

FIRST DATA CORP  
Form POS AM  
December 30, 2003  
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As filed with the Securities and Exchange Commission on December 30, 2003

Registration No. 333-105432

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# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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## Post-Effective Amendment No. 1

to

## FORM S-4

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

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# First Data Corporation

(Exact name of registrant as specified in its charter)

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

**6199**  
(Primary Standard Industrial  
Classification Code Number)

**47-0731996**  
(I.R.S. Employer  
Identification Number)

**6200 South Quebec Street**  
**Greenwood Village, Colorado 80111**

**(303) 488-8000**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

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Michael T. Whealy, Esq.

Executive Vice President, Chief Administrative

Officer and General Counsel

First Data Corporation

10825 Old Mill Road, M-10

Omaha, Nebraska 68154

(402) 777-2000

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

---

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**Approximate date of commencement of proposed sale of the securities to the public:** As soon as practicable after this registration statement becomes effective and after the conditions to the completion of the proposed transaction described in the proxy statement/prospectus have been satisfied or waived.

If the securities being registered on this form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box.

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

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

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**EXPLANATORY NOTE:** The Registration Statement to which this Post-Effective Amendment relates has been filed in connection with the shares of common stock to be issued by First Data Corporation, a Delaware corporation ( First Data ), to shareholders of Concord EFS, Inc., a Delaware corporation ( Concord ), pursuant to the merger of Monaco Subsidiary Corporation, a Delaware corporation and a wholly owned subsidiary of First Data, with and into Concord (the Merger ).

The Registration Statement, as declared effective by the Securities and Exchange Commission on September 24, 2003, to which this Post-Effective Amendment relates included a Joint Proxy Statement/Prospectus in connection with the respective special meetings of the shareholders of Concord and First Data, each of which was held on October 28, 2003. At their respective meetings, the shareholders of Concord approved the Merger and the shareholders of First Data approved the issuance of the shares of common stock as contemplated by the Agreement and Plan of Merger, dated as of April 1, 2003 (the Merger Agreement ). On December 14, 2003, First Data and Concord entered into an Amendment and Abeyance Agreement, as described herein (the Amendment Agreement ), pursuant to which, among other things, the consideration to be paid to Concord shareholders in the Merger was reduced. The Proxy Statement/Prospectus included in this Post-Effective Amendment constitutes a prospectus of First Data with respect to the issuance to the Concord shareholders of a reduced number of shares, as contemplated by the Amendment Agreement, and a proxy statement of Concord for purposes of the special meeting of Concord shareholders, at which the Merger Agreement, as amended by the Amendment Agreement, will be submitted to the Concord shareholders for adoption. No additional First Data shareholder vote is required.

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**The information in this proxy statement/prospectus is not complete and may be changed. These securities may not be sold until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary proxy statement/prospectus is not an offer to sell and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.**

**Preliminary Copy Subject to Completion, dated December 30, 2003**

**MERGER PROPOSAL YOUR VOTE IS IMPORTANT**

**Dear Shareholders:**

You are cordially invited to attend a special meeting of shareholders of Concord EFS, Inc., which will be held at [•] on [•], 2004, beginning at [•] a.m. local time. At this important meeting, you will be asked to adopt the amended merger agreement by and among Concord, First Data Corporation and Monaco Subsidiary Corporation, a wholly owned subsidiary of First Data Corporation, and, by doing so, approve the proposed merger.

On October 28, 2003, you voted to approve the original merger agreement by and among Concord, First Data and Monaco Subsidiary Corporation, which provided for a merger in which Concord shareholders would receive 0.40 of a share of First Data common stock for each share of Concord common stock that they hold, and cash in lieu of fractional shares of First Data common stock. The amended merger agreement provides that Concord shareholders will receive 0.365 of a share of First Data common stock for each share of Concord common stock that they hold, and cash in lieu of fractional shares of First Data common stock.

**On December 12, 2003, which was the last full trading day prior to the announcement of the amended merger agreement, the closing price of the First Data common stock on the New York Stock Exchange, where it is traded under the symbol FDC, was \$39.30 and the closing price of the Concord common stock on the New York Stock Exchange, where it is traded under the symbol CE, was \$13.50. Based upon this First Data common stock closing price, the value of First Data common stock to be received for each share of Concord common stock in the merger would have been \$14.34. On [•], 2004, the closing price of the First Data common stock and the Concord common stock was \$[•] and \$[•], respectively. Based upon this First Data common stock closing price, the value of First Data common stock to be received for each share of Concord common stock in the merger would have been \$[•].** Under the amended merger agreement, the exchange ratio is fixed at 0.365 and will not be changed to reflect fluctuations in the market price of the common stock of either company.

A holder of Concord common stock generally will not recognize any gain or loss for federal income tax purposes upon the exchange of the holder's shares of Concord common stock for shares of First Data common stock pursuant to the merger. For a more detailed discussion of the federal income tax consequences of the merger, see **Material Federal Income Tax Consequences of the Merger** beginning on page 56 of this proxy statement/prospectus.

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**In addition, the section entitled Risk Factors on pages 17 through 20 of this proxy statement/prospectus contains a description of the risks that you should consider in evaluating the merger.**

Your board of directors has concluded after careful consideration that approval of the amended merger agreement is in the best interests of the Concord shareholders. As a result of the amendment, we were able to protect most of the value from the original transaction for our shareholders and also greatly increase the likelihood that the merger will be completed. The enclosed document describes in detail the background and reasons for your board of directors' approval of the amended merger agreement and for its recommendation that you vote to adopt the amended merger agreement and, by doing so, approve the proposed merger. **Your board of directors unanimously recommends that Concord shareholders vote FOR this proposal.**

We cannot complete the merger unless the Concord shareholders adopt the amended merger agreement. We encourage you to read this proxy statement/prospectus, which includes important information about the merger. **Your vote is important.**

BOND R. ISAACSON  
*Co-Chief Executive Officer*  
*Concord EFS, Inc.*

DAN M. PALMER  
*Co-Chief Executive Officer*  
*Concord EFS, Inc.*

**Neither the SEC nor any state securities commission has approved or disapproved the securities to be issued under this proxy statement/prospectus or determined if this proxy statement/prospectus is accurate or adequate. Any representation to the contrary is a criminal offense.**

This proxy statement/prospectus is dated [•], 2004 and is first being mailed to the Concord shareholders on or about [•], 2004.

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**REFERENCES TO ADDITIONAL INFORMATION**

This proxy statement/prospectus incorporates important business and financial information about First Data and Concord from other documents that are not included in or delivered with this proxy statement/prospectus. This information is available to you without charge upon your written or oral request. You can obtain those documents incorporated by reference in this proxy statement/prospectus by requesting them in writing or by telephone from the appropriate company at the following addresses and telephone numbers:

<b>First Data Corporation</b>	<b>Concord EFS, Inc.</b>
Investor Relations Department	Investor Relations
6200 South Quebec Street	1100 Carr Road
Greenwood Village, CO 80111	Wilmington, DE 19809
(303) 967-6756	(302) 791-8111

*If you would like to request documents, please do so by [•], 2004, in order to receive them before the special meeting.*

See Where You Can Find More Information.

**VOTING BY MAIL OR BY TELEPHONE**

If you are a shareholder of record, you may submit your proxies:

By mail, by signing and dating each proxy card you receive, indicating your voting preference on the proposal and returning each proxy card in the prepaid envelope which accompanied that proxy card; or

By telephone, by calling the toll-free number 1-877-779-8683 in the United States, Canada or Puerto Rico on a touch-tone phone and following the recorded instructions.

If you are a beneficial owner, please refer to your proxy card or the information forwarded by your bank, broker or other holder of record to see which options are available to you.

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**NOTICE OF SPECIAL MEETING OF SHAREHOLDERS**

TO THE SHAREHOLDERS OF CONCORD EFS, INC.:

NOTICE IS HEREBY GIVEN that Concord EFS, Inc. will hold a special meeting of its shareholders at [•] on [•], 2004, beginning at [•] a.m. local time. The purpose of the special meeting is to consider and to vote upon the following matters:

1. A proposal to adopt the Agreement and Plan of Merger, dated as of April 1, 2003, as amended by the Amendment and Abeyance Agreement, dated as of December 14, 2003, (which we refer to collectively in this document as the amended merger agreement) among First Data Corporation, Monaco Subsidiary Corporation, a wholly owned subsidiary of First Data, and Concord EFS, Inc. A copy of the original merger agreement and the amendment and abeyance agreement are included as *Annex A* and *Annex B*, respectively, to the accompanying proxy statement/prospectus; and

2. To transact such other business as may properly come before the special meeting and any adjournment or postponement of the special meeting.

In the merger, each share of Concord common stock will be converted into 0.365 of a share of First Data common stock.

Holders of record of Concord common stock at the close of business on [•], 2004 are entitled to receive this notice and to vote at the special meeting and any adjournment or postponement of that meeting. As of the record date, there were [•] shares of Concord common stock outstanding. Each share of common stock is entitled to one vote on each matter properly brought before the meeting.

If your Concord shares are not registered in your own name and you would like to attend the special meeting, please bring evidence of your Concord share ownership on the record date with you to the meeting, such as an account statement from your bank, broker or other record holder.

Whether or not you plan to attend the meeting in person, please vote your shares promptly via telephone or by marking, signing, dating and returning the proxy card promptly in the enclosed prepaid envelope. Instructions regarding both methods of voting are contained on the proxy card.

**Your board of directors unanimously recommends that you vote to adopt the amended merger agreement. Your attention is directed to the proxy statement/prospectus accompanying this notice for a discussion of the merger and the amended merger agreement.**



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By Order of the Board of Directors,

J. Richard Buchignani  
*Secretary*

[•], 2004

**YOUR VOTE IS IMPORTANT**

**PLEASE PROMPTLY MARK, DATE, SIGN AND RETURN YOUR PROXY OR FOLLOW THE TELEPHONE VOTING PROCEDURES DESCRIBED ON THE PROXY SO THAT YOUR SHARES MAY BE VOTED IN ACCORDANCE WITH YOUR WISHES AND SO THAT THE PRESENCE OF A QUORUM MAY BE ASSURED. YOUR PROMPT ACTION WILL AID CONCORD EFS, INC. IN REDUCING THE EXPENSE OF PROXY SOLICITATION.**

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**CHAPTER ONE**

**THE MERGER**

**QUESTIONS AND ANSWERS ABOUT THE MERGER**

**Q: Why is Concord holding another meeting with respect to the merger?**

A: Because Concord and First Data have renegotiated the terms of the merger since the date of the first special shareholders meeting, including the consideration you will receive in exchange for your shares of Concord common stock, the law requires that Concord shareholders must approve the terms of the amended merger agreement before we can complete the merger.

**Q: What if I voted at the shareholders meeting on October 28, 2003 with respect to the merger? Should I vote again?**

A: Whether or how you voted at the October 28, 2003 meeting has no effect on the approval of the amended merger agreement. You are entitled, and we strongly encourage you, to vote at the Concord special meeting that will be held on [●], 2004.

**Q: Do I have to vote the same way I voted on October 28, 2003?**

A: No. After carefully reading the information contained in this document you should decide how you would like to vote. Your board of directors unanimously recommends that you vote for the approval of the amended merger agreement and, by doing so, approve the proposed merger.

**Q: What do I need to do now?**

A: After you carefully read this document, mail your signed proxy card in the enclosed return envelope, or submit your proxy by telephone, as soon as possible, so that your shares may be represented at the special meeting. In order to assure that your vote is recorded, please vote your proxy as instructed on your proxy card even if you currently plan to attend the special meeting in person.

**Q: Why is my vote important?**

A: You are being asked to adopt the amended merger agreement and, by doing so, approve the proposed merger. If you do not return your proxy card or submit your proxy by telephone or vote in person at the special meeting, it will be more difficult for Concord to obtain the necessary quorum to hold the special meeting. In addition, your failure to vote will have the same effect as a vote against the adoption of the amended merger agreement.

**Q: May I vote in person?**

A:

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Yes. If you are a shareholder of record as of [●], 2004, you may attend the special meeting and vote your shares in person, instead of returning your signed proxy card or submitting your proxy by telephone.

**Q: If my shares are held in street name by my broker, will my broker vote my shares for me?**

A: No. If your shares are held in street name by your broker and you do not provide your broker with instructions on how to vote your street name shares, your broker will not be permitted to vote them on the adoption of the amended merger agreement. You should therefore be sure to provide your broker with instructions on how to vote your shares. Please check the voting form used by your broker to see if it offers telephone or Internet submission of proxies.

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**Q: What if I fail to instruct my broker?**

A: If you fail to instruct your broker to vote your shares and the broker submits an unvoted proxy, the resulting broker non-vote will be counted toward a quorum at the special meeting and it will have the consequences discussed above under **Why is my vote important?**

**Q: What does it mean if I receive more than one set of materials?**

A: This means you own shares of Concord that are registered under different names. For example, you may own some shares directly as a shareholder of record and other shares through a broker or you may own shares through more than one broker. In these situations you will receive multiple sets of proxy materials. It is necessary for you to vote, sign and return all of the proxy cards or follow the instructions for any alternative voting procedure on each of the proxy cards you receive in order to vote all of the shares you own. Each proxy card you received came with its own prepaid return envelope; if you vote by mail, make sure you return each proxy card in the return envelope which accompanied that proxy card.

**Q: Can I revoke my proxy and change my vote?**

A: Yes. You have the right to revoke your proxy at any time prior to the time your shares are voted at the special meeting. If you are a shareholder of record, your proxy can be revoked in several ways: (i) by timely delivery of a written revocation to Concord's secretary, (ii) by submitting another valid proxy bearing a later date, or (iii) by attending the special meeting and voting your shares in person. However, if your shares are held in the name of your bank, broker, custodian or other recordholder, you must check with your bank, broker, custodian or other recordholder to determine how to revoke your proxy.

**Q: When and where is the special meeting?**

A: The special meeting will take place on [•] at [•] local time, at [•].

**Q: Should I send in my stock certificates now?**

A: No. After the merger is completed, First Data will send Concord shareholders written instructions for exchanging their Concord stock certificates for First Data stock.

**Q: When do you expect the merger to be completed?**

A: We are working to complete the merger during the first quarter of 2004. However, it is possible that factors outside of our control could require us to complete the merger at a later time or not complete it at all. We hope to complete the merger as soon as reasonably practicable.

**Q: Who can answer any questions I may have about the special meeting or the merger?**

A: You may call Georgeson Shareholder Communications, Inc. at 1-800-818-8320.

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**SUMMARY**

*This summary highlights selected information from this proxy statement/prospectus and may not contain all of the information that is important to you. All references in this proxy statement/prospectus to the original merger agreement mean the merger agreement, dated as of April 1, 2003, and all references to the amended merger agreement mean the merger agreement dated as of April 1, 2003, as amended by the amendment and abeyance agreement, dated as of December 14, 2003. To understand the merger fully and for a more complete description of the legal terms of the amended merger agreement, you should carefully read this entire document and the documents to which we refer you. Copies of the original merger agreement and the amendment and abeyance agreement are attached as Annex A and Annex B, respectively, to this document and are incorporated by reference in this proxy statement/prospectus. See *Where You Can Find More Information*.*

**The Companies Involved in the Proposed Merger (see page 60)**

First Data Corporation

6200 South Quebec Street

Greenwood Village, Colorado 80111

(303) 967-8000

Internet address: [www.firstdata.com](http://www.firstdata.com)

First Data Corporation, with headquarters in Denver, helps power the global economy. In the electronic commerce and payment services businesses, First Data serves approximately 3 million merchant locations, 1,400 card issuers and millions of consumers, making it easy, fast and secure for people and businesses to buy goods and services using virtually any form of payment. With 29,000 employees worldwide, First Data provides the following services throughout the United States:

credit, debit, smart card and stored-value card issuing and merchant transaction processing services;

Internet commerce solutions;

money transfer services;

money orders; and

check processing and verification services.

First Data also offers a variety of payment services in the United Kingdom, Australia, Canada, Japan, Mexico, Spain, the Netherlands, the Middle East and Germany. First Data's Western Union and Orlandi Valuta money transfer networks include a total of approximately 169,000 agent locations in more than 195 countries and territories. Shares of First Data common stock are traded on the New York Stock Exchange under

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the symbol FDC.

Concord EFS, Inc.

2525 Horizon Lake Drive, Suite 120

Memphis, Tennessee 38133

(901) 371-8000

Internet address: [www.concordefs.com](http://www.concordefs.com)

Concord EFS, Inc., an electronic transaction processor, provides the technology and network systems that make payments and other financial transactions faster, more efficient and more secure than paper-based alternatives. Concord's primary activities include:

Network Services, which provides automated teller machine (referred to as an ATM in this proxy statement/prospectus) processing, debit card processing, deposit risk management and STAR<sub>sm</sub> network access principally for financial institutions; and

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Payment Services, which provides point of sale processing, settlement and related services, with specialized systems focusing on supermarkets, major retailers, gas stations, convenience stores, restaurants and trucking companies.

Concord's new Risk Management Services group, which combines products that are currently part of its Network Services and Payment Services reporting segments, provides software, information and analysis to financial institutions, retailers, government service providers and other businesses to assist in fraud prevention and reduction. Shares of Concord common stock are traded on the New York Stock Exchange under the symbol CE.

### **Concord Shareholders Will Receive 0.365 of a Share of First Data Common Stock for Each Share of Concord Common Stock They Hold (see page 69)**

Concord shareholders will receive 0.365 of a share of First Data common stock for each share of Concord common stock they hold. First Data will not issue fractional shares pursuant to the merger. As a result, the total number of shares of First Data common stock that each Concord shareholder will receive pursuant to the merger will be rounded down to the nearest whole number, and each Concord shareholder will receive a cash payment for the remaining fraction of a share of First Data common stock that he or she would otherwise receive, if any, based on the market value of First Data common stock at the close of business on the closing date of the merger.

*Example: If you currently own 130 shares of Concord common stock, you will be entitled to receive 47 shares of First Data common stock and a check for the market value of 0.45 shares of First Data common stock at the close of business on the closing date of the merger.*

### **Concord Shareholders Will Not Recognize Any Gain or Loss for Federal Income Tax Purposes Upon the Exchange of Their Shares, Except that Gain or Loss Will be Recognized on the Receipt of Cash in Lieu of a Fractional Share of First Data Common Stock (see page 56)**

Each of Sidley Austin Brown & Wood LLP, legal counsel to First Data, and Kirkland & Ellis LLP, legal counsel to Concord, has delivered its opinion which provides that the merger will qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code and that each of First Data, Concord and Monaco Subsidiary Corporation (the wholly owned subsidiary of First Data that will merge with and into Concord) will be a party to the reorganization within the meaning of Section 368(a) of the Internal Revenue Code. It is the opinion of each of Sidley Austin Brown & Wood LLP and Kirkland & Ellis LLP that a holder of Concord common stock will not recognize any gain or loss for federal income tax purposes upon the exchange of the holder's shares of Concord common stock for shares of First Data common stock pursuant to the merger, except that gain or loss will be recognized on the receipt of cash in lieu of a fractional share of First Data common stock. The foregoing opinions are based, in part, on customary factual assumptions and written factual representations.

You should carefully read the discussion under the heading "Material Federal Income Tax Consequences of the Merger" beginning on page 56. The federal income tax consequences described above may not apply to some holders of Concord common stock, including some types of holders specifically referred to on page 56.

### **First Data Expects to Continue its Historical Policy of Paying Quarterly Dividends After Completion of the Merger**

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The holders of First Data common stock receive dividends if and when declared by the First Data board of directors out of legally available funds. First Data increased its dividend from \$0.01 to \$0.02 per share on a quarterly basis to stockholders during the second quarter of 2002. After completion of the merger, First Data expects to continue paying quarterly cash dividends on a basis consistent with First Data's past practice. The timing and amount of future dividends will be:

dependent upon First Data's results of operations, financial condition, cash requirements and other relevant factors;

subject to the discretion of the First Data board of directors; and

payable only out of First Data's surplus or current net profits in accordance with the General Corporation Law of the State of Delaware.

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First Data can give Concord shareholders no assurance that First Data will continue to pay dividends on its common stock in the future.

**Recent Closing Prices of First Data Common Stock and Concord Common Stock**

The following table includes the closing sale prices per share of First Data common stock and Concord common stock as reported on the NYSE Composite Transaction Tape on:

December 10, 2003, the last full trading day prior to the date on which *The Wall Street Journal* published an article suggesting that the antitrust litigation instituted by the U.S. Department of Justice might be settled prior to trial;

December 12, 2003, the last full trading day prior to the announcement of the amended merger agreement; and

[•], 2004, the most recent practicable date prior to the mailing of this proxy statement/prospectus to Concord's shareholders.

This table also includes the equivalent price per share of Concord common stock on those dates. The equivalent price per share is equal to the closing price of a share of First Data common stock on that date multiplied by 0.365 the applicable exchange ratio in the merger. These prices will fluctuate prior to the special meeting and the merger, and shareholders are urged to obtain current market quotations prior to making any decision with respect to the merger.

	<b>First Data Common Stock</b>	<b>Concord Common Stock</b>	<b>Concord Common Stock per Share Equivalent</b>
December 10, 2003	\$ 38.21	\$ 11.47	\$ 13.95
December 12, 2003	\$ 39.30	\$ 13.50	\$ 14.34
[•], 2004	\$ [•]	\$ [•]	\$ [•]

**Dissenters Will Not Have Any Appraisal Rights (see page 59)**

The holders of Concord common stock will not have any right to an appraisal of the value of their shares in connection with the merger.

**Concord's Financial Advisors Delivered Opinions to the Concord Board of Directors that, as of December 14, 2003, the Exchange Ratio of 0.365 was Fair, From a Financial Point of View, to Concord Shareholders (see page 39)**

Each of Goldman, Sachs & Co. and William Blair & Company, L.L.C. delivered its opinion to the Concord board of directors that, as of December 14, 2003 and based upon and subject to the assumptions, qualifications and limitations discussed in such opinion, the exchange ratio in the proposed merger was fair, from a financial point of view, to the holders of Concord common stock. The full text of the written opinions of

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Goldman Sachs and William Blair, each dated December 14, 2003, which discuss, among other things, the assumptions made, procedures followed, matters considered and qualifications and limitations of the review undertaken in connection with each opinion, are attached to this proxy statement/prospectus as *Annex C* and *Annex D*, respectively. Concord shareholders should read these opinions in their entirety. Based on these opinions and a number of other factors described in *The Proposed Merger - Concord's Reasons for the Merger*, the Concord board of directors believes that the terms of the merger, including the exchange ratio of 0.365, are advisable to Concord and its shareholders and unanimously recommends to Concord's shareholders that they adopt the amended merger agreement and, by doing so, approve the merger.

Due to the size and significance of the merger, the Concord board of directors believed that it was appropriate to retain the services of two financial advisors. The non-executive chairman of the Concord board of

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directors is a principal of William Blair. The disinterested directors of Concord believed it to be in the best interests of Concord shareholders to engage William Blair as a financial advisor based on William Blair's qualifications and expertise, reputation, knowledge of Concord's business and long record of providing sound financial advice to Concord. The Concord board of directors believed that it was advisable to engage Goldman Sachs as a financial advisor because it is an internationally recognized investment banking firm that has substantial experience in transactions similar to the merger and has no direct or indirect interest in Concord.

