of the Holders promptly after the termination or withdrawal of the applicable Tender Offer).

**4. Signatures on Letter of Transmittal.** If any Notes tendered hereby are held of record by two or more persons, all such persons must sign this Letter of Transmittal.

If any Notes tendered hereby are registered in different names, it will be necessary to complete, sign and submit as many separate Letters of Transmittal as there are different registrations of such Notes.

If this Letter of Transmittal is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation or other person acting in a fiduciary or representative capacity, such person should so indicate when signing, and proper evidence satisfactory to the Company of such person's authority so to act must be submitted.

**5. Questions and Requests for Assistance or Additional Copies.** Questions or requests for assistance may be directed to the Depositary at its address and telephone numbers, as set forth on the front and back cover of this Letter of Transmittal. Requests for additional copies of the Offer to Purchase, this Letter of Transmittal, the IRS Form W-9 or the IRS Form W-9 instructions may be directed to the Depositary and Information Agent, and copies will be furnished promptly at the Company's expense.

Holders of Notes may contact their brokers, dealers, commercial banks, trust companies or other nominees for assistance concerning the offer.

**6. Important Tax Information.** Under current U.S. federal income tax law, the Depositary (as payer) may be required under the backup withholding rules to withhold a portion of the amount of any payments made to certain stockholders (or other payees) pursuant to the Tender Offer. In order to avoid such backup withholding, each tendering Holder that is a United States person (for U.S. federal income tax purposes) whose tendered Notes are accepted for purchase must (i) provide the Depositary (as payor) with such Holder's correct taxpayer identification number ("**TIN**"), which, in the case of a Holder who is a citizen or individual resident of the United States, generally is such Holder's social security number, and certify that such Holder is not subject to such backup withholding by completing an Internal Revenue Service ("**IRS**") Form W-9, attached hereto (or available from the IRS by calling 1-800-TAX-FORM (1-800-829-3676) or from the IRS website at <http://www.irs.gov>), or (ii) otherwise establish an exemption from backup withholding (currently imposed at a rate of 28%). Certain holders or payees (including, among others, corporations, non-resident foreign individuals and foreign entities) are not subject to these backup withholding and reporting requirements. Exempt stockholders should furnish their TIN, provide the applicable codes in the box labeled "Exemptions," and sign, date and send the IRS Form W-9 to the Depositary. A tendering stockholder who is a foreign individual or a foreign entity should complete, sign, and submit to the Depositary the appropriate Form W-8 (instead of an IRS Form W-9), signed under penalties of perjury, attesting to such stockholder's exempt status. Stockholders are urged to consult their own tax advisors to determine whether they are exempt from or otherwise not subject to backup withholding. The appropriate Form W-8 may be obtained from the Depositary or from the IRS.

If the Depositary is not provided with the correct TIN or an adequate basis for an exemption, such Holder may be subject to a \$50 penalty imposed by the IRS and/or any payments pursuant to the Tender Offer may be subject to backup withholding. Failure to comply truthfully with the backup withholding requirements, if done willfully, may also result in the imposition of criminal and/or civil fines and penalties. See IRS Form W-9 attached hereto for additional information.

If backup withholding applies, the Depositary is required to withhold on any payments made to the holder or other payee. Backup withholding is not an additional tax. A holder or payee subject to the backup withholding rules will be allowed a credit of the amount withheld against such holder's U.S. federal income tax liability, and, if backup withholding results in an overpayment of tax, such holder may be entitled to a refund, provided the requisite information is correctly furnished to the IRS in a timely manner.

**7. Transfer Taxes.** Except as otherwise provided in this Instruction 7, the Company will pay or cause to be paid all transfer taxes with respect to the purchase of any Notes in the Tender Offer (for the avoidance of doubt, transfer taxes do not include U.S. federal income or backup withholding taxes). If, however, payment of the purchase price is to be made to, or (in the circumstances permitted hereby) if Notes not tendered or accepted for payment are to be registered in the name of, any person other than the registered owner(s), or if tendered Notes are registered in the name of any person other than the person signing this Letter of Transmittal, the amount of any transfer taxes (whether imposed on the registered owner(s), such person or otherwise) payable on account of the transfer to such person will be deducted from the purchase price of such Notes purchased, unless satisfactory evidence of the payment of such taxes, or exemption therefrom, is submitted.