Under the terms of separate letter agreements, dated February 21, 2003, in the case of Goldman Sachs, and February 20, 2003, in the case of William Blair, Concord agreed to pay Goldman Sachs a fee of \$10,000,000 and William Blair a fee of \$9,500,000 upon completion of the proposed merger. In addition, under the terms of the letter agreements, Concord paid Goldman Sachs a fee of \$2,000,000 and William Blair a fee of \$1,500,000, in each case, upon delivery of its opinion on April 1, 2003 as to the fairness, from a financial point of view, of the exchange ratio in the original merger agreement.

**Each of the Goldman Sachs and William Blair opinions is addressed to the Concord board of directors and is directed to the fairness, from a financial point of view, of the exchange ratio in the proposed merger. Neither the Goldman Sachs opinion nor the William Blair opinion constitutes a recommendation to any Concord shareholder as to how any such shareholder should vote with respect to the proposed merger or any other matter.**

**The Merger and the Future Performance of First Data After the Completion of the Merger are Subject to a Number of Risks (see page 17)**

There are a number of risks related to the merger, including the following:

the value of First Data shares to be received by Concord shareholders will fluctuate;

First Data may be unable to successfully integrate the operations of First Data and Concord and realize the publicly announced potential cost synergies of \$205 million in 2006;

First Data may incur significant transaction, merger-related and restructuring costs in connection with the merger, including an estimated \$80 million of transaction costs; and

charges to earnings resulting from the application of the purchase method of accounting may adversely affect the market value of First Data's common stock following the merger.

Furthermore, there are a number of risks relating to the businesses of First Data, Concord and the combined company, including the following:

the business of the combined company will be subject to risks currently affecting the businesses of First Data and Concord, such as the potential loss of certain significant customers in Concord's Network Services segment due to a possible failure to renew certain customer contracts which by their terms terminate on December 31, 2004, increasing competition in the combined company's line of business and continued consolidation in the banking and retail industries;

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current or future card association rules and practices could adversely affect the business, transaction volumes, operating results and financial condition of the combined company;

the outcome of litigation involving VISA and MasterCard could have a negative impact on the business of the combined company;

changes in card association fees or products could increase the costs or otherwise limit the operations of the combined company; and

First Data and Concord are the subject of various legal proceedings.

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For a more complete discussion of these and other risk factors please see [Risk Factors](#) and the documents that we have filed with the Securities and Exchange Commission and which we have incorporated into this document.

### **Due to Variances Between the Certificates of Incorporation, By-laws and Other Corporate Documents of First Data and Concord, Differences Exist Between the Rights of First Data Shareholders and Concord Shareholders (see page 98)**

The rights of shareholders of both companies are governed by Delaware law. However, there are differences in the rights of First Data shareholders and Concord shareholders as a result of the provisions of the certificate of incorporation, by-laws and other corporate documents of each company. See [Certain Legal Information](#) [Comparison of First Data/Concord Shareholder Rights](#).

### **Recommendations to Concord Shareholders (see page 39)**

Your board of directors believes the merger is advisable and unanimously recommends that you vote **FOR** the proposal to adopt the amended merger agreement and, by doing so, approve the proposed merger.

### **Concord Shareholder Approval Will Be Required to Complete the Merger (see page 95)**

Adoption of the amended merger agreement requires the affirmative vote of at least a majority of the votes represented by the outstanding shares of Concord common stock. On [●], 2004, which is the record date for determining those Concord shareholders who are entitled to vote at the special meeting, directors and executive officers of Concord and their affiliates beneficially owned and had the right to vote [●] shares of Concord common stock, or approximately [●]% of the outstanding shares of Concord common stock outstanding and entitled to vote at the special meeting. Although none of the members of the board of directors of Concord or its executive officers have executed voting agreements, based solely on discussions with its board of directors and executive officers, to Concord's knowledge, directors and executive officers of Concord and their affiliates intend to vote their common stock in favor of the adoption of the amended merger agreement.

### **Upon the Completion of the Merger, Concord Will Become a Wholly Owned Subsidiary of First Data (see page 69)**

Under the terms of the proposed merger, a wholly owned subsidiary of First Data, formed for the purpose of the merger, will merge with and into Concord. As a result, Concord will survive the merger and will become a wholly owned subsidiary of First Data upon completion of the merger.

The original merger agreement and the amendment and abeyance agreement are attached as *Annex A* and *Annex B*, respectively, to this proxy statement/prospectus. We encourage you to read the original merger agreement and the amendment and abeyance agreement carefully and fully, as they are the legal documents that govern the merger.

### **Concord Shareholders Will Hold Approximately 19% of the First Data Shares**

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First Data will issue up to approximately 190 million shares of First Data common stock to Concord shareholders as contemplated by the amended merger agreement, which includes approximately 21 million shares of First Data common stock issuable pursuant to Concord stock options to be assumed by First Data and converted into options to purchase shares of First Data common stock. Immediately following completion of the merger, it is expected that there will be approximately 892 million shares of First Data common stock issued and outstanding. The shares of First Data common stock to be issued to Concord shareholders as contemplated by the amended merger agreement will represent approximately 19% of the outstanding First Data common stock after the merger on a fully diluted basis. This information is based on the number of First Data and Concord shares and options outstanding on December 22, 2003.

### **Bank Regulatory Approvals Will be Required for the Completion of the Merger (see page 58)**

First Data and Concord have sought and obtained regulatory approval of the Division of Banking of the Colorado Department of Regulatory Agencies and the Federal Deposit Insurance Corporation in connection with



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transactions related to the transfer of the assets and liabilities of Concord EFS National Bank and the termination of its national bank charter so that First Data does not become a bank holding company. On August 21, 2003, the Division of Banking of the Colorado Department of Regulatory Agencies approved, subject to certain customary conditions, the applications of First Financial Bank, Concord and Concord EFS National Bank to complete such transactions. On October 14, 2003, the Federal Deposit Insurance Corporation approved, subject to certain customary conditions, the application of First Financial Bank to complete the transactions. The approval order provides that the transactions must be completed within six months of the date of the approval order, unless such time period is extended for good cause by the Federal Deposit Insurance Corporation.

### **A Number of Conditions Must Be Satisfied or Waived to Complete the Merger (see page 79)**

The completion of the merger depends upon the satisfaction or waiver of a number of conditions, including the following:

adoption of the amended merger agreement by the Concord shareholders;  
absence of any law, judgment, injunction or other order by a governmental entity prohibiting the completion of the merger;  
receipt of opinions of counsel to First Data and Concord that the merger will qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code;

authorization for listing by the NYSE of the shares of First Data common stock issuable pursuant to the amended merger agreement, subject to official notice of issuance;

absence of breaches of a limited number of representations and warranties in the amended merger agreement which result in a material adverse effect on the representing party;

reasonable satisfaction of First Data that neither it nor any of its subsidiaries will become a bank holding company or financial holding company under the Bank Holding Company Act of 1956, as amended, on an ongoing basis as a result of the merger; provided, however, that this condition will be deemed to be satisfied upon the merger of Concord's national bank with and into Concord's interim Colorado industrial loan company; and

material compliance by the parties with their respective obligations under the amended merger agreement.

### **How the Amended Merger Agreement May Be Terminated by First Data and Concord (see page 80)**

First Data and Concord may mutually agree to terminate the amended merger agreement and abandon the merger at any time prior to completion of the merger, whether before or after the Concord shareholders have adopted the amended merger agreement.

In addition, either party could decide, without the consent of the other, to terminate the amended merger agreement in a number of situations, including:

if the merger is not completed by the earlier of April 30, 2004 or three business days after the conclusion of the special meeting;

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if a court or other governmental entity issues an order, decree or ruling or takes any other action permanently prohibiting the completion of the merger and the order, decree or ruling or other action has become final and nonappealable; or if the other party breaches its representations, warranties or covenants in the amended merger agreement, which breach results in a failure of one of the conditions to the completion of the merger being satisfied.

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The amended merger agreement may also be terminated by First Data prior to the completion of the merger if the board of directors of Concord withdraws or adversely modifies its recommendation of the merger.

The amended merger agreement may also be terminated by Concord prior to the completion of the merger if:

the Concord board of directors authorizes Concord, subject to complying with the terms of the amended merger agreement, to enter into a definitive agreement with a third party concerning a transaction that constitutes a *superior proposal* (see The Amended Merger Agreement Covenants No Solicitation for a discussion of this term) and Concord notifies First Data in writing that it intends to enter into the agreement;

First Data does not make, within three business days of receipt of Concord's written notification of its intention to enter into a definitive agreement for a superior proposal, an offer that the Concord board of directors determines, in good faith after consultation with its financial advisors, is at least as favorable, in the aggregate, to Concord's shareholders as the superior proposal; and

prior to or concurrently with the termination of the amended merger agreement, Concord pays to First Data a termination fee of \$210 million.

### **Termination Fees and Expenses May Be Payable in Some Circumstances (see page 81)**

Generally, if the amended merger agreement is terminated by either party in certain circumstances where the Concord board of directors has withdrawn or modified its recommendation of the merger with First Data in favor of a competing takeover proposal or in certain circumstances involving the acquisition of Concord by another person, Concord will be required to pay First Data a termination fee of \$210 million.

### **First Data and Concord Have Agreed to Divest NYCE Corporation (see page 58)**

On October 23, 2003, the Antitrust Division, along with the District of Columbia and the states of Connecticut, Illinois, Louisiana, Massachusetts, New York, Ohio, Pennsylvania and Texas (which we refer to in this document as the plaintiff states), filed a complaint in the United States District Court for the District of Columbia. The complaint asserted that the proposed merger of First Data and Concord would substantially lessen competition in the alleged market for point of sale PIN debit network services and sought to enjoin the proposed transaction.

On December 14, 2003, First Data, Concord, the Antitrust Division and the plaintiff states entered into a hold separate stipulation and order and agreed to the terms of a proposed final judgment, which would resolve the issues in the pending litigation. On December 15, 2003, the proposed final judgment and hold separate stipulation and order were filed with the United States District Court, and the hold separate stipulation and order was signed by the Court. After compliance with the requirements of the Tunney Act, including the passage of a 60-day waiting period, the opportunity for public comment and a finding by the Court that the proposed final judgment is in the public interest, the Court is expected to sign the proposed final judgment, formally settling the litigation.

Pursuant to the terms of the proposed final judgment, First Data has agreed to divest its 64 percent interest in NYCE Corporation, including NYCE Corporation's interests in various tangible and intangible assets, within 150 calendar days of the signing of the hold separate stipulation and order by the United States District Court, or within five days after notice of entry of the final judgment by the United States District Court, whichever is later. NYCE Corporation operates an ATM network, provides PIN-based debit point-of-sale services and provides real-time payment solutions such as ATM management and monitoring services and debit card issuance and authorization solutions. The Antitrust Division, in consultation with the plaintiff states, may agree to one or more extensions of the time period for divestiture, with such extensions

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not to exceed ninety calendar days in total. First Data agreed to use its best efforts to accomplish the divestiture as expeditiously as possible.

The agreement by the parties to the hold separate stipulation and order and the terms of the final judgment, and the signing of the hold separate stipulation and order by the United States District Court, effectively terminate any obstacle that the Antitrust Division or the plaintiff states could impose to the closing of the merger under the Hart-Scott-Rodino Act.

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### **First Data Common Stock Will Be Listed on the NYSE (see page 59)**

The shares of First Data common stock to be issued pursuant to the merger will be listed on the New York Stock Exchange under the symbol FDC.

### **Concord Executive Officers and Directors Have Interests in the Merger that May be Different From, or in Addition to, the Interests of Concord Shareholders, Including Interests With Respect to Stock Options, Retention Bonus Payments and Employment Agreements (see page 63)**

When Concord shareholders consider their board of directors' recommendation that they vote in favor of the adoption of the amended merger agreement, Concord shareholders should be aware that Concord executive officers and directors may have interests in the merger that may be different from, or in addition to, shareholders' interests.

For example, the dollar amount of in-the-money options held by the directors and executive officers of Concord that will become vested upon completion of the merger is approximately \$30.9 million, based on the closing sale price of First Data common stock on December 29, 2003. Under the Concord retention bonus program, executive officers of Concord have been allocated an aggregate of approximately \$4.7 million, which will become payable upon completion of the merger or, in some cases, six months after completion of the merger.

In addition, Concord executive officers Edward A. Labry III, Dan M. Palmer, J. Richard Buchignani, Ronald V. Congemi, Paul W. Finch, Jr., Edward T. Haslam and E. Miles Kilburn have employment agreements which provide that they are entitled to payments and benefits in the event of a change of control of Concord or in the event the executive officers are terminated by Concord without cause or terminate their employment for good reason (in each case, as defined in their respective employment agreements). The aggregate cash amounts payable to these executive officers under their employment agreements would have totaled approximately \$5.4 million if the merger had been completed and the terminations had occurred on December 29, 2003.

The Concord board of directors was aware of these interests and considered them, among other matters, in approving the amended merger agreement and the merger. Concord shareholders should consider these and other interests of Concord's directors and executive officers that are described in this proxy statement/prospectus.

### **Each Outstanding Concord Stock Option to Purchase Concord Common Stock Will Be Converted Into a Vested and Fully Exercisable Option to Purchase 0.365 Shares of First Data Common Stock (see page 66)**

Upon completion of the merger, each outstanding Concord stock option to purchase Concord common stock will be converted into an option to purchase First Data common stock. Each outstanding Concord stock option will become vested and fully exercisable upon completion of the merger. The number of shares of First Data common stock underlying the new First Data option will equal the number of shares of Concord common stock for which the corresponding Concord option was exercisable, multiplied by 0.365, rounded to the nearest whole share. The per share exercise price of each new First Data option will equal the exercise price of the corresponding Concord option divided by 0.365, rounded to the nearest whole cent.

**The Purchase Method of Accounting Will Be Used to Account for the Merger (see page 55)**

First Data will account for the merger under the purchase method of accounting for business combinations under accounting principles generally accepted in the United States of America.

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**Selected Historical Financial Information**

We are providing the following selected historical consolidated financial information to assist you in your analysis of the financial aspects of the merger. We derived the annual First Data historical information from the consolidated financial statements of First Data as of and for each of the years ended December 31, 1998 through 2002. We derived the annual Concord historical information from the consolidated financial statements of Concord as of and for each of the years ended December 31, 1998 through 2002. The data as of and for the nine months ended September 30, 2003 and 2002 has been derived from interim financial statements of both First Data and Concord and, in the opinion of each company's management, include all normal and recurring adjustments that are considered necessary for the fair presentation of the results for the interim period. The information is only a summary and should be read in conjunction with each company's historical consolidated financial statements and related notes contained in the First Data and Concord annual reports on Form 10-K for the year ended December 31, 2002 and quarterly reports on Form 10-Q for the periods ended March 31, 2003, June 30, 2003 and September 30, 2003, which have been incorporated by reference in this proxy statement/prospectus, as well as other information that has been filed with the Securities and Exchange Commission ( SEC ). See

**Where You Can Find More Information** for information on where you can obtain copies of this information. The historical results included below and elsewhere in this document are not indicative of the future performance of First Data, Concord or the combined company.

**Table of Contents****First Data Selected Historical Financial Information**

	As of and for the						
	Nine Months Ended September 30,		Year Ended December 31,				
	2003	2002	2002	2001	2000	1999	1998
	(in millions, except per share data)						
<b>Income Statement Data</b>							
Revenues	\$ 6,262.8	\$ 5,577.7	\$ 7,636.2	\$ 6,651.6	\$ 5,922.1	\$ 5,776.4	\$ 5,309.5
Expenses, net of other income/expense	4,925.8	4,385.2	5,981.9	5,591.7	4,724.6	3,996.7	4,597.9
Income before income taxes, minority interest, equity earnings in affiliates and cumulative effect of a change in accounting principle	1,337.0	1,192.5	1,654.3	1,059.9	1,197.5	1,779.7	711.6
Income taxes	344.1	319.6	432.2	336.8	378.7	625.7	246.2
Minority interest	(89.3)	(73.2)	(102.8)	(32.4)	(24.5)	(38.7)	(35.8)
Equity earnings in affiliates	103.7	85.7	118.6	183.9	135.3	84.4	36.1
Income before cumulative effect of a change in accounting principle	1,007.3	885.4	1,237.9	874.6	929.6	1,199.7	465.7
Cumulative effect of a change in accounting principle, net of \$1.6 income tax benefit				(2.7)			
Net Income	\$ 1,007.3	\$ 885.4	\$ 1,237.9	\$ 871.9	\$ 929.6	\$ 1,199.7	\$ 465.7
Depreciation and amortization	\$ 432.9	\$ 394.6	\$ 538.5	\$ 638.4	\$ 588.8	\$ 617.8	\$ 591.1
<b>Per Share Data</b>							
Earnings per share basic	\$ 1.36	\$ 1.17	\$ 1.63	\$ 1.12	\$ 1.14	\$ 1.40	\$ 0.52
Earnings per share diluted	1.33	1.14	1.61	1.10	1.12	1.38	0.52
Cash dividends per share	0.06	0.05	0.07	0.04	0.04	0.04	0.04
<b>Balance Sheet Data (at End of Period)</b>							
Total assets	\$ 26,293.0	\$ 25,520.4	\$ 26,591.2	\$ 21,912.2	\$ 17,295.1	\$ 17,004.8	\$ 16,587.0
Settlement assets	15,952.1	15,969.3	16,688.5	13,166.9	9,816.6	9,585.6	9,758.0
Total liabilities	22,153.3	21,587.8	22,434.9	18,392.3	13,567.4	13,097.1	12,831.1
Settlement obligations	15,572.4	15,544.9	16,294.3	13,100.6	9,773.2	9,694.6	9,617.0
Borrowings	3,033.1	2,574.3	2,581.8	2,517.3	1,780.0	1,528.1	1,521.7
Convertible debt	536.9	585.7	552.7	584.8	50.0	50.0	50.0
Total stockholders equity	4,139.7	3,932.6	4,156.3	3,519.9	3,727.7	3,907.7	3,755.9



**Table of Contents****Concord Selected Historical Financial Information**

	As of and for the						
	Nine Months Ended September 30,		Year Ended December 31,				
	2003	2002	2002	2001	2000	1999	1998
(in millions, except per share data)							
<b>Income Statement Data</b>							
Revenue(1)	\$ 1,678.4	\$ 1,424.3	\$ 1,966.6	\$ 1,579.9	\$ 1,319.7	\$ 1,037.6	\$ 811.6
Cost of operations	1,220.8	981.0	1,366.5	1,080.4	924.7	713.3	552.5
Selling, general and administrative expenses	100.4	88.4	123.9	91.1	92.0	92.3	90.9
Acquisition, restructuring and write-off charges	17.4	76.5	77.5	125.3	11.7	36.2	
Litigation settlement charges		9.8	8.7				
Operating income	339.8	268.6	390.0	283.1	291.3	195.8	168.2
Net investment income	35.4	51.0	65.7	57.6	37.2	16.2	2.6
Other income, net	18.3	7.9	9.1	4.2	2.2	0.2	1.2
Equity in earnings of subsidiary							0.3
Income taxes	136.3	115.0	163.1	128.0	120.2	82.9	65.7
Minority interest in subsidiary	0.8	0.7	0.9	0.5	0.6	0.1	
Net income	\$ 256.4	\$ 211.8	\$ 300.8	\$ 216.4	\$ 209.9	\$ 129.2	\$ 106.6
Depreciation and amortization	\$ 81.1	\$ 64.5	\$ 85.9	\$ 94.1	\$ 96.6	\$ 82.7	\$ 70.7
Basic earnings per share	\$ 0.53	\$ 0.41	\$ 0.59	\$ 0.44	\$ 0.44	\$ 0.28	\$ 0.24
Diluted earnings per share	\$ 0.52	\$ 0.40	\$ 0.57	\$ 0.42	\$ 0.42	\$ 0.27	\$ 0.23
Basic shares	482.8	511.0	507.3	494.7	478.4	463.7	448.5
Diluted shares	493.4	530.3	524.7	517.0	496.0	479.7	462.8
<b>Balance Sheet Data</b>							
Working capital	\$ 1,187.9	\$ 1,540.8	\$ 1,288.5	\$ 1,318.9	\$ 656.0	\$ 450.3	\$ 223.1
Total assets	\$ 2,439.0	\$ 3,153.3	\$ 2,528.4	\$ 2,729.4	\$ 1,828.3	\$ 1,301.1	\$ 1,002.3
Long-term debt, less current maturities	\$ 130.8	\$ 141.8	\$ 139.1	\$ 119.5	\$ 109.9	\$ 89.3	\$ 190.6
Total stockholders equity	\$ 1,852.7	\$ 2,154.2	\$ 1,916.2	\$ 1,858.6	\$ 1,132.5	\$ 855.4	\$ 493.2

- (1) In the third quarter of 2003, Concord began recognizing revenue from product sales when title to the equipment passes to the customer. Prior to the third quarter of 2003, Concord had recognized revenue from product sales when the equipment was shipped. This change in method of recognizing revenue did not necessitate a restatement of Concord's financial statements because the impact of the change was not material.

**Table of Contents****Selected Unaudited Pro Forma Condensed Combined Consolidated Financial Information**

The merger will be accounted for under the purchase method of accounting, which means the assets and liabilities of Concord will be recorded, as of completion of the merger, at their respective fair values and added to those of First Data. For a more detailed description of purchase accounting, see The Proposed Merger Accounting Treatment.

We have presented below selected unaudited pro forma condensed combined consolidated financial information that reflects the purchase method of accounting and is intended to provide you with a better picture of what our businesses might have looked like had they actually been combined at the beginning of each period presented. The unaudited pro forma condensed combined consolidated financial information has been prepared assuming that 0.365 of a share of First Data common stock had been issued in exchange for each outstanding share of Concord common stock. The unaudited pro forma condensed combined consolidated financial information may have been different had the companies actually been combined at the beginning of each period presented. The unaudited pro forma condensed combined consolidated financial statements reflect NYCE Corporation as a discontinued operation because of the required divestiture under the proposed agreement with the Antitrust Division of the Department of Justice. The assets and liabilities of NYCE are classified as held for sale in the unaudited pro forma condensed combined consolidated balance sheet, and NYCE's results of operations are treated as income from discontinued operations, net of tax, and excluded from the unaudited pro forma condensed combined consolidated statements of income. You should not rely on the selected unaudited pro forma condensed combined consolidated financial information as being indicative of the historical results that would have occurred had the companies been combined or the future results that may be achieved after the completion of the merger. The following selected unaudited pro forma condensed combined consolidated financial information has been derived from, and should be read in conjunction with, the Unaudited Pro Forma Condensed Combined Consolidated Financial Statements and related notes included in Chapter Two of this proxy statement/prospectus.

	For the	
	Nine Months Ended	
	September 30, 2003	Year Ended December 31, 2002
	(in millions, except per share data)	
<b>Income Statement Data</b>		
Revenue	\$ 7,089.0	\$ 8,649.0
Operating income	1,657.8	2,010.4
Net income from continuing operations	1,211.8	1,454.1
Earnings per share from continuing operations:		
Basic	\$ 1.32	\$ 1.54
Diluted	1.29	1.51
Weighted average number of shares and share equivalents:		
Basic	919.5	942.7
Diluted	936.7	963.3
Depreciation/Amortization	599.3	745.0
<b>Balance Sheet Data (at September 30, 2003)</b>		
Cash	\$ 1,119.0	
Settlement assets	16,156.6	
Total assets	\$ 34,133.9	
Settlement obligations	15,776.9	
Borrowings	3,570.0	
Stockholders' equity	11,004.5	



**Table of Contents****Comparative Historical and Unaudited Pro Forma Per Share Information**

The following table includes selected historical per share information of First Data and Concord and unaudited pro forma condensed combined consolidated per share information after giving effect to the treatment of NYCE Corporation as a discontinued operation and the merger between First Data and Concord, under the purchase method of accounting, assuming that 0.365 of a share of First Data common stock had been issued in exchange for each outstanding share of Concord common stock. You should read this information in conjunction with the selected historical financial information, included elsewhere in this proxy statement/prospectus, and the historical financial statements of First Data and Concord and related notes that are incorporated in this proxy statement/prospectus by reference. The unaudited First Data pro forma condensed combined consolidated per share information is derived from, and should be read in conjunction with, the Unaudited Pro Forma Condensed Combined Consolidated Financial Statements and related notes included in Chapter Two of this proxy statement/prospectus. The historical per share information is derived from audited financial statements as of and for the year ended December 31, 2002 and unaudited financial statements for the nine months ended September 30, 2003. The unaudited First Data pro forma combined cash dividends per share reflect the historical amounts paid by First Data. The unaudited pro forma Concord per share equivalents are calculated by multiplying the unaudited First Data pro forma combined per share amounts by the exchange ratio of 0.365. The pro forma combined outstanding shares of First Data as of September 30, 2003 was 898.6 million. The pro forma combined outstanding shares are based on the number of shares of First Data common stock outstanding at September 30, 2003 and the number of shares of Concord common stock outstanding at September 30, 2003 multiplied by the 0.365 exchange ratio. All per share amounts with respect to First Data common stock noted below have been retroactively restated to reflect the impact of a 2-for-1 stock split that was distributed on June 4, 2002.

The unaudited pro forma condensed combined consolidated per share information does not purport to represent what the actual results of operations of First Data and Concord would have been had the companies been combined during the periods presented or to project First Data's and Concord's results of operations that may be achieved after the completion of the merger.

	For the	
	September 30, 2003	Year Ended December 31, 2002
<b>Unaudited First Data Pro Forma Combined</b>		
Per common share data:		
Income from continuing operations:		
Basic	\$ 1.32	\$ 1.54
Diluted	1.29	1.51
Cash dividends paid	0.06	0.07
Book value	12.25	N/A
<b>First Data Historical</b>		
Per common share data:		
Income:		
Basic	\$ 1.36	\$ 1.63
Diluted	1.33	1.61
Cash dividends paid	0.06	0.07
Book value	5.68	N/A
<b>Concord Historical</b>		
Per common share data:		
Income:		
Basic	\$ 0.53	\$ 0.59

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Diluted	0.52	0.57
Cash dividends paid		
Book value	3.98	N/A
<b>Unaudited Pro Forma Concord Equivalents Combined</b>		
Per common share data:		
Income from continuing operations:		
Basic	\$ 0.48	\$ 0.56
Diluted	0.47	0.55
Cash dividends paid	0.02	0.03
Book value	4.47	N/A

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**Table of Contents****Comparative Per Share Market Price And Dividend Information**

First Data common stock and Concord common stock are each listed on the New York Stock Exchange. First Data's and Concord's ticker symbols are FDC and CE, respectively. The following table shows, for the calendar quarters indicated, based on published financial sources: (1) the high and low sale prices of shares of First Data common stock and Concord common stock as reported on the New York Stock Exchange Composite Transaction Tape (and on the NASDAQ National Market with respect to Concord prior to November 7, 2002) and (2) the cash dividends paid per share of First Data common stock. Concord has not paid cash dividends on its common stock. The sales prices and dividends with respect to First Data common stock noted below have been retroactively restated for all periods to reflect the impact of a 2-for-1 stock split that was distributed to the First Data shareholders on June 4, 2002.

	First Data Common Stock			Concord Common Stock	
	High	Low	Dividends	High	Low
<b>2002</b>					
First Quarter	\$ 44.05	\$ 37.98	\$ 0.01	\$ 34.38	\$ 24.75
Second Quarter	\$ 45.08	\$ 35.15	\$ 0.02	\$ 35.06	\$ 28.66
Third Quarter	\$ 39.24	\$ 26.84	\$ 0.02	\$ 30.78	\$ 12.60
Fourth Quarter	\$ 37.74	\$ 23.75	\$ 0.02	\$ 18.10	\$ 12.70
<b>2003</b>					
First Quarter	\$ 38.30	\$ 30.90	\$ 0.02	\$ 16.66	\$ 7.80
Second Quarter	\$ 44.90	\$ 32.50	\$ 0.02	\$ 16.23	\$ 11.50
Third Quarter	\$ 43.63	\$ 36.98	\$ 0.02	\$ 15.45	\$ 13.26
Fourth Quarter (through [•] [•], 2003)	\$ [•]	\$ [•]	\$ 0.02	\$ [•]	\$ [•]
<b>2004</b>					
First Quarter (through [•], 2004)	\$ [•]	\$ [•]	\$ [•]	\$ [•]	\$ [•]

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**RISK FACTORS**

*Concord shareholders should carefully consider the following factors, in addition to those factors discussed in the documents that we have filed with the Securities and Exchange Commission and which we have incorporated into this document and the other information in this proxy statement/prospectus, before voting at the special meeting.*

**Risks Relating to the Merger**

**The value of First Data shares to be received by Concord shareholders will fluctuate.**

The number of shares of First Data common stock issued pursuant to the merger for each share of Concord common stock is fixed. The market prices of First Data common stock and Concord common stock when the merger is completed may vary from their market prices at the date of this document and at the date of the special meeting. For example, during the 12-month period ended on [●], 2004, the most recent practical date prior to the mailing of this proxy statement/prospectus, First Data common stock traded in a range from a low of \$[●] to a high of \$[●] and ended that period at \$[●], and Concord common stock traded in a range from a low of \$[●] to a high of \$[●] and ended that period at \$[●]. See Summary Comparative Per Share Market Price and Dividend Information for more detailed share price information.

These variations may be the result of various factors, including:

changes in the business, operations or prospects of First Data or Concord;

general market and economic conditions; and

litigation and/or regulatory developments.

At the time of the special meeting, Concord shareholders will not know the exact value of the First Data common stock that will be issued in connection with the merger.

Shareholders of Concord are urged to obtain current market quotations for First Data and Concord common stock.

**We may be unable to successfully integrate the operations of First Data and Concord and realize the publicly announced potential cost synergies of \$205 million in 2006.**

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The merger involves the integration of two companies that previously operated independently. The difficulties of combining the companies operations include:

the necessity of coordinating geographically separated organizations, systems and facilities; and

integrating personnel with diverse business backgrounds and organizational cultures.

The process of integrating operations could cause an interruption of, or loss of momentum in, the activities of one or more of the combined company s businesses and the possible loss of key personnel. The diversion of management s attention and any delays or difficulties encountered in connection with the merger and the integration of the two companies operations could have an adverse effect on the business, results of operations, financial condition or prospects of the combined company after the merger.

On December 15, 2003, First Data announced that it anticipated potential cost synergies of \$205 million in 2006 that could result from the merger. The decrease in anticipated cost synergies (and the delay in realizing such synergies) from the \$230 million that First Data announced on April 2, 2003 could be achieved by 2005 is primarily attributable to the required divestiture of First Data s interests in NYCE Corporation and the delay in the closing of the merger. We cannot give any assurance that these savings will be realized within the time periods contemplated or even that they will be realized at all.



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### **We will incur significant transaction, merger-related and restructuring costs in connection with the merger.**

First Data and Concord expect to incur costs associated with combining the operations of the two companies, transaction fees and other costs related to the merger. The total estimate includes approximately \$80 million for transaction costs. The estimated \$80 million of transaction costs will be recorded as a component of the purchase price. First Data also will incur restructuring and integration costs in connection with the merger. First Data is continuing to assess these costs and at this time is unable to give an estimate of these costs. The amount related to restructuring will be included as a liability in the purchase price allocation or as an expense, depending on the nature of the restructuring activity. The amount of transaction fees expected to be incurred is a preliminary estimate and subject to change. Additional unanticipated costs may be incurred in the integration of the businesses of First Data and Concord. Although First Data and Concord expect that the elimination of duplicative costs, as well as the realization of other efficiencies related to the integration of the businesses, may offset incremental transaction, merger-related and restructuring costs over time, we cannot give any assurance that this net benefit will be achieved in the near term, or at all.

### **Charges to earnings resulting from the application of the purchase method of accounting may adversely affect the market value of First Data's common stock following the merger.**

In accordance with generally accepted accounting principles in the United States, the merger will be accounted for using the purchase method of accounting, which will result in charges to earnings that could have an adverse impact on the market value of First Data common stock following completion of the merger. Under the purchase method of accounting, the total estimated purchase price will be allocated to Concord's net tangible assets and identifiable intangible assets based on their fair values as of the date of completion of the merger. The excess of the purchase price over those fair values will be recorded as goodwill. The combined company will incur additional amortization expense based on the identifiable intangible assets acquired in connection with the merger. Additionally, to the extent the value of goodwill becomes impaired, the combined company may be required to incur material charges relating to such impairment. These amortization and potential impairment charges could have a material impact on the combined company's results of operations.

First Data estimates the annual amortization expense for these identifiable intangible assets will approximate \$153 million. Based on Concord's amortization expense of approximately \$33 million related to identifiable intangible assets for the year ended December 31, 2002, First Data will incur approximately \$121 million of incremental annual amortization expense after the completion of the merger. This incremental expense will impact the earnings per share after the completion of the merger by approximately \$0.08 per share. Changes in earnings per share, including as a result of this incremental expense, could adversely affect the trading price of the First Data common stock.

### **Risks Relating to the Businesses of First Data, Concord and the Combined Company**

#### **The business of the combined company will be subject to risks currently affecting the businesses of First Data and Concord.**

After the completion of the merger, the business of the combined company, as well as the price of First Data common stock, will be subject to numerous risks currently affecting the businesses of First Data and Concord, including, without limitation, the potential loss of certain significant customers in Concord's Network Services segment due to a possible failure to renew certain customer contracts which by their terms terminate on December 31, 2004, increasing competition in the combined company's line of business and continued consolidation in the banking and retail industries. For a discussion of First Data's business and Concord's business, together with certain factors to consider in connection with such businesses, see First Data's Annual Report on Form 10-K for the fiscal year ended December 31, 2002 and Concord's Annual Report on Form 10-K for the fiscal year ended December 31, 2002 and the other filings with the SEC that are incorporated by reference in this proxy statement/prospectus.

**Current or future card association rules and practices could adversely affect our business, transaction volumes, operating results and financial condition.**

Concord's STAR<sub>sm</sub> network, as a result of the combination of the STAR<sub>sm</sub>, MAC<sup>®</sup> and Cash Station<sup>®</sup> networks, is the first regional debit network that may potentially be viewed as achieving national status in terms of size and geographic coverage. Current VISA and MasterCard rules prohibit their members from issuing the debit cards or credit cards of any competing national network, with the exception of each other. These rules also prohibit

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the coexistence of competing national marks on their credit and branded debit cards. If VISA and/or MasterCard were to determine that STAR<sub>sm</sub> is a competing national network and mark, they could attempt to prohibit their members from issuing STAR<sub>sm</sub>-branded cards and/or prohibit the coexistence of the STAR<sub>sm</sub> mark with the VISA and/or MasterCard marks on debit and credit cards. If this occurred, we cannot predict whether, when forced to choose between STAR<sub>sm</sub> and other brands, issuing banks would favor STAR<sub>sm</sub> over VISA or MasterCard. Further, the combined company could lose access to the VISA or MasterCard network and cardholders, which could adversely affect elements of our business, such as ATM transactions, personal identification number (referred to as a PIN in this proxy statement/prospectus) secured and signature debit transactions, credit card transactions, operating results and financial condition. Card issuers who participate in both STAR<sub>sm</sub> and VISA or MasterCard networks also may provide incentives for cardholders to use VISA or MasterCard signature-based systems instead of the STAR<sub>sm</sub> PIN-based system. Such incentives may adversely affect our business, operating results and financial condition.

**The outcome of litigation involving VISA and MasterCard could have a negative impact on the business of the combined company.**

VISA and MasterCard have been sued by the Department of Justice for alleged violations of the federal antitrust laws. After trial of the action, the remaining issue of the case arises out of their respective functionally identical policies of prohibiting their members from issuing cards in competing systems other than VISA, MasterCard or Citigroup, one of the largest owners/members of VISA and MasterCard. VISA and MasterCard appealed an adverse judgment by the trial court on this issue to the court of appeals for the Second Circuit. The Second Circuit affirmed the decision. The potential impact of this litigation on the combined company depends upon whether or not the Department of Justice is successful and if it is successful, the relief ordered by the court. Concord does not currently issue credit cards and has not been deemed to operate a competing system by either VISA or MasterCard. If VISA and MasterCard are permitted to prohibit members from issuing cards in competing systems, however, there could be a significant negative impact on the combined company if VISA or MasterCard were then to deem the STAR<sub>sm</sub> debit network to be a competing system for these purposes.

VISA and MasterCard were also sued in a class action case brought by merchants who alleged that VISA and MasterCard had (1) unlawfully tied merchant acceptance of VISA and MasterCard signature debit cards to merchant acceptance of VISA and MasterCard credit cards and (2) attempted and conspired to monopolize the market for debit cards, a business in which the combined company will compete against VISA and MasterCard. We understand that on June 4, 2003, MasterCard and VISA each entered into an agreement to settle the class action litigation with the merchants, and that the proposed settlements include monetary payments in the amount of approximately \$2 billion with respect to VISA and \$1 billion with respect to MasterCard, as well as agreements relating to the operating rules and competitive practices of the MasterCard and VISA networks. The settlements were approved by the court on December 19, 2003. Currently, given the uncertainties regarding the effect of the proposed settlements on the complex competitive environment, we cannot assess the potential impact of these settlements on the combined company and competing debit networks, including the STAR<sub>sm</sub> debit network.

On December 19, 2003, VISA and MasterCard announced reductions to the interchange fees they charge for signature debit transactions, effective in 2004. These reductions could negatively impact the growth of PIN based debit transactions, as they will reduce the current disparity between the interchange fees charged for these two types of transactions.

**Changes in card association fees or products could increase our costs or otherwise limit our operations.**

From time to time, VISA, MasterCard, Discover, American Express and Diners Club increase the organization and/or processing fees (known as interchange fees) that they charge. For example, in April 2002 MasterCard increased its fees, and in October 2002 VISA increased its fees. It is possible that competitive pressures will result in the combined company absorbing a portion of such increases in the future, which would increase its operating costs, reduce its profit margin and adversely affect its business, operating results and financial condition. Furthermore, the rules and regulations of the various card associations and networks prescribe certain capital requirements. Any increase in the capital level required would further limit the combined company's use of capital for other purposes.



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**First Data and Concord are the subject of various legal proceedings.**

First Data and Concord are involved in various litigation matters. First Data and Concord also are involved in or are the subject of governmental or regulatory agency inquiries or investigations from time to time. For more information about First Data's and Concord's legal proceedings, see the filings with the SEC that are incorporated by reference into this proxy statement/prospectus.

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**FORWARD-LOOKING STATEMENTS**

We have made forward-looking statements in this document, and in documents that are incorporated by reference in this document, that are subject to risks and uncertainties. These statements are based on the beliefs and assumptions of each company's management. Generally, forward-looking statements include information concerning possible or assumed future actions, events or results of operations of First Data, Concord and the combined company. Forward-looking statements include the information in this document regarding:

management forecasts;

efficiencies/cost avoidance;

cost savings;

income and margins;

earnings per share;

growth;

economies of scale;

combined operations;

the economy;

future economic performance;

conditions to, and the timetable for, completing the merger;

future acquisitions and dispositions;

litigation;

potential and contingent liabilities;

management's plans;

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business portfolios;

taxes; and

merger and integration-related expenses.

These statements may be preceded by, followed by or include the words may, will, should, potential, possible, believes, expects, anti-intends, plans, estimates, hopes or similar expressions. We claim the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995 for all forward-looking statements.

Forward-looking statements are not guarantees of performance. You should understand that the following important factors, in addition to those discussed in Risk Factors above and elsewhere in this document, and in the documents which are incorporated by reference in this document, could affect the future results of First Data and Concord, and of the combined company after the completion of the merger, and could cause those results or other outcomes to differ materially from those expressed or implied in our forward-looking statements:

the ability of First Data and Concord to satisfy all conditions precedent to the completion of the merger (including approval by the Concord shareholders of the amended merger agreement);

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- the ability of First Data and Concord to integrate their operations successfully;
- the timing of the integration of First Data and Concord necessary to achieve enhanced earnings or effect cost savings;
- the ability to implement comprehensive plans for asset rationalization;
- the successful integration of the information technology systems and elimination of duplicative overhead and information technology costs without unexpected costs or delays;
- the retention of existing, and continued attraction of additional, customers and critical employees;
- the ability to expand successfully First Data's and Concord's comprehensive product offering to the combined customer base;
- the ability to grow at rates approximating recent levels for card-based payment transactions and other relevant products and services;
- the effect of unanticipated changes in laws, regulations, credit card association rules or other industry standards or practices affecting First Data's, Concord's or the combined company's businesses which could require significant product redevelopment efforts, reduce the market for or value of their products or render products obsolete;
- the effects of competition (in particular the response to the proposed transaction in the marketplace);
- the effect of changes in card association fees, products or practices;
- the effect of unanticipated developments relating to previously disclosed lawsuits or similar matters, including, but not limited to, the outcome of litigation involving VISA and MasterCard;
- the ability of First Data to divest its interest in NYCE Corporation and the terms and conditions of such divestiture;
- the ability to manage successfully any impact from slowing economic conditions or consumer spending;
- the effect of catastrophic events that could impact First Data's, Concord's or the combined company's or their customers' operating facilities, communication systems and technology or that have a material negative impact on current economic conditions or levels of consumer spending;
- the effect of a material breach of security of any of First Data's or Concord's systems;
- the effects of any utility or system interruptions or processing errors;
- the ability to manage successfully the potential both for patent protection and patent liability in the context of the rapidly developing legal framework for expansive software patent protection;



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the possibility of continued consolidation in the banking and retail industries;

the susceptibility of First Data's and Concord's businesses to fraud at the merchant level;

the effect of economic and political conditions on a regional, national or international basis;

the possibility of future terrorist activities or the possibility of a future escalation of hostilities in the Middle East or elsewhere;

the effect of inflation, changes in currency exchange rates and changes in interest rates;

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the financial resources of, and products available to, the combined company's competitors;

the ability to gain customer acceptance of the combined company's new products and technologies;

product performance and customer expectations; and

opportunities that may be presented to and pursued by the combined company following the merger.

Because forward-looking statements are subject to assumptions and uncertainties, actual results may differ materially from those expressed or implied by such forward-looking statements. Shareholders are cautioned not to place undue reliance on such statements, which speak only as of the date of this document or the date of any document incorporated by reference.

All subsequent written and oral forward-looking statements concerning the merger or other matters addressed in this document and attributable to First Data or Concord or any person acting on either company's behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this section. Except to the extent required by applicable law or regulation, neither First Data nor Concord undertakes any obligation to release publicly any revisions or updates to such forward-looking statements to reflect events or circumstances after the date of this document or to reflect the occurrence of unanticipated events.

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### THE PROPOSED MERGER

#### General

The Concord board of directors is using this proxy statement/prospectus to solicit proxies from the holders of Concord common stock for use at the special meeting.

#### Proposal

At the special meeting, holders of Concord common stock will be asked to vote upon the adoption of the amended merger agreement.

**The merger will not be completed unless Concord's shareholders adopt the amended merger agreement and, by doing so, approve the proposed merger.**

#### Background of the Merger

Since the mid-1990s, as part of its active and ongoing strategic review and business development activities, First Data from time to time considered the possibility of entering into a business combination, joint venture or other transaction with Concord. On a number of occasions during this period, representatives of the two companies met for preliminary discussions regarding a possible transaction or other contractual relationship.

In particular, in February 2000, Mr. Henry C. Duques, then Chairman and Chief Executive Officer of First Data, contacted Mr. Dan M. Palmer, then Chairman and Chief Executive Officer of Concord, to discuss the possibility of a business combination transaction. On February 17, 2000, Mr. Duques, Mr. Charles T. Fote, then President and Chief Operating Officer of First Data, and Mr. Palmer met in Memphis, Tennessee to consider this possibility. The representatives discussed on a preliminary basis a potential stock-for-stock merger transaction between the two companies. On March 3, 2000, First Data and Concord entered into a mutual confidentiality agreement. During late February and March, Messrs. Duques and Fote periodically discussed with Mr. Palmer, Mr. Richard P. Kiphart, a member of Concord's board of directors, and Mr. Edward A. Labry III, the President of Concord, the financial aspects of a potential merger transaction between the two companies. At a regularly scheduled meeting of the First Data board of directors held on March 8, 2000, the board discussed a possible merger with Concord. During the spring of 2000, First Data periodically held internal discussions regarding Concord's business and financial results. During this period, Mr. Palmer held numerous discussions with Concord directors regarding the communications with representatives of First Data. On May 10, 2000, at a regularly scheduled meeting, the First Data board of directors received an update on the Concord discussions. First Data and Concord continued to discuss a possible transaction from time to time until June 2000, when First Data determined that it could not offer Concord an attractive exchange ratio based on Concord's market capitalization relative to First Data's market capitalization. At the time the parties terminated discussions, First Data and Concord were only in the preliminary stages of considering a possible business combination.

During January and February of 2002, Mr. Labry contacted Mr. Fote of First Data to propose a possible stock-for-stock merger or other business combination between the two companies. On March 13, 2002, Mr. Fote, then President and Chief Executive Officer of First Data, and Ms. Kimberly S. Patmore, the Chief Financial Officer of First Data, met with Messrs. Palmer and Kiphart in Denver, Colorado to consider the parties' expectations regarding the possible terms and conditions of such a transaction. From March 2002 through August 2002, Messrs. Fote, Palmer and Labry occasionally held telephonic discussions concerning the strategic rationale and possible terms of a merger, but no agreement or arrangement was reached from these conversations, and these discussions ended.

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On January 13, 2003 and January 27, 2003, Messrs. Fote and Labry held telephone calls to discuss possible commercial opportunities between the two companies, not involving a business combination transaction.

During a February 12, 2003 telephone call involving Messrs. Fote, Palmer and Labry, the individuals again discussed the possibility of a business combination between the two companies, structured as a stock-for-stock merger at a fixed exchange ratio, and considered possible exchange ratios for such a merger. Messrs. Fote, Palmer and Labry agreed to meet in person to continue these discussions. Following that telephone call, First Data and Concord each began a preliminary financial analysis of a fixed exchange ratio merger. On February 13, Concord announced a realignment of its senior management team. Among other things, Mr. Kiphart was appointed Chairman

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of the Concord board of directors, Mr. Palmer was named Co-Chief Executive Officer, and Mr. Bond R. Isaacson was appointed a director and Co-Chief Executive Officer.

On February 14, 2003, Mr. Fote met with Messrs. Palmer and Labry in Palm Springs, California. At the meeting, the parties further discussed the possible merger transaction and considered an exchange ratio of 0.43, which was based on, among other things, the consensus analysts estimate of Concord's 2003 diluted earnings per share of \$0.82 and was subject to the satisfactory completion of First Data's due diligence review of Concord. Messrs. Fote, Palmer and Labry also discussed other possible terms of a merger transaction, including potential antitrust issues raised by the contemplated merger and the payment by Concord of a 3% break-up fee to First Data in certain situations involving an alternative third party acquisition of Concord. The parties decided to pursue further negotiations to determine whether a transaction would be in the mutual interests of both companies and their respective shareholders. They also agreed that First Data would commence a due diligence review of Concord.