**8. Irregularities.** The Company, in its sole discretion, will determine all questions as to the form of documents and validity, eligibility (including time of receipt), acceptance for purchase and withdrawal of validly tendered Notes, and such determinations will be final and binding. The Company reserves the absolute right to reject any and all tenders of Notes that it determines are not in proper form or where the acceptance for purchase of, or payment for, such Notes may, in the Company's opinion, be unlawful. The Company also reserves the absolute right in its sole discretion to waive any of the conditions of the Tender Offer or any defect or irregularity in the tender of Notes of any particular Holder, regardless of whether similar conditions, defects or irregularities are waived in the case of other Holders. The Company's interpretation of the terms and conditions of the Tender Offer will be final and binding.

Any defect or irregularity in connection with tenders of Notes must be cured within such time as the Company determines, unless waived by the Company. Tenders of Notes shall not be deemed to have been made until all defects or irregularities have been waived or cured. None of the Company, the Depositary and Information Agent, the Trustee or any other person will be under any duty to give notification of any defects or irregularities in tenders or notices of withdrawal or will incur any liability for failure to give any such notification. If the Company waives its right to reject a defective tender of Notes, the Holder will be entitled to the Purchase Price, plus Accrued Interest.

**9. Waiver of Conditions; Termination of Tender Offer.** The Company expressly reserves the absolute right, in its sole discretion, to waive any of the conditions to the Tender Offer in the case of any Notes tendered, in whole or in part, at any time and from time to time. The Company also expressly reserves the absolute right, in its sole discretion, subject to applicable law and the Settlement Agreement (as defined in the Offer to Purchase), to terminate the Tender Offer at any time for any reason without accepting for purchase any Notes that may have been tendered prior to such termination.

**IMPORTANT: THIS PROPERLY COMPLETED AND DULY EXECUTED LETTER OF TRANSMITTAL (OR MANUALLY SIGNED FACSIMILE THEREOF) OR A PROPERLY TRANSMITTED AGENT'S MESSAGE DELIVERED PURSUANT TO THE DTC'S ATOP, CONFIRMATION OF A BOOK-ENTRY TRANSFER OF NOTES AND ANY OTHER DOCUMENTS REQUIRED BY THIS LETTER OF TRANSMITTAL MUST BE RECEIVED BY THE DEPOSITARY AT OR PRIOR TO THE EXPIRATION DATE.**

# Request for Taxpayer Identification Number and Certification

Give Form to the  
requester. Do not  
send to the IRS.

Print or type  
See Specific Instructions on page 2.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
2 Business name/disregarded entity name, if different from above	
3 Check appropriate box for federal tax classification; check only <b>one</b> of the following seven boxes: <input type="checkbox"/> Individual/scale proprietor or single-member LLC <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ <b>Note.</b> For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner. <input type="checkbox"/> Other (see instructions) ▶ _____	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <i>(Applies to accounts maintained outside the U.S.)</i>
5 Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
6 City, state, and ZIP code	
7 List account number(s) here (optional)	

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

Social security number	
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OR	
Employer identification number	
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## Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here	Signature of U.S. person ▶	Date ▶

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at [www.irs.gov/fw9](http://www.irs.gov/fw9).

### Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding?* on page 2.

By signing the filled-out form, you:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued).
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
- Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

**Note.** If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States:

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

## Backup Withholding

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),

3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code* on page 3 and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships* above.

## What is FATCA reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code* on page 3 and the Instructions for the Requester of Form W-9 for more information.

## Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account, list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

**Note, ITIN applicant:** Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C Corporation, or S Corporation.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(ii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

**Line 2**

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

**Line 3**

Check the appropriate box in line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box in line 3.

**Limited Liability Company (LLC).** If the name on line 1 is an LLC treated as a partnership for U.S. federal tax purposes, check the "Limited Liability Company" box and enter "P" in the space provided. If the LLC has filed Form 8832 or 2553 to be taxed as a corporation, check the "Limited Liability Company" box and in the space provided enter "C" for C corporation or "S" for S corporation. If it is a single-member LLC that is a disregarded entity, do not check the "Limited Liability Company" box; instead check the first box in line 3 "Individual/sole proprietor or single-member LLC."