Also on February 14, 2003, the Concord board of directors held a telephonic meeting to discuss the possible business combination with First Data. Messrs. Palmer and Labry described to the Concord board of directors the meeting they had held with Mr. Fote and the exchange ratio that had been discussed. Following a discussion by the Concord board of directors of the relative merits of pursuing such a transaction as compared to the benefits of remaining an independent company, the Concord board of directors concluded that discussions with First Data should continue.

On February 15, 2003, the First Data board of directors, along with Sidley Austin Brown & Wood LLP, its legal counsel, Bingham McCutchen LLP, First Data's special counsel for antitrust matters, and Merrill Lynch, its financial advisor, held a telephonic meeting to discuss the possible business combination. Mr. Fote described to the First Data board of directors the recent meetings with Concord, the preliminary business case for a possible business combination, the recent realignment of Concord's senior management team and the proposed due diligence process.

On February 16, 2003, Messrs. Kiphart and Fote had a telephone call to discuss the possible business and financial terms of a merger transaction. On this call, Mr. Kiphart proposed a reverse break-up fee to be paid by First Data in certain situations involving a termination of the merger for certain regulatory reasons.

On February 17, 2003, the Concord board of directors, along with Kirkland & Ellis LLP, its legal counsel, and William Blair, its financial advisor, held a telephonic meeting to review the recent discussions with First Data, including the potential exchange ratio and break-up fee. The Concord board of directors instructed management to continue such discussions, to gather more information about First Data's proposal and to establish criteria for the engagement of financial advisors.

On February 18, 2003, Concord issued a press release announcing its results of operations for the fourth quarter of 2002. In the press release, Concord forecast its 2003 diluted earnings per share to be in the range of \$0.75 to \$0.79 per share, which was lower than the consensus analysts estimate. Also on that date, First Data and Concord entered into a mutual confidentiality and standstill agreement. On the evening of February 18, Mr. Fote met with Messrs. Kiphart and Isaacson in Chicago, Illinois to discuss further the financial and business terms of the possible merger transaction.

On February 19, 2003, senior officers of First Data, including Ms. Patmore, Mr. Michael T. Whealy, its General Counsel and Chief Administrative Officer, Mr. Richard E. Aiello, its Senior Vice President responsible for Strategic Investments, along with Sidley Austin Brown & Wood LLP and Merrill Lynch, held an organizational meeting in Chicago, Illinois with senior officers of Concord, including Mr. Kiphart, Mr. Isaacson and Mr. E. Miles Kilburn, then the Senior Vice President of Business Strategy and Corporate Development of Concord, along with Kirkland & Ellis LLP and William Blair. During the meeting, the parties discussed the possible terms of a transaction and whether a proposed

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merger was achievable. In addition, First Data commenced the due diligence review of Concord.

From time to time during the period of February 19, 2003 through April 1, 2003, First Data and Concord reviewed a broad range of business, financial, accounting, legal and operational issues. This review included an examination of litigation, accounting, financial reporting, tax, treasury, banking and antitrust regulatory, real estate, asset valuation, human resources, employee benefits, executive compensation, information technology, intellectual property, vendor, licensing, customer contracts, customer relationships and general legal matters. During this period, the parties held numerous and extensive meetings by telephone or in person to exchange information in the

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course of the due diligence process and to consider the possible synergies and other opportunities presented by a merger.

On February 20, 2003, the Concord board of directors held a telephonic meeting to discuss the retention of potential financial advisors. Due to the size and significance of the merger, the Concord board of directors believed that it was appropriate to retain the services of two financial advisors. The non-executive chairman of the Concord board of directors is a principal of William Blair. The disinterested directors of Concord believed it to be in the best interests of Concord shareholders to engage William Blair as a financial advisor based on William Blair's qualifications and expertise, reputation, knowledge of Concord's business and long record of providing sound financial advice to Concord. The Concord board of directors believed that it was advisable to engage Goldman Sachs as a financial advisor because it is an internationally recognized investment banking firm that has substantial experience in transactions similar to the merger and has no direct or indirect interest in Concord. Accordingly, on February 20, 2003, the Concord board of directors retained Goldman Sachs and, with Mr. Kiphart recusing himself, retained William Blair as its financial advisors for the proposed transaction.

Also on February 20, Sidley Austin Brown & Wood LLP delivered a draft merger agreement to Kirkland & Ellis LLP, and Mr. Aiello and Merrill Lynch met with Goldman Sachs to discuss the due diligence process. Later that evening, Mr. Fote met with Mr. Isaacson to discuss the potential transaction in greater detail.

On February 24, 2003, Kirkland & Ellis LLP delivered Concord's comments to the draft agreement. Among the changes requested by Concord was a provision requiring First Data to pay a termination fee to Concord in the event that the merger failed to close as a result of the failure to obtain antitrust clearance.

On February 25, 2003, the Concord board of directors met in Memphis, Tennessee with Goldman Sachs, William Blair, Kirkland & Ellis LLP and Skadden, Arps, Slate, Meagher & Flom, LLP, Concord's special counsel for Delaware corporate law matters, to review the proposed merger and the discussions to date, including the potential financial effect on Concord shareholders as well as the negative and affirmative covenants and the break-up fee. At the meeting, the Concord board of directors designated Messrs. Kiphart and Kilburn to lead the negotiations with First Data.

As is customary in large public transactions and in order to undertake a deliberate and careful examination of the proposed merger, the First Data board of directors determined that it was advisable to retain two internationally recognized investment banking and advisory firms with substantial experience in transactions similar to the proposed merger to render opinions as to the fairness to First Data, from a financial point of view, of the exchange ratio. Accordingly, on February 25, 2003, First Data retained JPMorgan to serve as an additional financial advisor.

On February 26, 2003, Sidley Austin Brown & Wood LLP distributed to Concord and Kirkland & Ellis LLP a revised draft of the merger agreement.

On February 27, 2003, the First Data executive committee of the board of directors held a telephonic meeting to discuss the preliminary results of the due diligence investigation of Concord and the status of negotiations with Concord.

On February 28, 2003, Messrs. Aiello and Kilburn, Sidley Austin Brown & Wood LLP, Merrill Lynch, JPMorgan, Kirkland & Ellis LLP, Goldman Sachs and William Blair met in Chicago, Illinois to discuss the revised draft merger agreement and outstanding financial, accounting and legal due diligence issues.

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On March 2, 2003, the Concord board of directors, along with Kirkland & Ellis LLP, Skadden, Arps, Slate, Meagher & Flom, LLP, Goldman Sachs and William Blair, held a telephonic meeting to discuss the status of the due diligence process and the merger negotiations, including the status of various potential closing conditions and covenants. On the same day, Sidley Austin Brown & Wood LLP sent a revised draft of the merger agreement to Kirkland & Ellis LLP. On March 3, Messrs. Fote, Whealy, Kiphart and Kilburn, Sidley Austin Brown & Wood LLP, Merrill Lynch, JPMorgan, Kirkland & Ellis LLP, Goldman Sachs and William Blair again met in Chicago, Illinois to discuss First Data's due diligence efforts to date and the status of the transaction. Because the parties were unable to agree on a number of terms, including the scope of the parties' respective termination rights and closing conditions, and in view of the extensive further financial, accounting, operational and legal due diligence that First Data desired to pursue, Concord requested that the parties temporarily halt the due diligence review of Concord.

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On March 5, 2003, the First Data board of directors, along with Merrill Lynch, JPMorgan and First Data's legal counsel (including Sidley Austin Brown & Wood LLP, Bingham McCutchen LLP and Parker, Hudson, Rainer & Dobbs LLP), met in New York City to discuss the possible business combination with Concord. The First Data board of directors reviewed the preliminary due diligence findings and the financial and legal terms of the proposed merger. Merrill Lynch and JPMorgan gave a presentation regarding their preliminary financial analysis of Concord.

On March 5 and 6, 2003, the Concord board of directors held a regularly scheduled meeting in Memphis, Tennessee during which the Concord board of directors discussed Concord operational and corporate governance matters and also were informed of the status of due diligence efforts and negotiations with First Data regarding the proposed merger. Mr. Kiphart advised the Concord board of directors that the negotiations and due diligence had been temporarily halted.

Later on March 6, 2003, Messrs. Fote and Kiphart met in Chicago, Illinois to discuss some of the outstanding merger agreement issues, including the termination rights and the matters which had been raised by the First Data due diligence team. On March 9, the First Data board of directors, with Sidley Austin Brown & Wood LLP, Merrill Lynch and JPMorgan, held a telephonic meeting to receive an update on the unresolved merger agreement issues and the status of due diligence.

On March 10, 2003, *Bloomberg News* issued an article reporting rumors that Concord had put itself up for sale for as much as \$6 billion and that Goldman Sachs had been retained by Concord in connection with such a transaction. The article identified First Data as one of several possible acquirers of Concord. Both Concord and First Data declined to comment in response to the article. As a result of the publication of the *Bloomberg News* article, from March 10 through April 1, 2003, Goldman Sachs and Mr. Kiphart from time to time received inquiries about a possible business combination transaction. During this time, Goldman Sachs and Mr. Kiphart discussed with certain third parties the possibility of a transaction. All such inquiries and discussions were preliminary in nature, and no specific proposals were received by Concord.

On March 12, 2003, Messrs. Fote, Whealy, Aiello, Isaacson and Kilburn, along with Merrill Lynch, Goldman Sachs and William Blair, met in Chicago, Illinois to discuss various remaining key terms of the proposed merger and to discuss the resumption of First Data's due diligence. First Data agreed, among other things, to pay to Concord a \$25 million termination fee in the event that the merger agreement is terminated as a result of the failure to obtain antitrust clearance. Pending further discussions, Concord agreed to provide additional due diligence information.

On March 13, 2003, the Concord board of directors, along with Kirkland & Ellis LLP, Skadden, Arps, Slate, Meagher & Flom, LLP, Goldman Sachs and William Blair, held a telephonic meeting during which the status of negotiations with First Data, including covenants to close the merger and the breadth of certain requested representations and warranties, were discussed. Mr. Kilburn advised the Concord board of directors that several significant issues had been resolved in principle, including covenants to defend against challenges to the merger and the payment of a break-up fee by First Data to Concord for failure of the merger to be completed for certain regulatory reasons. On the same day, Kirkland & Ellis LLP provided to Sidley Austin Brown & Wood LLP further written comments on the latest draft merger agreement.

On March 17, 2003, Messrs. Fote and Kiphart further discussed the outstanding terms of the proposed merger, including the final exchange ratio. Subject to, among other things, the ongoing due diligence and the approval of their respective boards of directors, they discussed a proposed exchange ratio of 0.40. The change in the proposed exchange ratio reflected a number of developments that had occurred since the parties first discussed the preliminary exchange ratio, including, among other things, Concord's reduced forecast for 2003 diluted earnings per share and the results of First Data's ongoing due diligence and financial analysis of the proposed merger.

On March 18, 2003, the Concord board of directors, along with Kirkland & Ellis LLP, Skadden, Arps, Slate, Meagher & Flom, LLP, Goldman Sachs and William Blair, held a telephonic meeting to discuss due diligence and the status of negotiations with First Data, including the

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proposed exchange ratio. Messrs. Aiello, Labry and Kilburn, along with Merrill Lynch, JPMorgan, Goldman Sachs and William Blair, then held further discussions on that day regarding the due diligence process. Following those discussions, Concord informed First Data that, in light of the significant work needed to be accomplished by Concord's internal finance and accounting staff to prepare its Annual Report on Form 10-K for 2002, full financial and accounting due diligence of Concord would resume only after the filing of that document with the SEC.

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On March 20, 2003, the Concord board of directors, along with Kirkland & Ellis LLP, Skadden, Arps, Slate, Meagher & Flom, LLP, Goldman Sachs and William Blair, held a telephonic meeting during which the status of the negotiations with First Data, the due diligence efforts to date and the strategic rationale of a business combination with First Data were further discussed.

On March 26, 2003, Messrs. Aiello, Labry and Kilburn, Merrill Lynch, JPMorgan, Goldman Sachs and William Blair met in New York City to continue First Data's review of Concord's business and to discuss outstanding merger agreement issues. On March 27, Concord filed its Annual Report on Form 10-K for 2002. The next day, members of First Data's due diligence team and Merrill Lynch and JP Morgan traveled to Wilmington, Delaware to resume the financial and accounting due diligence of Concord. On the same day, Sidley Austin Brown & Wood LLP sent a revised draft of the merger agreement to Kirkland & Ellis LLP. Also on March 28, Goldman Sachs, William Blair and senior officers of Concord, including Mr. Palmer, Mr. Edward Haslam, its Chief Financial Officer and a Senior Vice President, Mr. Steve A. Lynch, its Chief Information Officer and a Senior Vice President, and Mr. P. Norman Bennett, its Senior Vice President, Treasury, traveled to Denver, Colorado to meet with Mr. Fote and other members of First Data's senior management (including, by telephone, Ms. Patmore) to continue their business and financial due diligence of First Data.

On March 29, 2003, the Concord board of directors, along with Kirkland & Ellis LLP, Skadden, Arps, Slate, Meagher & Flom, LLP, Goldman Sachs and William Blair, held a telephonic meeting to discuss the unresolved issues in the draft merger agreement and the results to date of Concord's due diligence investigation of First Data.

On March 30, 2003, Messrs. Aiello and Kilburn, Sidley Austin Brown & Wood LLP, Merrill Lynch, JPMorgan, Kirkland & Ellis LLP, Goldman Sachs and William Blair discussed the unresolved issues in the proposed merger agreement. The next day, Sidley Austin Brown & Wood LLP delivered a further revised merger agreement to Kirkland & Ellis LLP. Negotiations between Sidley Austin Brown & Wood LLP and Kirkland & Ellis LLP continued throughout the day and evening of March 31.

On April 1, 2003, *The Wall Street Journal* and *The New York Times* each published an article reporting that First Data and Concord were in advanced discussions regarding a merger valued at approximately \$7 billion. Both First Data and Concord declined to comment in response to the articles.

On April 1, 2003, the Concord board of directors, along with Kirkland & Ellis LLP, Skadden, Arps, Slate, Meagher & Flom, LLP, Goldman Sachs and William Blair, met in Memphis, Tennessee to review the merger agreement, the terms and conditions of the transaction proposed in the merger agreement, the alternatives available to Concord and the advisability and fairness of the proposed transaction. The Concord board of directors also reviewed the business, regulatory, financial and operational aspects of the proposed merger. Goldman Sachs and William Blair delivered their respective analyses of the proposed transaction with First Data. Each financial advisor then rendered its oral opinion, subsequently confirmed in writing, that, as of April 1, 2003 and based upon and subject to the assumptions made, procedures followed, matters considered and limitations on the review undertaken as set forth in the opinions, the proposed exchange ratio of 0.40 was fair, from a financial point of view, to the Concord shareholders.

The Concord board of directors then unanimously approved the original merger agreement and the transactions contemplated in the agreement and unanimously recommended the merger agreement to the Concord shareholders for adoption.

In the afternoon of April 1, 2003, the First Data board of directors, along with Merrill Lynch, JPMorgan and First Data's legal counsel (including Sidley Austin Brown & Wood LLP and Parker, Hudson, Rainer & Dobbs LLP), met in New York City to review the merger agreement and the proposed terms and conditions of the merger. The First Data board of directors also reviewed the business, regulatory, financial and operational

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aspects of the proposed merger. At that meeting, Sidley Austin Brown & Wood LLP gave a presentation regarding the directors' fiduciary duties and the terms of the merger agreement. The First Data board of directors also reviewed the due diligence findings. Mr. Aiello reviewed with the board of directors the business plan and synergy opportunities of the proposed merger. Next, each of Merrill Lynch and JP Morgan rendered its oral opinion to the First Data board of directors (subsequently confirmed in writing) that, as of April 1, 2003 and based upon and subject to the assumptions, qualifications and limitations set forth in such opinion, the proposed 0.40 exchange ratio was fair, from a financial point of view, to First Data.

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The First Data board of directors, by unanimous vote of all directors present for the vote, approved the original merger agreement and the transactions contemplated by the agreement.

Following the Concord and First Data boards of directors meetings, First Data and Concord finalized and thereafter executed the original merger agreement and certain ancillary agreements. Before the opening of trading on April 2, 2003, First Data and Concord issued a joint press release announcing the execution of the original merger agreement.

Beginning in April 2003, First Data and Concord commenced the process for obtaining the required governmental consents, including antitrust, securities law and bank regulatory approvals.

On April 10, 2003, the parties initially filed the required Hart-Scott-Rodino pre-merger notification and report forms with the Federal Trade Commission and the Antitrust Division of the U.S. Department of Justice. First Data, Concord, Sidley Austin Brown & Wood LLP, Bingham McCutchen LLP and Kirkland & Ellis LLP also began discussions with the staff of the Antitrust Division and representatives of various states to consider the pro-competitive effects of the proposed merger and to provide information about the companies and the proposed merger on a voluntary basis. On May 9, 2003, First Data withdrew its original filing, and on May 13, 2003, First Data re-filed the required notification and report forms with the Federal Trade Commission and the Antitrust Division, initiating a new 30-day review period. The re-filing was a procedural measure that allowed First Data to continue its informal discussions with the Antitrust Division for an additional 30 days without requiring the Antitrust Division to issue a formal statutory request for additional information.

On May 21, 2003, First Data initially filed with the SEC its registration statement under the Securities Act to register the shares of First Data common stock to be issued as contemplated by the original merger agreement. The registration statement contained a preliminary form of the joint proxy statement/prospectus to be used in connection with the solicitation of proxies for the First Data and Concord shareholders meetings called to approve the issuance of First Data shares and adopt the original merger agreement, respectively. In June 2003, the parties also filed applications with the Federal Deposit Insurance Corporation and the Division of Banking of the Colorado Department of Regulatory Agencies for the purpose of satisfying the bank regulatory condition to the closing of the merger.

On June 12, 2003, each of First Data and Concord received a request for additional information (which we refer to in this proxy statement/prospectus as the second request ) from the Antitrust Division in connection with the proposed merger. From June 12, 2003 through September 5, 2003, the parties (assisted by Sidley Austin Brown & Wood LLP, Bingham McCutchen LLP and Kirkland & Ellis LLP) engaged in an extensive document and information collection and production effort to comply with the second request.

On August 8, 2003, Messrs. Fote, Whealy and Kiphart met in Chicago, Illinois to discuss preparations for the First Data and Concord shareholder meetings and the status of discussions with the Antitrust Division.

On September 5, 2003, First Data and Concord each certified substantial compliance with the second request. Throughout September, and from October 1, 2003 through October 23, 2003, the parties were in regular communication with representatives of the Antitrust Division and the various states that were investigating the proposed merger. First Data and Concord received and voluntarily responded to numerous requests for additional information regarding the competitive effects of the proposed merger, made various company personnel available for depositions and met with the staff and senior officials of the Antitrust Division and representatives of the various states in an attempt to identify, narrow and resolve antitrust concerns.

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On September 24, 2003, First Data's registration statement was declared effective by the SEC, and First Data and Concord announced that their respective shareholder meetings would be held on October 28, 2003. First Data and Concord then commenced mailing the definitive joint proxy statement/prospectus to their respective shareholders.

On October 9, 2003, following discussions with the staff and senior officials of the Antitrust Division, the Antitrust Division wrote to the Chairman of the Federal Deposit Insurance Corporation, indicating that it had no objections to the combination of the banking subsidiaries of First Data and Concord, and on October 14, 2003, the FDIC wrote to First Data, indicating that the FDIC had approved this portion of the transaction.

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Beginning on or about October 12, 2003, First Data updated its due diligence review of Concord in connection with the First Data shareholder vote scheduled for October 28, 2003. On October 19, 2003, members of First Data's due diligence team traveled to Wilmington, Delaware to conduct financial and accounting diligence. Since the execution of the original merger agreement, certain of Concord's major network customers had announced that they did not intend to renew their contracts with Concord. First Data's due diligence effort focused on the state of Concord's customer relationships, as well as Concord's financial and operating performance during the first nine months of 2003, balance sheet as of September 30, 2003 and outstanding litigation matters. During this time, Mr. Fote and Mr. Labry had telephonic discussions regarding the results of this due diligence effort.

On October 22, 2003, the First Data board of directors, along with Merrill Lynch, JPMorgan, Sidley Austin Brown & Wood LLP and Bingham McCutchen LLP, held a telephonic board meeting to discuss recent developments regarding the proposed merger, including assessments of Concord's Network Services segment customer base and other matters developed during the recently completed due diligence update, the status of the antitrust review by the Antitrust Division and the upcoming First Data special meeting of shareholders.

On October 23, 2003, the Antitrust Division, along with eight states and the District of Columbia, filed a complaint in the United States District Court for the District of Columbia. The complaint alleged that the proposed merger of First Data and Concord would substantially lessen competition and sought to enjoin the proposed transaction. Later that day, First Data and Concord issued a joint press release announcing that they intended to defend the proposed transaction vigorously in court and that they were prepared to proceed quickly with the case.

Following the filing of the suit by the Antitrust Division, Concord expressed the view on various occasions to First Data that a divestiture of NYCE Corporation by First Data, in whole or in part, should be proposed to the Antitrust Division in an attempt to resolve the Division's concerns and thereby allow the proposed merger to proceed and that such a proposal was required by the terms of the original merger agreement. During this period, First Data expressed the view to Concord that it had no intention to propose such a divestiture and that such a divestiture was not required by the terms of the original merger agreement.

On October 24, 2003, the Concord board of directors, along with Kirkland & Ellis LLP, held a telephonic meeting during which the Concord board of directors reviewed potential timing implications of the Antitrust Division litigation, as well as potential termination dates and other provisions of the original merger agreement affected by the challenge by the Antitrust Division. Under the terms of the original merger agreement, if the merger was not completed by January 31, 2004, either First Data or Concord had the right to terminate the original merger agreement, provided that a party could not terminate the agreement if the cause of the merger not being completed was that party's failure to fulfill its obligations under the agreement.

In a telephone call on October 25, 2003, Messrs. Fote and Kiphart discussed efforts to resolve the Antitrust Division litigation.

On October 27, 2003, the Concord board of directors, along with Kirkland & Ellis LLP, met in Memphis, Tennessee and discussed the status of the Antitrust Division challenge and Concord's plans for operating as a stand-alone company in the event that the merger with First Data were not completed.

At the Concord shareholders meeting held in Memphis, Tennessee on October 28, 2003, the shareholders of Concord voted to adopt the original merger agreement. At the First Data shareholders meeting held in Englewood, Colorado on the same day, the shareholders of First Data approved the issuance of shares of First Data common stock as contemplated by the original merger agreement.

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Following the special meeting of Concord's shareholders on October 28, Concord's outside directors met in Memphis, Tennessee and discussed Concord's current and future plans and operations.

Also on October 28, Mr. J. Richard Buchignani, Vice Chairman and General Counsel of Concord, and Kirkland & Ellis LLP telephoned Mr. Whealy and Sidley Austin Brown & Wood LLP to inquire whether First Data would divest, in whole or in part, its interest in NYCE Corporation. Mr. Whealy indicated that he would respond shortly to Concord's inquiry.

In addition, on October 28, the United States District Court for the District of Columbia entered a scheduling order in the litigation filed by the Antitrust Division and the states. Among other things, the order

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provided that a hearing on the government's motion for a preliminary injunction would be consolidated with a trial on the merits and would begin on December 15, 2003.

On October 30, 2003, Concord's outside directors, along with Kirkland & Ellis LLP, held a telephonic meeting and discussed various matters, including the status of the Antitrust Division litigation and Concord's efforts to encourage First Data to seek a settlement of the litigation.

On October 31, 2003, Mr. Whealy and Sidley Austin Brown & Wood LLP telephoned Mr. Buchignani and Kirkland & Ellis LLP. In the call, Mr. Whealy indicated that First Data was prepared to enter into settlement discussions with the Antitrust Division based on remedies not involving a divestiture, in whole or in part, of NYCE Corporation. Mr. Whealy further stated that it was First Data's view that it did not have any obligation under the original merger agreement to offer to divest its interest in NYCE Corporation and that it had no present intent to do so.

On November 4, 2003, Mr. Fote met with Mr. Labry in New York City. At the meeting, Messrs. Fote and Labry discussed, among other things, prospects for Concord's Network Service segment customer relationships. During November and early December 2003, Mr. Fote had a number of telephone conversations with Messrs. Kiphart and Labry regarding the status of Concord's Network Services segment customer relationships.

On November 6, 2003, Concord's board of directors, along with Kirkland & Ellis LLP, held a telephonic meeting during which the board reviewed various aspects of the Antitrust Division suit, including the trial schedule and the possibility of appeal by the Antitrust Division if First Data and Concord were successful at trial. The Concord board of directors discussed Concord's business strategy and its efforts to encourage First Data to offer to divest its interest in NYCE Corporation in order to resolve the Antitrust Division litigation. The Concord board of directors also discussed the possible reduction in anticipated merger synergies that would be caused by a divestiture of First Data's interest in NYCE Corporation and the possibility that First Data might seek a reduced exchange ratio as a condition to agreeing to divest its interest in NYCE Corporation in order to resolve the suit filed by the Antitrust Division.

On November 11, 2003, Kirkland & Ellis LLP provided to First Data and Sidley Austin Brown & Wood LLP possible terms of a settlement proposal to be presented to the Antitrust Division which Concord believed First Data should consider. These suggested terms included limitations on First Data's post-merger conduct as well as a partial or complete divestiture of First Data's interest in NYCE Corporation. Kirkland & Ellis LLP expressed its position that a complete divestiture of NYCE Corporation was required by the original merger agreement, specifically by the provision requiring the parties to use their respective reasonable best efforts to close the merger.

On November 14, 2003, First Data responded to the settlement proposals proffered by Kirkland & Ellis LLP, agreeing to work with Concord and with Kirkland & Ellis LLP to develop appropriate proposals to settle the litigation with the Antitrust Division. In its response, First Data noted, however, that it did not agree that a divestiture of NYCE Corporation was either reasonable or required by the original merger agreement.

On November 17, 2003, the First Data board of directors, along with Sidley Austin Brown & Wood LLP, held a telephonic board meeting to discuss recent developments regarding the proposed merger, including the status of the litigation filed by the Antitrust Division, and an update on the performance of the Concord business. The board of directors discussed the projected financial effect a divestiture of NYCE Corporation would have on the combined company following the merger. Later that day, Messrs. Fote, Whealy, Kiphart and Buchignani and Mr. Scott Betts, an Executive Vice President of First Data, met in Omaha, Nebraska to discuss the litigation brought by the Antitrust Division and the possibility of settling with the government. Messrs. Kiphart and Buchignani continued to insist that First Data was required to offer to divest its interest in NYCE Corporation. Messrs. Fote and Whealy indicated that First Data was willing to discuss settlement proposals focused on conduct-based remedies but reiterated First Data's opposition to offering a divestiture.

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On November 19 and 20, 2003, the Concord board of directors, along with Kirkland & Ellis LLP, held a regularly scheduled meeting in Memphis, Tennessee during which it discussed operational, strategic and corporate governance matters and was informed by counsel of the status of the Antitrust Division litigation and Concord's efforts to encourage First Data to offer to divest its interest in NYCE Corporation in order to resolve the Antitrust Division litigation. The Concord board of directors discussed with counsel potential issues and outcomes that would be associated with pursuing a claim against First Data based on an alleged breach of the original merger agreement's requirement that each party use its reasonable best efforts to complete the merger and related undertakings. The

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Concord board of directors discussed the parties' rights to terminate the original merger agreement on January 31, 2004 and possible strategies for Concord as a stand-alone company in the event that the merger was not completed.

On November 21, 2003, Messrs. Kiphart and Buchignani sent a letter to Messrs. Fote and Whealy reiterating Concord's request on November 17 that First Data initiate settlement discussions with the Antitrust Division. The letter also asserted that First Data had been dilatory in exploring the possibility of settlement with the Antitrust Division. Messrs. Kiphart and Buchignani repeated Concord's view that the reasonable best efforts provision of the original merger agreement obligated First Data to offer a divestiture of NYCE Corporation to resolve the Antitrust Division challenge and that the failure to do so would constitute a breach of the agreement. The letter also noted that, while Concord agreed that First Data and Concord had strong arguments available in the Antitrust Division litigation, continuing uncertainty regarding the merger was detrimental to Concord's business. The letter conveyed Concord's concern that the outcome of the Antitrust Division suit was inherently unpredictable and that, even if First Data and Concord prevailed at trial, there was a substantial likelihood that the government would appeal any decision favorable to First Data and Concord and, consequently, the Antitrust Division litigation would likely not be completed before January 31, 2004 regardless of the outcome of the trial.

On November 24, 2003, Mr. Whealy sent a reply letter to Messrs. Kiphart and Buchignani. In the letter, Mr. Whealy stated that, in First Data's view, the parties had previously indicated a willingness to settle the Antitrust Division suit with relief short of a full divestiture of NYCE Corporation, but that the Antitrust Division had shown no interest in pursuing such discussions. The letter stated that First Data remained committed to reaching a settlement with the Antitrust Division on reasonable terms, but that the original merger agreement did not require First Data to divest its interest in NYCE Corporation. Mr. Whealy pointed out that First Data believed that such a divestiture would produce an unreasonable result from a financial and strategic perspective at the negotiated exchange ratio of 0.40 shares of First Data common stock for each share of Concord common stock.

On November 25, 2003, Sidley Austin Brown & Wood LLP and Kirkland & Ellis LLP met with representatives of the Antitrust Division's senior staff in Washington, D.C. to express First Data's and Concord's willingness to settle the lawsuit on the basis of limitations on the conduct of the parties after the closing of the merger. In this meeting, First Data and Concord proposed conduct-based restrictions that were designed to allow First Data to realize the cost savings and other efficiencies associated with the merger, while making it easier for smaller PIN debit networks to enter the market and compete.

On November 30, 2003, the Antitrust Division advised First Data and Concord that it was not interested in discussing a conduct-based remedy along the lines that had been proposed. Instead, the Antitrust Division indicated that a divestiture of First Data's interest in NYCE Corporation would be required.

During a December 1, 2003 telephone call, Mr. Kiphart urged Mr. Fote to offer at least a partial divestiture of First Data's interest in NYCE Corporation in an attempt to resolve the Antitrust Division challenge.

In the evening of December 2, 2003, Mr. Fote met with Mr. Kiphart in Chicago, Illinois. At this meeting, Mr. Fote informed Mr. Kiphart that First Data was not willing to offer the divestiture of its interest in NYCE Corporation and that First Data intended to proceed with the trial on December 15. Mr. Fote also indicated to Mr. Kiphart that if Concord wished to have First Data make such a divestiture offer to the government, Concord should make a financial proposal to First Data.

On December 3, 2003, the First Data board of directors held a telephonic board meeting to discuss recent developments regarding the proposed merger, including the status of the litigation filed by the Antitrust Division. The board of directors reviewed the possible outcomes arising from

such litigation and potential settlement strategies.

On December 4, 2003, Messrs. Kiphart and Buchignani sent a letter to Messrs. Fote and Whealy. In their letter, Messrs. Kiphart and Buchignani reiterated their belief that the original merger agreement required First Data to divest its interest in NYCE Corporation in order to resolve the challenge by the Antitrust Division. They also stated that Concord did not intend to offer First Data any additional economic incentive to divest NYCE Corporation.

Also on December 4, Messrs. Fote and Labry discussed by telephone the limited amount of time remaining in which to settle the Antitrust Division suit before the start of the scheduled trial and their desire to reach a settlement before the trial began. Mr. Fote requested that Concord make a proposal to amend the original merger

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agreement and indicated that, if Concord and First Data were in agreement on the proposal, First Data would accept the risks associated with resolving the Antitrust Division challenge and would agree not to terminate the merger agreement if the merger were not completed by January 31, 2004.

On December 9, 2003, Messrs. Fote and Whealy met with Messrs. Kiphart, Labry, Kilburn and Buchignani in New York City. At the meeting, the parties discussed, among other things, the pending litigation with the Antitrust Division and the status of Concord's business. At this meeting, Mr. Fote proposed that, subject to the approval of their respective boards of directors, First Data would seek a settlement of the Antitrust Division litigation by December 31, 2003, including through a divestiture of First Data's interest in NYCE Corporation, if Concord would agree to a reduction to the exchange ratio applicable to the merger. Concord's representatives stated that Concord would not consider a reduction to the exchange ratio unless the original merger agreement were amended to provide substantially greater certainty that the merger would be completed. Following discussions, Mr. Fote proposed a merger exchange ratio of 0.36. The parties also discussed amending the original merger agreement to eliminate some of the conditions to closing in order to provide greater certainty for the closing of the merger. After further discussions, the parties agreed to propose for review and consideration by the boards of directors of their respective companies that if a full divestiture of First Data's interest in NYCE Corporation were required to settle the Antitrust Division challenge, then the exchange ratio would be reduced from 0.40 to 0.365, and that if the lawsuit were resolved on any basis other than a complete divestiture of the NYCE Corporation interest, then the exchange ratio would be reduced from 0.40 to 0.375.

At a regularly scheduled meeting of the First Data board of directors held on December 10, 2003, the board reviewed the recent discussions with representatives of Concord, the tentative understanding that had been reached with Concord and the status of discussions with the Antitrust Division. The board authorized First Data's management to continue these discussions with Concord and also to initiate negotiations with the Antitrust Division involving a possible divestiture of NYCE Corporation.

Also on December 10, the United States District Court for the District of Columbia held its final pretrial conference in the litigation filed by the Antitrust Division and reconfirmed the scheduled December 15, 2003 beginning of the trial.

On December 11, 2003, the Concord board of directors, along with its legal advisors (including Kirkland & Ellis LLP), held a telephonic meeting to discuss developments with respect to the proposed merger and Concord's business. During the Concord board of directors meeting, management reviewed the recent correspondence between Concord and First Data regarding potential approaches to resolving the Antitrust Division suit and the companies' differing views regarding whether divestiture of First Data's interest in NYCE Corporation was required under the terms of the original merger agreement. Kirkland & Ellis LLP described the terms of the tentative understanding reached in the December 9, 2003 meeting between First Data and Concord representatives. The Concord board of directors reviewed the timing and other challenges to the completion of the merger presented by the Antitrust Division litigation and discussed whether an amendment to the original merger agreement based on the terms discussed in the December 9 meeting between First Data and Concord representatives would be in the interest of Concord and its shareholders. The Concord board of directors authorized Mr. Kiphart and Mr. Kilburn to negotiate with First Data regarding an amendment to the original merger agreement consistent with the terms presented to the Concord board of directors, subject to the Concord board of directors' review and approval of any such amendment.

On December 11, 2003, Messrs. Fote and Whealy met in Washington, D.C. with the Assistant Attorney General in charge of the Antitrust Division and his principal deputy to discuss a possible settlement of the litigation. Among other things, Mr. Fote expressed a willingness to explore a partial structural remedy (i.e., a partial divestiture of First Data's interest in NYCE Corporation) to settle the pending litigation. The Assistant Attorney General indicated that he did not think a partial structural remedy would be acceptable to the Antitrust Division, but said he would consider it with his staff. In further conversations later that day by telephone, the Assistant Attorney General advised Mr. Fote that a partial structural remedy would not be acceptable to the Antitrust Division and that the Antitrust Division would rather litigate the case than accept this proposed remedy. Mr. Fote then asked the Assistant Attorney General to direct his staff to prepare draft documentation reflecting the terms upon which the government would agree to settle the pending litigation. Later that evening, the senior staff of the Antitrust Division delivered to Sidley Austin Brown & Wood LLP a draft proposed final judgment that contemplated the complete divestiture by First Data of its interest in NYCE Corporation.

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In the afternoon of December 12, 2003, Sidley Austin Brown & Wood LLP delivered to Kirkland & Ellis LLP a draft of the amendment and abeyance agreement. The draft agreement provided for, among other things, a

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reduction in the exchange ratio and an extension of the January 31, 2004 closing deadline to permit the parties to hold a further Concord shareholders meeting to adopt the amended merger agreement. The draft agreement also contained a confirmation by each party that the other party had satisfied its obligations to use reasonable best efforts to close the transaction and a confirmation by each party that a material adverse change had not occurred with respect to the other party. Later that afternoon, Mr. Buchignani telephoned Mr. Whealy to convey Concord's position that the draft amendment and abeyance agreement was unacceptable because, among other things, it did not provide Concord shareholders with adequate certainty that the merger would be completed. During the evening of December 12, 2003, First Data, Concord, Sidley Austin Brown & Wood LLP and Kirkland & Ellis LLP negotiated the terms contained in the draft amendment and abeyance agreement.

Also on December 12, 2003, Mr. Fote had further telephone conversations with the Assistant Attorney General regarding the proposed settlement, and representatives of First Data and Sidley Austin Brown & Wood LLP began negotiations with senior officials of the Antitrust Division regarding the terms of the proposed final judgment.

During the morning and afternoon of December 13, 2003, the parties, along with Sidley Austin Brown & Wood LLP and Kirkland & Ellis LLP, continued the negotiation of the terms of the draft amendment and abeyance agreement. Concord requested, among other things, additional provisions designed to increase the likelihood of the closing of the merger. Also on December 13, 2003, senior officials of the Antitrust Division delivered to First Data and Sidley Austin Brown & Wood LLP a revised draft final judgment and a draft of a proposed hold separate stipulation and order, under which First Data would be required to hold separate its interest in NYCE Corporation pending divestiture.

In the evening of December 13, 2003, First Data agreed to Concord's requests for additional changes to the draft amendment and abeyance agreement, and the parties, subject to the approval of their respective boards, tentatively agreed on the draft agreement. Also in the evening of December 13, and into the day on December 14, financial and accounting members of First Data's due diligence team met with financial and accounting employees of Concord in Wilmington, Delaware to update First Data's due diligence on Concord.

During the morning of December 14, 2003, Mr. Palmer, Goldman Sachs and William Blair had discussions with Ms. Patmore, Mr. Aiello and other representatives of First Data regarding First Data business and financial matters, as well as updated cost savings and operating synergies expected to result from the combined company after giving effect to a divestiture of First Data's interest in NYCE Corporation. Also on the morning of December 14, representatives of First Data reached agreement with the Antitrust Division, subject to the approval of the First Data and Concord boards, on the terms of the proposed final judgment and hold separate stipulation and order. These documents, which, among other things, called for First Data to divest all of its interest in NYCE Corporation, were then shared with Concord and Kirkland & Ellis LLP for their review, and the United States District Court was informed that a settlement of the Antitrust Division's challenge to the merger was possible.

Later in the day on December 14, 2003, the Concord board of directors, along with Kirkland & Ellis LLP, Skadden, Arps, Slate, Meagher & Flom LLP, Goldman Sachs and William Blair, held a telephonic meeting to review the proposed amendment and abeyance agreement and the settlement agreement with the Antitrust Division and the terms and conditions of the transactions proposed in these agreements, the alternatives available to Concord and the advisability and fairness of the proposed transactions. The Concord board of directors reviewed the business, legal, regulatory, financial and operational aspects of the amendment and abeyance agreement, the settlement agreement with the Antitrust Division, the amended merger agreement and the merger. Goldman Sachs and William Blair delivered their respective analyses of the proposed amended transaction with First Data. Each financial advisor then rendered its oral opinion, subsequently confirmed in writing, that, as of December 14, 2003 and based upon and subject to the assumptions made, procedures followed, matters considered and limitations on the review undertaken as set forth in their respective opinions, the proposed exchange ratio of 0.365 was fair, from a financial point of view, to the Concord shareholders.

The Concord board of directors then unanimously approved the amendment and abeyance agreement, the settlement agreement and Concord's performance of its obligations under such agreements and unanimously recommended the amended merger agreement to the Concord shareholders for adoption.

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In the afternoon of December 14, 2003, the First Data board of directors, along with Merrill Lynch, JPMorgan and First Data's legal advisors (including Sidley Austin Brown & Wood LLP), held a telephonic board meeting to review the draft amendment and abeyance agreement and the terms of the proposed settlement with the Antitrust Division. Sidley Austin Brown & Wood LLP summarized for the board the negotiations with the Antitrust

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Division and the provisions of the proposed final judgment and the proposed hold separate stipulation and order. Sidley Austin Brown & Wood LLP also reviewed with the board the provisions of the proposed amendment and abeyance agreement. Mr. Aiello reviewed the updated business case for the proposed merger on the amended terms. Each of Merrill Lynch and JP Morgan rendered its oral opinion to the First Data board of directors (subsequently confirmed in writing) that, as of December 14, 2003 and based upon and subject to the assumptions, qualifications and limitations set forth in such opinion, the proposed 0.365 exchange ratio was fair, from a financial point of view, to First Data.

The First Data board of directors then approved the amendment and abeyance agreement and the proposed settlement with the Antitrust Division, with all directors in attendance voting in favor.

Following the Concord and First Data board meetings, the parties executed the amendment and abeyance agreement, First Data and Concord executed the hold separate stipulation and order, and the United States District Court was informed that the parties had reached a settlement. Before the opening of trading on December 15, 2003, First Data and Concord issued a joint press release announcing the amended merger terms and the settlement with the Antitrust Division.

### **Concord's Reasons for the Merger**

At a special meeting held on December 14, 2003, after due consideration and consultation with financial and other advisors, the Concord board of directors:

determined that the amended merger agreement and the transactions contemplated by the amended merger agreement are advisable to Concord and its shareholders;

approved the amendment and abeyance agreement, which amended the original merger agreement, and the settlement agreement;

directed that the amended merger agreement be submitted for consideration by the Concord shareholders; and

unanimously recommended that the Concord shareholders vote FOR adoption of the amended merger agreement.

In the course of reaching its decision to approve the settlement agreement and the amendment and abeyance agreement and to recommend the amended merger agreement, the Concord board of directors consulted with Concord's management, as well as its outside legal counsel and its financial advisors, and considered the following material factors:

The risk that the Antitrust Division litigation (including any appeals) would not be resolved in a manner and on a schedule that would result in completion of the merger prior to January 31, 2004.

The fact that the original merger agreement provided that either First Data or Concord could unilaterally terminate the original merger agreement if the merger were not completed by January 31, 2004, provided that a party could not terminate the original merger agreement if the cause of the merger not being completed was that party's failure to fulfill its obligations under the original merger agreement, and that in the amended merger agreement this date would be extended to April 30, 2004.

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The statements by the staff of the Antitrust Division that it would require a divestiture of First Data's interest in the NYCE network to settle the Antitrust Division litigation and that First Data had asserted to Concord that it was not willing to offer to divest its interest in the NYCE network unless Concord agreed to reduce the exchange ratio in the merger.

The Concord board of directors' belief that there was a substantial risk that, if the merger were not completed by January 31, 2004, First Data would terminate the original merger agreement unless Concord agreed to reduce the exchange ratio in the merger.

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The uncertainty associated with Concord's ability, through litigation based on a claim of breach of the original merger agreement's requirement that each party use its reasonable best efforts to complete the merger and related undertakings, to force First Data to offer to divest its interest in the NYCE network in order to resolve the Antitrust Division litigation, prevent First Data from terminating the original merger on or after January 31, 2004 and/or obtain damages from First Data following a termination of the original merger agreement, and the potential distraction to management and disruption to Concord's businesses that could result from any such litigation.

The fact that the amended merger agreement contains significantly fewer conditions to closing the merger and, therefore, offers Concord shareholders materially greater certainty of closing than did the terms of the original merger agreement.

The market prices at which Concord common stock had traded prior to December 14, 2003.

The value of the consideration to be received by Concord's shareholders pursuant to the merger, including the historical market prices and trading information for shares of First Data's common stock and that the exchange ratio provided by the amended merger agreement represented a premium over the market prices at which Concord common stock had traded both prior to the initial announcement of the original merger agreement and during the period following the filing of the Antitrust Division litigation.

The opinions of each of Goldman Sachs and William Blair, delivered to the Concord board on December 14, 2003, which provide that, as of that date and based on and subject to the assumptions, qualifications and limitations described in their respective opinions, the exchange ratio pursuant to the amended merger agreement is fair from a financial point of view to the holders of Concord common stock. Copies of the written opinions of Goldman Sachs and William Blair, each dated December 14, 2003, which discuss the procedures followed, assumptions made, matters considered and the limitations of the reviews undertaken by each of Goldman Sachs and William Blair in connection with their respective opinions, are attached as *Annex C* and *Annex D*, respectively, to this proxy statement/prospectus and are incorporated in this proxy statement/prospectus by reference. Concord shareholders are urged to read the Goldman Sachs and William Blair opinions in their entirety. See *The Proposed Merger - Opinions of Concord's Financial Advisors*.

The fact that the amended merger agreement permits Concord, subject to complying with the terms of the amended merger agreement, to provide information to, negotiate with and enter into a definitive agreement with a third party concerning a superior alternative merger or acquisition proposal, provided that the terms of the amended merger agreement give First Data an opportunity to match any superior proposal and, if First Data does not match a superior proposal, require Concord to pay a \$210 million termination fee to First Data if Concord terminates the amended merger agreement to accept a superior proposal.

The other advice from Concord's management and Concord's financial and legal advisors, and the discussions of the Concord board of directors concerning the proposed amended merger agreement.

The Concord board of directors weighed these advantages and opportunities of the amended merger agreement against:

The fact that the exchange ratio in the amended merger agreement represents a reduction in the consideration to be received by Concord shareholders in the merger when compared to the exchange ratio in the original merger agreement.

The fact that the amended merger agreement provides for a fixed exchange ratio of 0.365, and that the value of the consideration to be received in the merger by Concord shareholders depends on the value of the First Data common stock at the time of the merger.

The fact that First Data would be required to divest its interest in the NYCE network pursuant to the settlement agreement and the potential effect of this divestiture on the combined company.



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Concord's business plans and prospects as a stand-alone company in the event that the merger with First Data were not completed.

The interests of Concord management and directors in the merger.

In addition, the Concord board of directors again considered the various strategic and other factors that had affected the board's decision to approve the original merger agreement. The following are material factors that the Concord board of directors considered in connection with its decision to approve and recommend that Concord shareholders adopt the original merger agreement, which continued to be relevant to the Concord board of directors' consideration of the amended merger agreement:

The business, operations, earnings and prospects of First Data, the complementary businesses of Concord and First Data, the potential prospects and businesses of the combined company following the merger and the opportunity for Concord shareholders to participate in the combined company's long-term growth. The board also considered that there could be no assurance that such growth would occur.

That Concord shareholders would own approximately 19% of the combined company following the merger.

That the combined company would be better able to compete with card associations and other payment processors and acquirers than Concord would be were it not to enter into the merger.

That the combined company will be better able to promote growth in merchant acceptance of PIN-based debit cards at the point of sale because of First Data's relationships with merchants through its merchant-acquiring alliances with 16 United States-based financial institutions.