**Line 4, Exemptions**

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space in line 4 any code(s) that may apply to you.

**Exempt payee code.**

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

- 1—An organization exempt from tax under section 501(c)(3), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
  - 2—The United States or any of its agencies or instrumentalities
  - 3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
  - 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
  - 5—A corporation
  - 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession
  - 7—A futures commission merchant registered with the Commodity Futures Trading Commission
  - 8—A real estate investment trust
  - 9—An entity registered at all times during the tax year under the Investment Company Act of 1940
  - 10—A common trust fund operated by a bank under section 584(a)
  - 11—A financial institution
  - 12—A middleman known in the investment community as a nominee or custodian
  - 13—A trust exempt from tax under section 664 or described in section 4947
- The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt payees 1 through 5 <sup>2</sup>
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

**Exemption from FATCA reporting code.** The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

- A—An organization exempt from tax under section 501(c)(3) or any individual retirement plan as defined in section 7701(a)(37)
- B—The United States or any of its agencies or instrumentalities
- C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
- D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)
- E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)
- F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state
- G—A real estate investment trust
- H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940
- I—A common trust fund as defined in section 584(a)
- J—A bank as defined in section 581
- K—A broker
- L—A trust exempt from tax under section 664 or described in section 4947(a)(1)
- M—A tax exempt trust under a section 403(b) plan or section 457(c) plan

**Note.** You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

**Line 5**

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns.

**Line 6**

Enter your city, state, and ZIP code.

**Part I. Taxpayer Identification Number (TIN)**

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on this page), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note.** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at [www.ssa.gov](http://www.ssa.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/businesses](http://www.irs.gov/businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting [irs.gov](http://irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note.** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, or 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee* code earlier.

**Signature requirements.** Complete the certification as indicated in items 1 through 5 below.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

## What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee) b. So-called trust account that is not a legal or valid trust under state law	The grantor-trustee <sup>3</sup> The actual owner <sup>4</sup>
5. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>3</sup>
6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor <sup>4</sup>
For this type of account:	Give name and EIN of:
7. Disregarded entity not owned by an individual	The owner
8. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
9. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
10. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
11. Partnership or multi-member LLC	The partnership
12. A broker or registered nominee	The broker or nominee
13. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
14. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN if you have one, but the IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title. See *Special rules for partnerships* on page 2.

<sup>5</sup> Note. Grantor also must provide a Form W-9 to trustee of trust.

**Note.** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

## Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN.
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Publication 4535, Identity Theft Prevention and Victim Assistance.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

**Protect yourself from suspicious emails or phishing schemes.** Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: [spam@ftc.gov](mailto:spam@ftc.gov) or contact them at [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft) or 1-877-ID-THIEF-1 (1-877-438-4389).

Visit [IRS.gov](http://IRS.gov) to learn more about identity theft and how to reduce your risk.

## Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

In order to tender Notes, a Holder should send or deliver a properly completed and signed Letter of Transmittal and any other required documents to the Depositary at one of its addresses set forth below or tender pursuant to DTC's ATOP. Questions or requests for assistance relating to the procedures for tendering Notes or for additional copies of the Offer Documents may be directed to the Information Agent at its telephone number and address set forth below.

*The Depositary for the Tender Offer is:*  
**Global Bondholder Services Corporation**

*By facsimile:*  
*(For Eligible Institutions only)*  
(212) 430-3775  
Confirmation:  
(212) 430-3774

*By Mail, Overnight Courier or Hand:*  
Global Bondholder Services Corp.  
Attn: Corporate Action  
65 Broadway, Suite 404  
New York, New York 10006  
(212) 430-3774

*The Information Agent for the Tender Offer is:*  
**Global Bondholder Services Corporation**

65 Broadway, Suite 404  
New York, New York 10006  
Banks and Brokers call: (212) 430-3774  
Toll free: (866) 470-4200  
Email: [contact@gbsc-usa.com](mailto:contact@gbsc-usa.com)

You may contact your broker, dealer, commercial bank or trust company or other nominee for assistance concerning the Tender Offer or requests for additional copies of the Offer Documents.