That the combined company will be better able to attract issuers to its network because of First Data's relationships with issuers, not only through its merchant-acquiring alliances with 16 United States-based financial institutions but also through its processing relationships with over 1,000 banks.

The Concord board of directors' review of public disclosures by and about the business, financial condition and current business strategy of First Data, the due diligence review by Concord's management and Concord's financial, legal and accounting advisors of First Data and its businesses and First Data's historical stock price performance.

Trends and competitive developments in the electronic funds transfer industry and the range of strategic alternatives available to Concord, including Concord continuing its existing strategy of continuing to develop and market its products and services as an independent company, or exploring potential business combinations with other companies.

That the combined company is expected to have combined annual revenues of approximately \$10 billion.

The importance of size and scope, which would allow the combined company to compete more effectively and efficiently in the increasingly competitive electronic funds transfer industry and the fact that the combined company would be stronger financially than Concord would be as an independent entity.

The corporate governance aspects of the merger, including that at or prior to the completion of the merger, one of Concord's current directors would be named to serve on the First Data board of directors after the merger.

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The intended treatment of the merger as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code.

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The terms of the original merger agreement, including covenants that generally obligated First Data not to agree to enter into any agreement to acquire another entity if this would cause a material delay in or prevent the receipt of any antitrust approval necessary to complete the merger.

In connection with its decision to approve and recommend that Concord shareholders adopt the original merger agreement, the Concord board of directors had weighed these advantages and opportunities against the following factors, which continued to be relevant to the Concord board of directors' consideration of the amended merger agreement:

The challenges inherent in the combination of two business enterprises of the size and scope of First Data and Concord, which would have combined annual revenues of approximately \$10 billion, and the possible resulting diversion of management attention for an extended period of time.

The restrictions contained in the original merger agreement on the operation of Concord's business during the period between the signing of the original merger agreement and the completion of the merger.

The \$210 million termination fee to be paid to First Data if the Concord board of directors approves or recommends a takeover proposal from another entity and in certain other circumstances.

The possibility that the merger might not be completed and the effect of the resulting public announcement of termination of the merger on:

the market price of Concord's stock;

Concord's operating results, particularly in light of the costs incurred in connection with the transaction; and

Concord's ability to attract and retain key personnel.

The possibility of significant costs and delays which may result from seeking regulatory approvals necessary for the completion of the merger and the fact that failure to obtain these regulatory approvals could prevent completion of the merger.

The possibility that Concord may have to transfer the assets and liabilities of Concord EFS National Bank or otherwise reorganize or restructure Concord EFS National Bank in order to complete the merger.

The risk that anticipated benefits, long-term as well as short-term, of the merger for the Concord shareholders might not be realized.

The impact of the merger on Concord's employees.

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The risk that various provisions of the original merger agreement may have the effect of discouraging other persons potentially interested in a combination with Concord from pursuing such opportunity.

The uncertainties associated with an action filed against First Data by VISA and the counterclaim filed against VISA by First Data.

Other risks described in this proxy statement/prospectus in the section entitled Risk Factors.

The Concord board realized that there can be no assurance about future results, including results expected or considered in any of the factors listed above. However, the Concord board concluded that the potential positive factors outweighed the potential risks of completing the merger.

The foregoing discussion of the information and factors considered by the Concord board of directors is not exhaustive, but includes material factors considered by the Concord board. In view of the wide variety of factors



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considered by the Concord board in connection with its evaluation of the merger and the complexity of such matters, the Concord board did not consider it practical to, nor did it attempt to, quantify, rank or otherwise assign relative weights to the specific factors that it considered in reaching its decision. The Concord board discussed the factors described above, asked questions of Concord's management and Concord's legal and financial advisors and reached general consensus that the merger was advisable to Concord and its shareholders. In considering the factors described above, individual members of the Concord board of directors may have given different weight to different factors and may have applied different analyses to each of the material factors considered by the Concord board of directors.

**The Concord board of directors has approved the amended merger agreement, the merger and the other transactions contemplated by the amended merger agreement and believes that the terms of the merger are advisable to Concord and its shareholders. Accordingly, the Concord board of directors unanimously recommends that Concord shareholders vote FOR the adoption of the amended merger agreement and, by doing so, approve the proposed merger.**

## **Opinions of Concord's Financial Advisors**

Goldman Sachs and William Blair rendered their opinions to the Concord board of directors that, as of December 14, 2003 and based upon and subject to the factors and assumptions discussed in the opinions, the exchange ratio in the amended merger agreement was fair from a financial point of view to the holders of Concord common stock.

The full text of the written opinions of Goldman Sachs and William Blair, each dated December 14, 2003, which discuss the assumptions made, procedures followed, matters considered and limitations on the review undertaken in connection with the opinions, are attached to this proxy statement/prospectus as *Annex C* and *Annex D*, respectively. Holders of Concord common stock should read these opinions in their entirety.

**Goldman Sachs and William Blair provided their opinions for the information and assistance of the Concord board of directors in connection with its consideration of the transaction contemplated by the amended merger agreement. The Goldman Sachs and William Blair opinions do not constitute recommendations as to how any holder of Concord common stock should vote with respect to such transaction.**

### *Opinion of Goldman, Sachs & Co.*

Goldman Sachs rendered its opinion to the Concord board of directors that, as of December 14, 2003 and based upon and subject to the factors and assumptions discussed in its opinion, the exchange ratio of 0.365 shares of First Data common stock to be exchanged for each share of Concord's common stock pursuant to the amended merger agreement is fair from a financial point of view to the holders of Concord common stock.

**The full text of the written opinion of Goldman Sachs, dated December 14, 2003, which includes the assumptions made, procedures followed, matters considered and limitations on the review undertaken in connection with the opinion, is attached to this proxy statement/prospectus as Annex C and is incorporated in this proxy statement/prospectus by reference. Concord's shareholders should read the opinion in its entirety. Goldman Sachs provided its opinion for the information and assistance of the Concord board of**

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**directors in connection with its consideration of the transaction contemplated by the amended merger agreement. The Goldman Sachs opinion is not a recommendation as to how any holder of Concord common stock should vote with respect to the transaction and does not address the underlying business decision of Concord to enter into the amendment to the merger agreement.**

In connection with rendering the opinion described above and performing its related financial analyses, Goldman Sachs reviewed, among other things:

the original registration statement on Form S-4 of First Data, including the joint proxy statement/prospectus dated September 24, 2003, relating to the special meetings of shareholders of Concord and First Data;

the amended merger agreement;

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the Annual Reports to Shareholders and Annual Reports on Form 10-K of Concord and First Data for the five years ended December 31, 2002;

certain interim reports to shareholders and Quarterly Reports on Form 10-Q of Concord and First Data;

certain other communications from Concord and First Data to their respective shareholders;

certain internal financial analyses and forecasts for Concord and First Data prepared by their respective managements, as of April 2003, and provided for the use of Goldman Sachs, including certain updated cost savings and operating synergies projected by the managements of Concord and First Data to result from the transaction contemplated by the amended merger agreement; and

certain research analyst estimates for each of Concord and First Data.

Goldman Sachs also held discussions with members of the senior managements of Concord and First Data regarding their assessment of the strategic rationale for, and the potential benefits of, the transaction contemplated by the amended merger agreement and the past and current business operations, financial condition and future prospects of their respective companies. In addition, Goldman Sachs:

reviewed the reported price and trading activity for Concord common stock and First Data common stock;

compared certain financial and stock market information for Concord and First Data with similar information for certain other companies the securities of which are publicly traded; and

reviewed the financial terms of certain recent business combinations in the payments processing industry specifically and in other industries generally and performed such other studies and analyses as Goldman Sachs considered appropriate.

Goldman Sachs relied upon the accuracy and completeness of all of the financial, accounting and other information discussed with or reviewed by Goldman Sachs and assumed such accuracy and completeness for purposes of rendering its opinion. The managements of Concord and First Data informed Goldman Sachs that the April 2003 internal financial forecasts had not been updated. In that regard, the management of Concord instructed Goldman Sachs to use the I/B/E/S International Inc. research analyst estimates, but to take into account the view of the management of Concord that there are substantial risks and uncertainties with respect to Concord's ability to achieve these estimates. I/B/E/S is a data service that monitors and publishes compilations of earnings estimates by selected research analysts regarding companies of interest to institutional investors. Goldman Sachs also assumed that the updated cost savings and operating synergies projected by the managements of Concord and First Data to result from the transaction had been reasonably prepared on a basis reflecting the best currently available judgments and estimates of Concord and First Data. Goldman Sachs is not an expert in the evaluation of loan and lease portfolios for purposes of assessing the adequacy of the allowances for losses with respect to those portfolios and, accordingly, it assumed that such allowances for losses are in the aggregate adequate to cover such losses. In addition, Goldman Sachs did not review individual credit files nor did it make an independent evaluation or appraisal of the assets and liabilities (including any derivative or off-balance-sheet assets and liabilities) of Concord or First Data or any of their respective subsidiaries and Goldman Sachs was not furnished with any such evaluation or appraisal.

The following is a summary of the material financial analyses used by Goldman Sachs in connection with providing its opinion to the Concord board of directors on December 14, 2003. The following summary, however, does not purport to be a complete description of the financial analyses performed by Goldman Sachs. The order of analyses described does not represent relative importance or weight given to those analyses by Goldman Sachs. Some of the summaries of the financial analyses include information presented in tabular format. The tables, including the implied per share valuation table, must be read together with the text of each summary and are alone not a complete description of Goldman Sachs' financial analyses. Except as otherwise noted, the following quantitative information, to the extent that it is based on market data, is based

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on market data as it existed on or before December 12, 2003 and is not necessarily indicative of current market conditions.

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*Implied Per Share Valuation Table.* As more fully summarized below, Goldman Sachs performed various financial analyses, including premium analysis and exchange ratio history, comparison of selected public companies, discounted cash flow and discounted share price analysis, pro forma merger analysis, contribution analysis and comparable transactions. For each of the discounted cash flow analysis and the discounted share price analysis, Goldman Sachs calculated implied per share valuation ranges of Concord common stock as of December 31, 2003. The table below summarizes the implied per share valuation ranges for each of these analyses. Based on the exchange ratio and the closing prices of Concord and First Data common stock on December 12, 2003, the implied purchase price per share of Concord common stock was \$14.34. Goldman Sachs did not calculate implied per share valuation ranges of Concord common stock for the following financial analyses: premium analysis and exchange ratio history, comparison of selected public companies, pro forma merger analysis, contribution analysis and comparable transactions. The table below is not a complete description of the discounted cash flow analysis and the discounted share price analysis. The implied per share valuation ranges in the table below must be read together with the text of the summary of the *Discounted Cash Flow & Discounted Share Price Analysis* and in the context of all of the material financial analyses performed by Goldman Sachs, including the assumptions made, procedures followed, matters considered and limitations on the review in connection with providing its opinion to the Concord board of directors on December 14, 2003. Relying on the implied per share valuation ranges of the discounted cash flow and discounted share analysis is not in itself an appropriate method of determining the value of Concord's common stock. Selecting any particular portion of the analyses, without considering all of the analyses conducted by Goldman Sachs, would create an incomplete view of the process underlying Goldman Sachs' analyses and opinion.

<b>Financial Analysis</b>	<b>Implied Per Share Valuation</b>
<b>Financial Analysis</b>	<b>Range of Concord Common Stock</b>
Discounted Cash Flow Analysis	\$11.53 - \$17.92
Discounted Share Price Analysis	\$8.67 - \$17.48
Implied Purchase Price Per Share of Concord Common Stock	\$14.34

*Premium Analysis and Exchange Ratio History.* Goldman Sachs calculated the implied premiums represented by an exchange ratio of 0.365 based on the average closing prices of Concord common stock and First Data common stock for the five, thirty and 180-day periods ended December 12, 2003. Goldman Sachs also calculated the implied premiums represented by an exchange ratio of 0.365 based on the average closing prices of Concord common stock and First Data common stock for the five, thirty and 180-day periods ended March 31, 2003. March 31, 2003 was the last business day prior to entering into the original merger agreement. Goldman Sachs also analyzed the premiums paid in twenty-nine precedent transactions since January 1, 2001 with transaction values in the range of \$3 billion to \$10 billion and involving U.S.-based target companies in various industries. Goldman Sachs also calculated the implied exchange ratio of Concord common stock to First Data common stock based on the average closing prices of Concord common stock and First Data common stock for the five, thirty and 180-day periods ended December 12, 2003 and March 31, 2003. The results are shown in the following tables:

**Implied Premium Represented by an Exchange Ratio of 0.365**

<b>Period</b>	<b>Premium</b>
1 day prior (as of December 12, 2003)	6.3%
5 days ended December 12, 2003	19.2%
30 days ended December 12, 2003	28.7%
180 days ended December 12, 2003	7.3%

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<u>Period</u>	<u>Premium</u>
As of March 31, 2003	52.6%
5 days ended March 31, 2003	52.0%
30 days ended March 31, 2003	49.6%
180 days ended March 31, 2003	3.6%

**Transactions Valued at \$3 billion - \$10 billion**

<u>Period Prior to Announcement</u>	<u>Range of Premiums</u>	<u>Median Premium</u>
1 day	3.6% - 129.5%	24.7%
5 days	(3.0)% - 167.4%	23.7%
30 days	(2.9)% - 156.5%	30.6%
180 days	(44.1)% - 101.8%	38.4%

**Exchange Ratio History**

<u>Period</u>	<u>Average Exchange Ratio</u>
1 day prior (as of December 12, 2003)	0.344x
5 days ended December 12, 2003	0.312x
30 days ended December 12, 2003	0.296x
180 days ended December 12, 2003	0.339x

  

<u>Period</u>	<u>Premium</u>
1 day prior (as of March 31, 2003)	0.254x
5 days ended March 31, 2003	0.254x
30 days ended March 31, 2003	0.275x
180 days ended March 31, 2003	0.318x

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*Comparison of Selected Public Companies.* Goldman Sachs compiled and reviewed selected financial information and calculated certain ratios and public market multiples for the publicly traded payments processing companies listed below:

Total System Services, Inc.

Viad Corporation

Certegy, Inc.

Alliance Data Systems Corporation

Global Payments, Inc.

National Processing, Inc.

Although none of the selected companies is directly comparable to Concord or First Data, the companies included were chosen by Goldman Sachs because they are publicly traded companies with operations that for purposes of analysis Goldman Sachs considered similar to certain operations of Concord and First Data.

Goldman Sachs also calculated and compared various financial multiples and ratios based on financial data as of December 12, 2003, information it obtained from SEC filings and I/B/E/S estimates. The multiples and ratios of Concord were calculated using the Concord closing price on December 12, 2003 and the multiples and ratios of First Data were calculated using the First Data closing price on December 12, 2003. The multiples and ratios of Concord and First Data were based on information provided by their respective managements, published equity research, consensus earnings estimates from I/B/E/S and the most recent publicly available information. The multiples and ratios for each of the selected companies were based on the most recent publicly available information. The results of such analysis are summarized in the table below:

	<u>Range</u>	<u>Median</u>	<u>Concord</u>	<u>First Data</u>
<b>Enterprise Value Multiples of:</b>				
Latest Twelve Months Revenue	1.4x-5.8x	2.5x	4.4x	3.8x
Latest Twelve Months EBITDA	10.3x-21.7x	13.0x	9.2x	12.5x
<b>Price to Earnings Multiples for:</b>				
Calendar Year 2003 Estimated (based on I/B/E/S estimates; and management estimates for Concord and First Data)	20.0x-42.5x	27.7x	18.5x	20.7x
Calendar Year 2004 Estimated (based on I/B/E/S estimates)	16.8x-36.3x	24.0x	16.9x	18.0x
<b>2004 Price to Earnings to 5-Year Earnings Per Share Compounded Annual Growth Rate</b> (based on I/B/E/S estimates)	1.2x-2.4x	1.8x	1.2x	1.2x

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*Discounted Cash Flow & Discounted Share Price Analysis.* Goldman Sachs performed a discounted cash flow analysis of the expected cash flows of Concord using projections from Concord's management and I/B/E/S estimates. Goldman Sachs calculated illustrative net present values per Concord common share, as of December 31, 2003, of Concord's projected free cash flows for the fiscal years 2004 through 2008 using discount rates ranging from 11% to 13%. Goldman Sachs also calculated illustrative terminal values per Concord common share in the year 2008 based on price to earnings exit multiples ranging from 13x to 20x. The illustrative terminal values were then discounted to December 31, 2003 using discount rates ranging from 11% to 13%. The illustrative range of implied net present values per Concord common share derived from such analysis was from \$12.63 to \$17.92.

Goldman Sachs also performed a discounted cash flow analysis using long-term earnings per share growth rates ranging from 8% to 14% and 2003 to 2005 earnings per share compounded annual growth rates ranging from 0% to 14%. Goldman Sachs calculated illustrative net present values per Concord common share, as of December 31, 2003, of Concord's projected free cash flows for the fiscal years 2004 through 2008 using a discount rate of 12%. Goldman Sachs also calculated illustrative terminal values per Concord common share in the year 2008 using price to earnings exit multiples of 15x and 17x. The illustrative terminal values were then discounted to December 31, 2003 using a discount rate of 12%. The illustrative range of implied net present values per Concord common share derived from such analysis was from \$11.53 to \$17.77.

In addition, Goldman Sachs performed a discounted share price analysis. Discounting the share price using a 12% discount rate, assuming 2008 forward price to earnings multiples ranging from 13x to 20x and assuming earnings per share growth rates ranging from 8% to 14%, the illustrative implied values per Concord common share derived from such analysis ranged from \$8.67 to \$17.48. The share prices were discounted to December 31, 2003.

Goldman Sachs also performed a discounted share price analysis using long-term earnings per share growth rates ranging from 8% to 14%, 2003 to 2005 earnings per share compounded annual growth rates ranging from 0% to 14% and 2008 forward price to earnings multiples of 15x and 17x. Using a discount rate of 12%, the illustrative implied values per Concord common share derived from such analysis ranged from \$8.68 to \$15.88. The share prices were discounted to December 31, 2003.

Goldman Sachs determined the discount rates based on an analysis of the weighted average cost of capital of selected public companies in the payments processing industry and determined the exit multiples based on the trading multiples of these companies.

*Pro Forma Merger Analysis.* Goldman Sachs performed a pro forma merger analysis of the financial impact of the merger based upon the following assumptions:

exchange ratio of 0.365 First Data common share per Concord common share;

Concord and First Data management earnings per share estimates for 2003;

I/B/E/S mean earnings per share estimates for 2004 and 2005 for Concord and First Data;

market data as of December 12, 2003;

updated cost savings and operating synergies projected by the managements of Concord and First Data; and



loss of a certain amount of pre-tax earnings of the NYCE network beginning in 2004.

Goldman Sachs performed calculations of the pro forma merger analysis (excluding estimated total transaction, merger-related and restructuring costs of \$385 million). The analysis, which assumes the repurchase of shares by First Data, indicated that the transaction would be dilutive to 2004 earnings per share and accretive to 2005 earnings per share of Concord common stock, but would be accretive to 2004 and 2005 earnings per share of Concord common stock on a cash basis (earnings per share excluding the effects of goodwill and amortization). The analysis also indicated that the transaction would be dilutive to 2004 earnings per share and accretive to 2005 earnings per share of First Data common stock, but would be neutral to 2004 earnings per share and accretive to 2005 earnings per share of First Data common stock on a cash basis.

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*Contribution Analysis.* Goldman Sachs reviewed specific historical and estimated future operating and financial information including, among other things, net revenues, EBITDA and net income for Concord, First Data and the combined entity resulting from the merger. The analysis indicated that Concord's shareholders would receive 19.1% of the outstanding common equity of the combined company following completion of the transaction. Goldman Sachs also analyzed the relative income statement contribution of Concord and First Data to the combined company following completion of the transaction. The following table presents the results of this analysis based upon:

Concord's and First Data's latest twelve months actual net revenues, EBITDA and net income (as of September 30, 2003);

Concord's and First Data's 2003 estimated net income using the internal financials and forecasts as provided by the respective managements of Concord and First Data; and

Concord's and First Data's 2003 and 2004 estimated income using earnings estimates from I/B/E/S on a pro forma basis.

	% Contribution	
	Concord	First Data
Equity Market Capitalization	18.1%	81.9%
LTM Net Revenue	12.7%	87.3%
LTM EBITDA	18.6%	81.4%
LTM Net Income	20.4%	79.6%
2003 Estimated Net Income (based on management estimates)	20.6%	79.4%
2003 Estimated Net Income (based on I/B/E/S estimates)	20.3%	79.7%
2004 Estimated Net Income (based on I/B/E/S estimates)	19.2%	80.8%

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*Comparable Transactions.* Goldman Sachs analyzed certain information relating to the following eight precedent transactions in the payment processing industry:

<u>Date Completed</u>	<u>Target/Acquirer</u>	<u>Purchase Price</u> (\$ in thousands)
June 20, 2003	ProBusiness Services, Inc./	\$500,000
October 3, 2002	Automatic Data Processing, Inc. PayPal, Inc./	\$1,486,010
May 7, 2001	eBay Inc. NOVA Corporation/	\$2,100,000
July 29, 1999	US Bancorp Paymentech, Inc./	\$417,235
April 29, 1999	First Data Corporation BA Merchant Services, Inc./	\$339,426
September 24, 1998	BankAmerica Corporation PMT Services, Inc./	\$1,009,000
July 10, 1998	NOVA Corporation MoneyGram Payment Systems, Inc./	\$287,000
June 13, 1995	Viad Corporation First Financial Management Corporation/ First Data Corporation	\$5,946,479

Goldman Sachs calculated and compared various financial multiples and ratios based on publicly available financial data, information it obtained from SEC filings and I/B/E/S estimates for these eight precedent transactions. The results of this analysis are summarized in the table below:

	<u>Range</u>	<u>Median</u>
<b>Multiples of Levered Market Value to Latest Twelve Months:</b>		
Revenue	1.9x-8.6x	3.6x
EBITDA	10.3x-22.5x	14.4x
<b>Multiples of Purchase Price to:</b>		
Latest Twelve Months Net Income	25.4x-48.6x	35.8x
Projected Net Income	20.1x-37.4x	24.6x

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(based on I/B/E/S estimates of net earnings for the fiscal year following the transaction)

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The preparation of a fairness opinion is a complex process and is not necessarily susceptible to partial analysis or summary description. Selecting portions of the analyses or of the summary provided above, without considering the analyses as a whole, could create an incomplete view of the processes underlying Goldman Sachs' opinion. In arriving at its fairness determination, Goldman Sachs considered the results of all of its analyses and did not attribute any particular weight to any factor or analysis considered by it. Rather, Goldman Sachs made its determination as to fairness on the basis of its experience and professional judgment after considering the results of all of its analyses. No company or transaction used in the above analyses as a comparison is directly comparable to Concord or First Data or the merger.

Goldman Sachs prepared these analyses solely for purposes of Goldman Sachs providing its opinion to the Concord board of directors as to the fairness to the holders of Concord common stock from a financial point of view of the exchange ratio. These analyses do not purport to be appraisals or necessarily reflect the prices at which businesses or securities actually may be sold. Analyses based upon forecasts of future results are not necessarily indicative of actual future results, which may be significantly more or less favorable than suggested by these analyses. Because these analyses are inherently subject to uncertainty, being based upon numerous factors or events beyond the control of the parties or their respective advisors, none of Concord, First Data, Goldman Sachs or any other person assumes responsibility if future results are materially different from those forecast.

As described above, Goldman Sachs' opinion to the Concord board of directors was one of many factors taken into consideration by the Concord board of directors in making its determination to approve the amended merger agreement. The exchange ratio and other terms of the proposed merger were determined through arms-length negotiations between Concord and First Data and were approved by the Concord board of directors. Goldman Sachs did not recommend any specific exchange ratio or other form of consideration to Concord or that any specific exchange ratio or other form of consideration constituted the only appropriate consideration for the proposed merger. The foregoing summary does not purport to be a complete description of the analysis performed by Goldman Sachs in connection with such opinion and is qualified by reference to the written opinion of Goldman Sachs attached to this proxy statement/prospectus as *Annex C*.

Goldman Sachs and its affiliates, as part of its investment banking business, are continually engaged in performing financial analyses with respect to businesses and their securities in connection with mergers and acquisitions, negotiated underwritings, competitive biddings, secondary distributions of listed and unlisted securities and private placements and other transactions as well as for estate, corporate and other purposes. Concord selected Goldman Sachs as its financial advisor because it is an internationally recognized investment banking firm that has substantial experience in transactions similar to the merger. Goldman Sachs is familiar with Concord, having provided certain investment banking services to Concord from time to time, including having acted as joint lead manager on a \$1.2 billion follow-on common stock offering of Concord in June 1999, having acted as joint book-runner on a \$1.3 billion follow-on common stock offering of Concord in June 2001, having acted as an agent on Concord's share repurchase program and having acted as its financial advisor in connection with the amended merger agreement. Goldman Sachs received fees from Concord for these investment banking services of approximately \$10.2 million for the 1999 follow-on common stock transaction, \$10.9 million for the 2001 follow-on common stock transaction and \$15,000 for the share repurchase program.

Goldman Sachs also provided certain investment banking services to First Data from time to time, including having acted as co-manager on a \$1 billion global notes offering in November 2001, for which it received a fee of approximately \$50,000. Goldman Sachs may provide investment banking services to Concord or First Data in the future.

Goldman Sachs is a full service securities firm engaged, either directly or through its affiliates, in securities trading, investment management, financial planning and benefits counseling, financing and brokerage activities for both Concord and First Data and for individuals. In the ordinary course of their trading, investment management, financing and brokerage activities, Goldman Sachs and its affiliates may actively trade the debt and equity securities (or related derivative securities) of Concord and First Data for their own accounts and for the accounts of their customers and may at any time hold long and short positions of such securities. As of the date hereof, entities affiliated with The Goldman Sachs Group, Inc., which is the parent of Goldman Sachs, have accumulated various trading positions in Concord common stock and First Data common stock and have an indirect investment in a subsidiary of First Data and certain First Data warrants.

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Pursuant to a letter agreement dated February 21, 2003, Concord engaged Goldman Sachs to act as its financial advisor in connection with a potential transaction involving First Data. Pursuant to the terms of this

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engagement letter. Goldman Sachs will receive a transaction fee of \$12 million, \$2 million of which was paid at the time Concord entered into the original merger agreement and \$10 million of which is payable upon completion of the transaction. Concord also has agreed to reimburse Goldman Sachs for its reasonable out-of-pocket expenses, including attorney's fees and disbursements plus any sales, use or similar taxes, and to indemnify Goldman Sachs against certain liabilities, including liabilities under federal securities laws.

*Opinion of William Blair & Company, L.L.C.*

William Blair was retained to act as a financial advisor to Concord in connection with the proposed merger involving Concord and First Data. As part of its engagement, Concord requested William Blair to render a fairness opinion relating to the merger. On December 14, 2003, William Blair delivered its oral opinion, subsequently confirmed in writing, which provides that, as of that date and based upon and subject to the assumptions and qualifications stated in its opinion, the exchange ratio specified in the amended merger agreement of 0.365 of a share of First Data common stock for each share of Concord common stock is fair, from a financial point of view, to the holders of the outstanding shares of common stock of Concord.

William Blair provided the opinion described above for the information and assistance of the Concord board of directors in connection with its consideration of the merger. William Blair's opinion to the Concord board of directors was one of many factors taken into consideration by the Concord board of directors in making its determination to approve the amended merger agreement. The terms of the amended merger agreement and the exchange ratio in the merger, however, were determined through negotiations between Concord and First Data and were approved by the Concord board of directors. William Blair provided advice to Concord during such negotiations. However, William Blair did not recommend any specific exchange ratio or other form of consideration to Concord or that any specific exchange ratio or other form of consideration constituted the only appropriate consideration for the proposed merger.

**The full text of William Blair's written opinion, dated December 14, 2003, is attached as *Annex D* to this proxy statement/prospectus and incorporated by reference. You are urged to read the entire opinion carefully to learn about the assumptions made, procedures followed, matters considered and qualifications and limitations of the scope of the review undertaken by William Blair in rendering its opinion. William Blair's opinion relates only to the fairness, from a financial point of view, to Concord's shareholders of the exchange ratio in the proposed merger, does not address any other aspect of the proposed merger or any related transaction, and does not constitute a recommendation to any shareholder as to how that shareholder should vote with respect to the adoption of the amended merger agreement. The following summary of William Blair's opinion does not purport to be a complete description of the analysis performed by William Blair in connection with such opinion and is qualified in its entirety by reference to the full text of the written opinion of William Blair attached to this proxy statement/prospectus as *Annex D*. William Blair's opinion was directed to the Concord board of directors for its benefit and use in evaluating the fairness of the exchange ratio. We urge you to read the opinion carefully and in its entirety.**

In connection with rendering its opinion and performing its related financial analyses, William Blair examined or discussed:

the Merger Agreement dated April 1, 2003 and a draft of the Amendment and Abeyance Agreement dated December 13, 2003, based on the assumption that the final form of the amendment would not differ in any material respect from the draft provided;

certain audited historical financial statements of Concord and of First Data for the three years ended December 31, 2002;

certain unaudited historical financial statements of Concord and of First Data for the nine months ended September 30, 2003;

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the reports on Form 10-K for the year ended December 31, 2002 and the reports on Form 10-Q for the period ended September 30, 2003 for Concord and First Data;

certain internal business, operating and financial information and the forecast of Concord for 2003 (the Short-Term Projections ), prepared by the senior management of Concord;

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information regarding the amount and timing of cost savings and related expenses and synergies which senior management of Concord and First Data expect will result from the merger (the Expected Synergies );

the pro forma impact of the merger on the earnings per share of First Data (before and after taking into consideration any Expected Synergies created as a result of the merger) based on the Short-Term Projections, the Forecasts (defined below), publicly available earnings guidance communicated by First Data and research analyst earnings estimates;

information regarding publicly available financial terms of certain other business combinations William Blair deemed relevant;

the financial position and operating results of Concord compared with those of certain other publicly traded companies William Blair deemed relevant;

current and historical market prices and trading volumes of the common stock of Concord and First Data; and

certain other publicly available information on Concord and First Data.

William Blair also held discussions with members of the senior management of Concord and First Data to discuss the foregoing. Further, senior management of Concord instructed William Blair to use research analyst earnings estimates to derive certain financial forecasts relating to Concord (the Forecasts ), but to take into account the views of the senior management of Concord that there are substantial risks and uncertainties with respect to Concord's ability to achieve these estimates. William Blair also considered other matters which it deemed relevant to its inquiry, and took into account the accepted financial and investment banking procedures and considerations that it deemed relevant or appropriate.

In rendering its opinion, William Blair assumed and relied upon, without independent verification, the accuracy and completeness of all the information examined by or otherwise reviewed or discussed with William Blair for purposes of its opinion, including, without limitation, the Short-Term Projections and the Forecasts. William Blair did not make or obtain an independent valuation or appraisal of the assets, liabilities or solvency of Concord or First Data. William Blair was advised by the senior management of Concord that the Short-Term Projections and the Expected Synergies were reasonably prepared on bases reflecting currently available estimates and judgments of the senior management of Concord. In that regard, William Blair assumed for purposes of its opinion that (1) the Short-Term Projections and the Forecasts would be achieved and the Expected Synergies would be realized in the amounts and at the times contemplated and (2) all material assets and liabilities (contingent or otherwise) of Concord were as disclosed in Concord's financial statements or other information made available to William Blair. William Blair assumed that as of the date of its opinion, First Data and its subsidiaries did not own any stock of Concord. William Blair expressed no opinion with respect to the Short-Term Projections, the Forecasts or Expected Synergies or the estimates and judgments on which they were based. First Data did not make available to William Blair any updated projections of expected future performance other than referring William Blair to certain publicly disclosed earnings and other financial guidance and, accordingly, William Blair expressed no opinion with respect to any of these matters.

William Blair's opinion did not address the relative merits of the merger as compared to any alternative business strategies that might exist for Concord or the effect of any other transaction in which Concord might engage. William Blair's opinion was based upon economic, market, financial and other conditions existing on, and other information disclosed to William Blair as of, the date of such opinion. Although subsequent developments may affect its opinion, William Blair does not have any obligation to update, revise or reaffirm its opinion.

William Blair assumed, with the consent of the Concord board of directors, that the merger would qualify as a tax-free reorganization for U.S. federal income tax purposes. William Blair also assumed without verification the accuracy and adequacy of the legal advice given by counsel to Concord on all legal matters, and assumed that the merger would be completed on the terms described in the amended merger agreement,

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without any waiver of any material terms or conditions by Concord. William Blair further assumed that all material governmental, regulatory, or other consents and approvals for the completion of the transaction contemplated by the amended merger

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agreement would be obtained without any adverse effect on Concord or First Data or their respective subsidiaries or on the expected benefits of the transaction contemplated by the amended merger agreement.

William Blair did not express any opinion as to the price at which the common stock of Concord and First Data will trade at any future time or as to the effect of the merger on the trading price of the common stock of Concord or First Data. In William Blair's view, those trading prices may be affected by a number of factors, including, but not limited to:

dispositions of the common stock of First Data or of Concord by shareholders within a short period of time after the announcement date or the effective date of the merger;

changes in the prevailing interest rates and other factors which generally influence the price of securities;

adverse changes in the current capital markets;

the occurrence of adverse changes in the financial condition, business, assets, results of operations or prospects of Concord or of First Data or in the payments processing market;

any necessary actions by or restrictions of federal, state or other governmental agencies or regulatory authorities; and

timely completion of the merger on the terms and conditions that are acceptable to all parties at interest.

The following is a summary of the material financial analyses performed and material factors considered by William Blair to arrive at its opinion. William Blair performed certain procedures, including each of the financial analyses described below, and reviewed with the Concord board of directors the assumptions upon which such analyses were based, as well as other factors. Although the summary does not purport to describe all of the analyses performed or factors considered by William Blair in this regard, it does discuss those considered by William Blair to be material in arriving at its opinion.

The equity value of the transaction was based on the implied purchase price for Concord of \$14.34 per share and a fully diluted common share count for Concord of 481.1 million, based on (A) 465.1 million common shares outstanding as of October 31, 2003, based on Concord's report on Form 10-Q for the period ended September 30, 2003, and (B) approximately 15.9 million common share equivalents representing in-the-money options outstanding, based on information presented in Concord's annual report on Form 10-K for the year ended December 31, 2002. The implied purchase price for Concord of \$14.34 per share was based on First Data's closing price of \$39.30 per share on December 12, 2003, the last trading day prior to the announcement of the amended merger agreement, and the exchange ratio of 0.365. The total value of the transaction was based on the equity value plus total debt (including deposits and settlement obligations net of settlement receivables) less cash and cash equivalents, which in the case of Concord includes securities available for sale.

*Summary Table.* The following table summarizes the implied per share equity value for Concord derived from the analyses indicated, as described in each respective section. The following table does not include the following valuation methodologies which are not conducive to determining an implied value per share of the merger consideration: premiums paid analysis, earnings accretion/dilution analysis, contribution analysis and historical exchange ratio analysis. In applying the various valuation methodologies to Concord's business and operations and the circumstances of the proposed merger, William Blair made qualitative judgments as to the significance and relevance of each analysis. The methodologies and imputed value ranges derived from these analyses should be considered as a whole and in the context of their narrative

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description, including the methodologies and assumptions underlying these analyses. Considering the imputed value ranges without considering the full narrative description of the financial analyses, including underlying methodologies and assumptions, could create a misleading or incomplete view of the financial analyses performed by William Blair.

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<b>Valuation Methodology</b>	<b>Implied Per Share Equity Value Range</b>
Comparable Public Company Analysis	\$14.50 - \$30.75
Comparable Transactions Analysis	\$11.25 - \$25.75
Discounted Cash Flow Analysis	\$11.25 - \$15.75
Discounted Implied Future Share Price Analysis	\$11.50 - \$17.50
Implied Merger Consideration per Share	\$14.34

*Comparable Public Company Analysis.* William Blair reviewed and compared certain financial information relating to Concord to corresponding financial information, ratios and public market multiples for certain publicly traded companies with operations in the transaction processing industry and market capitalizations in excess of \$500 million that William Blair deemed relevant. The comparable companies selected by William Blair were Alliance Data Systems Corp., Certegy, Inc., First Data Corporation, Global Payments, Inc., National Processing, Inc. and Total System Services, Inc. William Blair selected these companies because they are the publicly traded companies that engage in businesses reasonably comparable to Concord's business.

Among the information William Blair considered were EBITDA, EBIT and net income. The operating results and the corresponding derived multiples for Concord and the comparable companies were based on each company's most recent available publicly disclosed financial information for the last twelve months (LTM), closing share prices as of December 12, 2003 and consensus Wall Street analysts' EBITDA, EBIT and earnings per share estimates for calendar year 2004.

William Blair then derived a range of implied per share equity values for Concord by applying the multiples from the selected comparable companies to the corresponding data for Concord. Information regarding the multiples from William Blair's analysis of selected comparable publicly traded companies, including the range of implied per share equity values for Concord derived from these multiples, is provided in the following table.

<b>Multiple</b>	<b>Comparable Company Multiple Range</b>		<b>Implied Transaction Per Share Equity Value Range</b>	
	<b>Low</b>	<b>High</b>	<b>Low</b>	<b>High</b>
Total Value/LTM EBITDA	10.1x	22.5x	\$ 14.50	\$ 29.48
Total Value/2004 Projected EBITDA	8.8x	18.2x	\$ 14.05	\$ 26.59
Total Value/LTM EBIT	12.7x	32.8x	\$ 14.94	\$ 34.94
Total Value/2004 Projected EBIT	11.0x	27.4x	\$ 14.44	\$ 32.54
Equity Value/LTM Net Income	20.5x	43.3x	\$ 15.21	\$ 32.12
Equity Value/2004 Projected Net Income	18.0x	36.3x	\$ 14.19	\$ 28.62

The mean of the low and high implied transaction per share equity values for Concord implied by the comparable public company analysis is approximately \$14.50 per share and \$30.75 per share, respectively, as compared to the implied purchase price for Concord of \$14.34 per share.

None of the selected companies is identical to Concord. Accordingly, any analysis of the selected comparable publicly traded companies necessarily involved complex considerations and judgments concerning the differences in financial and operating characteristics and other factors that would necessarily affect the analysis of trading multiples of the selected comparable publicly traded companies.

*Comparable Transactions Analysis.* William Blair performed an analysis of selected recent business combinations consisting of transactions in excess of \$500 million in value, announced subsequent to January 1, 1998 and involving payment services companies based on publicly available information. In total, William Blair examined five transactions that were chosen based on William Blair's judgment that they were generally similar, in whole or in part, to the proposed merger. The selected transactions were not intended to be representative of the entire range of possible transactions in the payment services and transaction processing industries. The five transactions examined were (target/acquirer):

**Table of Contents**Nova Corporation/*U.S. Bancorp*STAR Systems, Inc./*Concord EFS, Inc.*Electronic Payment Services/*Concord EFS, Inc.*PMT Services, Inc./*Nova Corporation*SPS Transaction Services, Inc./*Associates First Capital Corp.*

William Blair reviewed the consideration paid in the selected comparable transactions in terms of the total value of such transactions as a multiple of EBITDA and EBIT and the equity value as a multiple of net income for the latest twelve months prior to the announcement of such transactions. William Blair then indexed each calculated transaction multiple to reflect the difference between (1) industry forward price/earnings multiples at the date such transaction was announced and (2) the then-current industry forward price/earnings multiples. Such indexing was applied only to the equity component of each transaction as the value of net debt would not fluctuate due to changes in price/earnings multiples. William Blair then derived a range of implied per share equity values for Concord by applying the indexed multiples from the selected comparable transactions to the corresponding data for Concord. Information regarding the indexed multiples from William Blair's analysis of selected comparable transactions, including the range of implied per share equity values for Concord derived from these multiples, is provided in the following table:

Multiple	Comparable Transaction Indexed Multiple Range		Implied Transaction Per Share Equity Value Range	
	Low	High	Low	High
Total Value/LTM EBITDA	7.6x	16.6x	\$ 11.48	\$ 22.36
Total Value/LTM EBIT	8.9x	24.2x	\$ 11.16	\$ 26.38
Equity Value/LTM Net Income	14.6x	38.5x	\$ 10.83	\$ 28.56

The mean of the low and high implied transaction per share equity values for Concord implied by the comparable transactions analysis is approximately \$11.25 per share and \$25.75 per share, respectively, as compared to the implied purchase price for Concord of \$14.34 per share.

Although William Blair utilized the indexed multiples implied by the selected transactions to derive the range of implied per share equity values of Concord, none of these transactions or associated companies is identical to the merger or Concord. Accordingly, any analysis of the selected comparable transactions necessarily involved complex considerations and judgments concerning the differences in financial and operating characteristics, parties involved and terms of their transactions and other factors that would necessarily affect the implied value of Concord versus the values of the companies in the selected comparable transactions.

*Discounted Cash Flow Analysis.* William Blair utilized the Short-Term Projections and the Forecasts to perform a discounted cash flow analysis of Concord's projected future cash flows for the period commencing January 1, 2004 and ending December 31, 2007. Using discounted cash flow methodology, William Blair calculated the present values of the projected free cash flows for Concord. In this analysis, William Blair assumed terminal value multiples ranging from 7.0x to 10.0x the projected 2007 EBITDA and discount rates ranging from 13% to 17%. William Blair selected the EBITDA terminal value range based on William Blair's review of, among other matters, the trading multiples of comparable

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companies and the transaction multiples of comparable transactions. William Blair determined the appropriate discount rate range based upon an analysis of the weighted average cost of capital of Concord and other comparable companies that William Blair deemed relevant in its expertise and judgment. William Blair aggregated (1) the present value of the free cash flows over the applicable forecast period with (2) the present value of the range of terminal values. The aggregate present value of these items represented the enterprise value range. An equity value was determined by adding back the current amount of net cash. William Blair calculated the implied per share equity value range by dividing the resulting equity values by the fully diluted share count of 481.1 million. The implied transaction per share equity values for Concord implied by the discounted cash flow analysis ranged from approximately \$11.25 per share to \$15.75 per share as compared to the implied purchase price for Concord of \$14.34 per share.

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*Discounted Implied Future Share Price Analysis.* William Blair utilized projected earnings per share for 2005 through 2007 based on the Forecasts to calculate an estimate of Concord's future share price for 2004, 2005 and 2006 by multiplying the range of forward price/earnings multiples of 16.0x to 24.0x by Concord's projected earnings per share. The range of forward price/earnings multiples of 16.0x to 24.0x represents a range from Concord's current forward multiple to the median forward multiple of the comparable company group previously referenced. William Blair considered this range of forward price/earnings multiples to be relevant in its expertise and judgment. William Blair then discounted these implied future share prices to December 31, 2003 using a discount rate of 15% based on its judgment of Concord's cost of equity capital. The range of implied per share equity values for Concord indicated by this analysis was approximately \$11.50 to \$17.50 as compared to the implied transaction price for Concord of \$14.34 per share.

*Premiums Paid Analysis.* William Blair reviewed data from 190 publicly available transactions occurring since January 2001 and with transaction values in excess of \$500 million. Specifically, William Blair analyzed the acquisition price as a premium to the closing share price one day, one week and four weeks prior to the announcement of the transaction, for all 190 transactions and for a subgroup of those transactions that were stock-for-stock transactions. William Blair compared the mean of the resulting stock price premiums for the reviewed transactions to the premiums implied by the merger based on Concord's stock prices one day, one week and four weeks prior to an assumed announcement on April 1, 2003 (the day on which published news reports cited terms of the potential transaction). William Blair also compared the mean of the resulting stock price premiums for the reviewed transactions to the premiums implied by the merger based on Concord's stock prices one day, one week and four weeks prior to an assumed announcement on December 15, 2003. Information regarding the premiums from William Blair's analysis of selected transactions is provided in the following table:

Premium Period	Mean of Transaction Premiums		Implied Transaction Premiums Assuming	
	All Consideration Types	Stock-for-Stock Deals	Announcement on	
			April 1, 2003	December 15, 2003
1 Day Prior	27.0%	26.7%	52.6%	6.3%
1 Week Prior	29.9%	28.6%	54.6%	26.8%
4 Weeks Prior	34.1%	30.4%	31.2%	38.6%

*Earnings Accretion/Dilution Analysis.* William Blair analyzed certain pro forma effects resulting from the merger, including the potential impact of the merger on projected 2004 and 2005 earnings per share of First Data following the merger, assuming a January 1, 2004 closing. William Blair utilized Concord's projected earnings for 2004 and 2005 according to the Forecasts. William Blair utilized First Data's projected earnings for 2004 and 2005 derived from the mean of I/B/E/S earnings per share estimates (the First Data Forecasts). William Blair's analysis included assumptions regarding, among other matters, various structural considerations, the estimated allocation of purchase price to amortizable intangible assets and Expected Synergies based on discussions with Concord and First Data management. William Blair's post-transaction pro forma analysis excludes one-time pre-tax transaction related expenses. William Blair's analysis indicated that the transaction would be slightly dilutive to 2004 earnings per share and accretive to 2005 earnings per share of First Data common stock.

*Contribution Analysis.* William Blair performed an analysis comparing the relative contributions of Concord and First Data to the combined pro forma company's LTM and projected 2003 and 2004 EBITDA, EBIT and net income. The LTM data for both Concord and First Data were based on publicly available information as of September 30, 2003. 2003 projections for Concord and First Data were based on the Short-Term Projections and the First Data 2003 operating plan, respectively. 2004 projections for Concord and First Data were based on the Forecasts and the First Data Forecasts, respectively. These relative contributions were compared to the relative split of the post-transaction fully-diluted common shares between Concord and First Data of 19.1% and 80.9%, respectively. Such analysis was prepared without regard to synergies, purchase accounting adjustments or assumed NYCE divestiture. Information regarding the relative contributions of Concord and First Data from William Blair's contribution analysis is provided in the following table:



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	<u>Concord</u>	<u>First Data</u>
<b>EBITDA:</b>		
LTM	18.6%	81.4%
2003 Projected	17.6%	82.4%
2004 Projected	16.6%	83.4%
<b>EBIT:</b>		
LTM	19.6%	80.4%
2003 Projected	18.7%	81.3%
2004 Projected	17.6%	82.4%
<b>Net Income:</b>		
LTM	20.4%	79.6%
2003 Projected	20.5%	79.5%
2004 Projected	19.2%	80.8%
Pro Forma Ownership of Combined Company	19.1%	80.9%

*Historical Exchange Ratio Analysis.* William Blair also performed a historical exchange ratio analysis in which William Blair compared (1) a series of implied exchange ratios for the merger derived from the mean of historical trading prices of Concord common stock and First Data common stock over certain specified periods of time (a) beginning March 29, 2002 and ending March 31, 2003 and (b) beginning December 13, 2002 and ending December 12, 2003; and (2) the exchange ratio in the merger of 0.365 of a share of First Data common stock for each share of Concord common stock. William Blair calculated the implied mean exchange ratios by dividing the closing prices per share of Concord common stock for the relevant period of time, by the closing prices per share of First Data common stock for the same period. The results of William Blair's implied exchange ratio analysis are presented in the tables below under the caption Mean Exchange Ratio. In connection with its historical exchange ratio analysis, William Blair also calculated the extent to which the exchange ratio in the merger of 0.365 of a share of First Data common stock for each share of Concord common stock exceeded or trailed, on a percentage basis, each of the implied exchange ratios derived from the historical trading prices. The results of this analysis are presented in the tables below under the caption Implied Premium/Discount to Proposed Exchange Ratio.

<u>Period</u>	<u>Mean Exchange Ratio</u>	<u>Implied Premium/Discount to Proposed Exchange Ratio</u>
March 31, 2003	0.254x	43.7%
10-Day Average	0.257x	41.8%
30-Day Average	0.273x	33.5%
3-Month Average	0.360x	1.4%
1-Year Average	0.555x	-34.2%
<u>Period</u>	<u>Mean Exchange Ratio</u>	<u>Implied Premium/Discount to Proposed Exchange Ratio</u>
December 12, 2003	0.344x	6.3%
10-Day Average	0.301x	21.1%
30-Day Average	0.296x	23.3%
3-Month Average	0.320x	14.1%
1-Year Average	0.352x	3.6%

*General.* The preparation of an opinion regarding fairness is a complex analytic process involving various determinations as to the most appropriate and relevant methods of financial analysis and the application of those methods to the particular circumstances, and, therefore, such an opinion is not readily susceptible to partial analysis or summary description. The preparation of a fairness opinion does not involve a mathematical evaluation or weighing of the results of the individual analyses performed, but requires William Blair to exercise its professional



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judgment, based on its experience and expertise, in considering a wide variety of analyses taken as a whole. Each of the analyses conducted by William Blair was carried out in order to provide a different perspective on the financial terms of the proposed merger and add to the total mix of information available. William Blair did not form a conclusion as to whether any individual analysis, considered in isolation, supported or failed to support an opinion about the fairness of the exchange ratio. Rather, in reaching its conclusion, William Blair considered the results of the analyses in light of each other and ultimately reached its opinion based on the results of all analyses taken as a whole. William Blair did not place particular reliance or weight on any particular analysis, but instead concluded its analyses, taken as a whole, supported its determination. Accordingly, notwithstanding the separate factors summarized above, William Blair believes that its analyses must be considered as a whole and that selecting portions of its analyses and the factors considered by it, without considering all analyses and factors, may create an incomplete view of the evaluation process underlying its opinion. No company or transaction used in the above analyses as a comparison is directly comparable to Concord or the merger. In performing its analyses, William Blair made numerous assumptions with respect to industry performance, business and economic conditions and other matters. The analyses performed by William Blair are not necessarily indicative of future actual values and future results, which may be significantly more or less favorable than suggested by such analyses.

William Blair is a nationally recognized firm and, as part of its investment banking activities, is regularly engaged in the valuation of businesses and their securities in connection with merger transactions and other types of strategic combinations and acquisitions. William Blair is familiar with Concord, having provided certain investment banking services to Concord and the Concord board of directors from time to time, most recently having acted as agent for Concord's stock repurchase program in August 2003 and as joint lead manager on a \$1.3 billion follow-on common stock offering of Concord in June 2001 (for which William Blair received remuneration of approximately \$0.2 million and \$9.0 million, respectively), as a financial advisor to Concord in connection with Concord's \$1.1 billion merger with Star Systems, Inc. in February 2001 (for which William Blair received remuneration of approximately \$3.3 million) and as a financial advisor to Concord in connection with, and having participated in certain of the negotiations leading to, the original merger agreement. William Blair previously acted as joint book-running manager on a \$1.2 billion follow-on common stock offering of Concord in June 1999. In addition, Mr. Richard P. Kiphart, the non-executive Chairman of Concord and a shareholder, is a principal of William Blair. See Interests of Concord's Directors and Executive Officers in the Merger.

In the ordinary course of its business, William Blair and its affiliates may beneficially own or actively trade common shares and other securities of Concord or First Data for its own account and for the accounts of customers, and, accordingly, may at any time hold a long or short position in these securities. As of December 29, 2003, William Blair beneficially owned 11,311,832 shares of Concord common stock, which includes 10,683,022 shares beneficially owned by principals of William Blair with respect to which William Blair disclaims beneficial ownership, and 628,810 shares held in client accounts at William Blair with respect to which William Blair disclaims beneficial ownership. Of the 10,683,022 shares of Concord common stock beneficially owned by principals of William Blair, 8,436,412 shares are direct or indirect holdings of Mr. Kiphart.

Concord hired William Blair based on its qualifications and expertise in providing financial advice to companies and its reputation as a nationally recognized investment banking firm. Pursuant to a letter agreement dated February 20, 2003, Concord paid William Blair a fee of \$1,500,000 upon the delivery of its opinion, dated April 1, 2003, as to the fairness, from a financial point of view, of the exchange ratio in the original merger agreement. Under the terms of the letter agreement, William Blair will receive an additional fee of \$9,500,000 contingent upon the completion of the merger. In addition, Concord has agreed to reimburse William Blair for all of its out-of-pocket expenses (including fees and expenses of its counsel) reasonably incurred by it in connection with its services and will indemnify William Blair against potential liabilities arising out of its engagement.

**Accounting Treatment**

The merger will be accounted for as a purchase by First Data under accounting principles generally accepted in the United States of America. Under the purchase method of accounting, the assets and liabilities of Concord will be recorded, as of completion of the merger, at their respective fair values and added to those of First Data. The reported financial condition and results of operations of First Data issued after completion of the merger will reflect Concord's balances and results after completion of the merger, but will not be restated retroactively to

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reflect the historical financial position or results of operations of Concord. Following the completion of the merger, the earnings of the combined company will reflect purchase accounting adjustments, including increased amortization and depreciation expense for acquired assets.

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### **Material Federal Income Tax Consequences of the Merger**

*General.* The following discussion addresses the material United States federal income tax consequences of the exchange of Concord common stock pursuant to the merger. This discussion represents the opinions of Sidley Austin Brown & Wood LLP, legal counsel to First Data, and Kirkland & Ellis LLP, legal counsel to Concord. The opinions of counsel are based, in part, upon customary written factual representations received from First Data and Concord, which factual representations counsel has assumed to be true and correct.

The following discussion is not binding on the Internal Revenue Service. It is based on the Internal Revenue Code of 1986, as amended, applicable Treasury regulations, administrative interpretations and court decisions, each as in effect as of the date of this proxy statement/prospectus and all of which are subject to change, possibly with retroactive effect. The tax consequences under foreign laws, United States state and local laws and United States federal laws other than United States federal income tax laws are not addressed.

This discussion addresses only those Concord shareholders that hold their Concord common stock as a capital asset and does not address all aspects of federal income taxation that may be relevant to a holder of Concord common stock in light of that shareholder's particular circumstances or to a shareholder subject to special rules, such as:

a shareholder that is not a citizen or resident of the United States;

a financial institution or insurance company;

a mutual fund;

a tax-exempt organization;

a broker or dealer in securities or foreign currencies;

a trader in securities that elects to apply a mark-to-market method of accounting;

a shareholder that holds its Concord common stock as part of a hedge, appreciated financial position, straddle or conversion transaction; or

a shareholder that acquired its Concord common stock pursuant to the exercise of options or otherwise as compensation.

Holders of Concord common stock are urged to consult their tax advisors as to the specific tax consequences to them of the merger, including the applicability and effect of federal, state, local and foreign income and other tax laws in light of their particular circumstances.

*Federal Income Tax Consequences of the Merger.* Each of Sidley Austin Brown & Wood LLP, legal counsel to First Data, and Kirkland & Ellis LLP, legal counsel to Concord, has delivered its opinion which provides that the merger will be treated for federal income tax purposes as a

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reorganization within the meaning of Section 368(a) of the Internal Revenue Code and that each of First Data, Concord and Monaco Subsidiary Corporation (the wholly owned subsidiary of First Data that will merge with and into Concord) will be a party to the reorganization within the meaning of Section 368(b) of the Internal Revenue Code. It is the opinion of Sidley Austin Brown & Wood LLP and Kirkland & Ellis LLP that the following are the material federal income tax consequences of the proposed merger:

Upon the merger, no gain or loss will be recognized by Concord, First Data or Monaco Subsidiary Corporation;

A holder of Concord common stock will not recognize any gain or loss upon the exchange of the holder's shares of Concord common stock for shares of First Data common stock pursuant to the merger, except that gain or loss will be recognized on the receipt of cash in lieu of a fractional share of First Data common stock;

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A holder of Concord common stock will have a tax basis in the First Data common stock received pursuant to the merger equal to the tax basis of the Concord common stock surrendered by the shareholder pursuant to the merger, reduced by any tax basis of the Concord common stock surrendered pursuant to the merger that is allocable to a fractional share of First Data common stock for which cash is received;

The holding period for shares of First Data common stock received in exchange for shares of Concord common stock pursuant to the merger will include the holding period for the shares of Concord common stock surrendered in exchange for shares of First Data common stock; and

To the extent that a holder of Concord common stock receives cash in lieu of a fractional share of First Data common stock, the shareholder will be required to recognize gain or loss equal to the difference between (1) the amount of cash received and (2) the tax basis of the Concord common stock surrendered pursuant to the merger that is allocable to the fractional share of First Data common stock for which cash is received. This gain or loss will be capital gain or loss and will be long-term capital gain or loss if the holding period for the Concord common stock exchanged for the fractional share of First Data common stock is more than one year at the completion of the merger.

It is a condition to the obligation of each of First Data and Concord to complete the merger that, at the closing of the merger, it receive a separate opinion of Sidley Austin Brown & Wood LLP, legal counsel to First Data, and Kirkland & Ellis LLP, legal counsel to Concord, respectively (or, in either case, another law firm of national standing), substantially to the same effect as the opinions described above. Neither First Data nor Concord intends to waive this condition.

Each of the opinions described above is or will be based, in part, on customary factual assumptions and written factual representations that have been or will be received from First Data and Concord, including those contained in the amended merger agreement and in certificates of officers of First Data and Concord, each of which must be accurate as of the effective time of the merger. If any of those assumptions or representations is inaccurate as of the effective time of the merger, the tax consequences of the merger could differ from those described in this proxy statement/prospectus.

Opinions of counsel neither bind the Internal Revenue Service or any court, nor preclude the Internal Revenue Service from adopting a contrary position. No ruling has been or will be sought from the Internal Revenue Service on the tax consequences of the merger.

This discussion does not address tax consequences that may vary with, or are contingent on, individual circumstances. In addition, it does not address any non-income tax or any foreign, state or local tax consequences of the merger. Accordingly, First Data and Concord urge each holder of Concord common stock to consult the holder's tax advisor to determine the particular federal, state, local or foreign income or other tax consequences of the merger to that shareholder.

## **Regulatory Matters Relating to the Merger**

### *Antitrust Matters*

The merger is subject to review by the Antitrust Division of the United States Department of Justice under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended. First Data and Concord filed the required notification and report forms with the Federal Trade

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Commission and the Antitrust Division on April 10, 2003. On May 9, 2003, First Data withdrew its original filing, and on May 13, 2003, First Data re-filed the required notification and report forms with the Federal Trade Commission and the Antitrust Division, initiating a new 30-day review period. The withdrawal of First Data's original filing terminated the running of the initial 30-day review period, which would have otherwise expired on May 12, 2003, absent the issuance of a request for additional information by the Antitrust Division. The re-filing was a procedural measure which allowed First Data to continue its informal discussions with the Antitrust Division for an additional 30 days without requiring the Antitrust Division to issue a formal statutory request for additional information.

On June 12, 2003, each of First Data and Concord received a request for additional information from the Antitrust Division in connection with the merger. This request effectively extended the waiting period for the

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merger under the Hart-Scott-Rodino Act until 30 days after both parties substantially complied with the request for additional information. First Data and Concord each certified substantial compliance with the request for additional information on September 5, 2003. Under the Hart-Scott-Rodino Act, the Antitrust Division had the right to challenge such certification, but did not.

On October 23, 2003, the Antitrust Division, along with the District of Columbia and the states of Connecticut, Illinois, Louisiana, Massachusetts, New York, Ohio, Pennsylvania and Texas (which we refer to in this document as the plaintiff states), filed a complaint in the United States District Court for the District of Columbia. The complaint asserted that the proposed merger of First Data and Concord would substantially lessen competition in the alleged market for point of sale PIN debit network services and sought to enjoin the proposed transaction.

On December 14, 2003, First Data, Concord, the Antitrust Division and the plaintiff states entered into a hold separate stipulation and order and agreed to the terms of a proposed final judgment, which would resolve the issues in the pending litigation. On December 15, 2003, the proposed final judgment and hold separate stipulation and order were filed with the United States District Court, and the hold separate stipulation and order was signed by the Court. After compliance with the requirements of the Tunney Act, including the passage of a 60-day waiting period, the opportunity for public comment and a finding by the Court that the proposed final judgment is in the public interest, the Court is expected to sign the proposed final judgment, formally settling the litigation.

Pursuant to the terms of the proposed final judgment, First Data has agreed to divest its 64 percent interest in NYCE Corporation, including NYCE Corporation's interests in various tangible and intangible assets, within 150 calendar days of the signing of the hold separate stipulation and order by the United States District Court, or within five days after notice of entry of the final judgment by the United States District Court, whichever is later. NYCE Corporation operates an ATM network, provides PIN-based debit point-of-sale services and provides real-time payment solutions such as ATM management and monitoring services and debit card issuance and authorization solutions. The Antitrust Division, in consultation with the plaintiff states, may agree to one or more extensions of the time period for divestiture, with such extensions not to exceed ninety calendar days in total. First Data agreed to use its best efforts to accomplish the divestiture as expeditiously as possible.

Pursuant to the terms of the hold separate stipulation and order, First Data has agreed to preserve and maintain NYCE Corporation as a separate, independent, ongoing, economically viable competitive business, with NYCE Corporation's management, sales and operations held entirely separate, distinct and apart from First Data's other operations. First Data has agreed to refrain, and is enjoined, from suggesting or nominating any person other than an officer or manager or minority shareholder of NYCE Corporation for election to NYCE Corporation's Board of Directors, from participating in any non-public meetings of NYCE Corporation's Board of Directors, or any committee thereof, and from voting any NYCE Corporation shares that First Data owns, or from otherwise using its ownership interest to exert influence on NYCE Corporation, except as necessary to carry out First Data's obligations under the hold separate stipulation and order.

The agreement by the parties to the hold separate stipulation and order and the terms of the final judgment, and the signing of the hold separate stipulation and order by the United States District Court, effectively terminate any obstacle that the Antitrust Division or the plaintiff states could impose to the closing of the merger under the Hart-Scott-Rodino Act.

### *Banking Regulatory Matters*

Concord is a financial holding company regulated by the Board of Governors of the Federal Reserve System, and its subsidiary depository institution, Concord EFS National Bank, is a national bank regulated by the Office of the Comptroller of the Currency. First Data also owns a subsidiary depository institution, First Financial Bank, a Colorado industrial bank regulated by the Federal Deposit Insurance Corporation and the Division of Banking of the Colorado Department of Regulatory Agencies. First Data is not a bank holding company and is not regulated by

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the Federal Reserve System. Concord, Concord EFS National Bank and First Financial Bank are highly regulated institutions. Numerous federal and state laws and regulations govern their activities. These institutions also are subject to ongoing supervision, regulation and periodic examination by various federal and state financial institution regulatory agencies.

The completion of the merger involving First Data and Concord depends upon the satisfaction of First Data that neither it nor any of its subsidiaries will become a bank holding company or financial holding company under the Bank Holding Company Act of 1956, as amended, on an ongoing basis as a result of the merger. Concord and

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First Data will assist one another and cooperate in the preparation and submission of any regulatory applications and filings with the bank regulatory authorities that are reasonably necessary to satisfy this condition, including assisting in obtaining consents and approvals for transfers and assignments of assets and liabilities of Concord EFS National Bank. To this end, once all other conditions to the completion of the merger involving First Data and Concord have been satisfied, Concord EFS National Bank will complete one or more transactions through which its national bank charter will be terminated. In June 2003, First Financial Bank, along with Concord and Concord EFS National Bank, filed applications with the Federal Deposit Insurance Corporation and the Division of Banking of the Colorado Department of Regulatory Agencies to transfer to First Financial Bank, through a series of transactions, certain assets and certain deposit and other liabilities of Concord EFS National Bank. Specifically, once all other conditions to the completion of the merger between First Data and Concord have been satisfied, Concord EFS National Bank will merge into a newly formed interim Colorado industrial bank subsidiary of Concord, thereby terminating the charter of Concord EFS National Bank. Upon completion of the merger between First Data and Concord, the newly formed interim Colorado industrial bank will transfer certain assets, certain deposits and other liabilities to First Financial Bank and then merge into a nonbank affiliate. On August 21, 2003, the Division of Banking of the Colorado Department of Regulatory Agencies approved, subject to certain customary conditions, the applications of First Financial Bank, Concord and Concord EFS National Bank to complete such transactions. On October 14, 2003, the Federal Deposit Insurance Corporation approved, subject to certain customary conditions, the application of First Financial Bank to complete the transactions. The approval order provides that the transactions must be completed within six months of the date of the approval order, unless such time period is extended for good cause by the Federal Deposit Insurance Corporation.

## **Appraisal Rights**

Holders of Concord common stock do not have appraisal rights under Delaware law in connection with the merger.

## **Federal Securities Laws Consequences; Stock Transfer Restriction Agreements**

This registration statement of which this proxy statement/prospectus is a part does not cover any resales of the First Data common stock to be received by the shareholders of Concord upon completion of the merger, and no person is authorized to make any use of this proxy statement/prospectus in connection with any such resale.

All shares of First Data common stock received by Concord shareholders pursuant to the merger will be freely transferable, except that shares of First Data common stock received by persons who are deemed to be affiliates of Concord under the Securities Act of 1933, as amended, at the time of the special meeting may be resold by them only in transactions permitted by Rule 145 under the Securities Act of 1933 or as otherwise permitted under the Securities Act of 1933. Persons who may be deemed to be affiliates of Concord for such purposes generally include individuals or entities that control, are controlled by or are under common control with, Concord, as the case may be, and include directors and certain executive officers of Concord. The amended merger agreement requires that Concord use reasonable best efforts to cause each affiliate to execute a written agreement which provides that such persons will not offer, sell or otherwise dispose of any of the shares of First Data common stock issued to them pursuant to the merger in violation of the Securities Act of 1933 or the related SEC rules and regulations promulgated thereunder.

## **Stock Exchange Listing; Delisting and Deregistration of Concord Common Stock**

It is a condition to the merger that the shares of First Data common stock issuable pursuant to the merger be approved for listing on the New York Stock Exchange, subject to official notice of issuance. If the merger is completed, Concord common stock will cease to be listed on the New York Stock Exchange and its shares will be deregistered under the Securities Exchange Act of 1934.



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**THE COMPANIES**

**First Data Corporation**

6200 South Quebec Street

Greenwood Village, Colorado 80111

(303) 488-8000

First Data Corporation was established in its current form in 1992 through an initial public offering in connection with a spin-off from American Express Company. In 1995, First Data merged with First Financial Management Corporation, which included Western Union Financial Services, Inc. and much of what is now First Data Merchant Services. First Data operates in four business segments: payment services, merchant services, card issuing services and emerging payments. The segments include the following businesses:

**Payment Services:**

Consumer-to-consumer money transfer: Offers money transfer services to people who periodically need to send or receive cash quickly to meet emergency situations or send funds to family and friends in other locations.

Consumer-to-business bill payment services: Includes services that facilitate transferring payments from consumers to utility companies, collection agencies, finance companies, mortgage lenders and other institutions.

Official checks and money orders: Issues official checks that serve as an alternative to a bank's own disbursement items such as teller's or bank checks and sells money orders through an agent network of financial institutions and other entities.

Stored-Value Card: Develops, implements and manages prepaid stored-value card programs for retailers (that is, gift cards).

**Merchant Services:**

Merchant Acquiring: Facilitates the merchants' ability to accept credit and debit cards by authorizing, capturing and settling the merchants' credit and debit card transactions. Also provides point-of-sale devices and other equipment necessary to capture merchant transactions.

Check verification and guarantee services: Through reference to First Data's database, verifies that a checkwriter does not have a history of writing bad checks or guarantees that checks presented to merchants for payment will be collectible.

ATM and PIN-based processing: Through its interest in NYCE Corporation operates an ATM network and provides processing services such as authorization and settlement to issuers of PIN-based debit cards.

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Gaming Services: Owns and manages ATMs in gaming establishments, provides credit card cash advance and debit card cash access services to customers of gaming establishments and guarantees or verifies check transactions for such establishments.

### Card Issuing Services:

Card Issuing and Processing: Provides credit, debit, retail and oil card outsourcing services to financial institutions and other issuers of credit and debit cards. Services include embossing, mailing and activating new credit cards; processing cardholder transactions; and producing and mailing monthly cardholder statements.

Card processing software: Licenses and provides maintenance for its card processing software to international banks, retailers and third party processors.

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**Emerging Payments:**

Government payments: Provides services to facilitate electronic tax payments to governmental agencies, provides systems and professional services to governmental agencies, and provides taxation systems and data to businesses.

Mobile payments: Develops mobile payment products and software for the wireless payments market.

Enterprise payments: Delivers accounts receivable and payable systems and processing services to businesses.

Among the actions First Data believes are necessary to continue its position is a focused effort to expand internationally, develop new products and services and to enhance its processing platforms in response to its growth, client requirements, changing technology and expanding e-commerce initiatives.

First Data's business strategy is to generate recurring revenue by developing long-term contractual relationships with clients to support First Data's core businesses going forward.

**Concord EFS, Inc.**

2525 Horizon Lake Drive, Suite 120

Memphis, Tennessee 38133

(901) 371-8000

Concord EFS, Inc., an electronic transaction processor, provides the technology and network systems that make payments and other financial transactions faster, more efficient and more secure than paper-based alternatives. As a vertically integrated service provider, Concord acquires, routes, authorizes, captures and settles virtually all types of electronic payment and deposit access transactions for financial institutions and merchants nationwide. In 2002 Concord processed approximately 10.8 billion transactions.

Concord organizes its business into segments based upon the different products and services that it offers to the different industries it serves. In the fiscal year ended December 31, 2002 Concord had two segments:

Network Services, which provides ATM processing, debit card processing and coast-to-coast debit network access principally for financial institutions; and

Payment Services, which provides point of sale processing, settlement and related services, with specialized systems focusing on supermarkets, major retailers, gas stations, convenience stores, restaurants and trucking companies.

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As previously announced, Concord had expected to organize its risk management services business line into a new segment during the 2003 fiscal year. The new Risk Management Services segment would have continued to provide the same services as does Concord's risk management services business line (namely, providing software, information and analysis to financial institutions, retailers, government service providers and other businesses to assist in fraud prevention and reduction), but would have been organized as a separate business segment and recognized as such for accounting purposes. In part as a result of Concord's having entered into the amended merger agreement with First Data, it has not yet been determined when or if Concord will organize a Risk Management Services segment.

Concord's development over the past ten years has been characterized by vertical expansion of its electronic transaction processing services. Concord began by providing merchants with services for various stages in an electronic transaction, including terminal equipment supply, transaction processing, transaction settlement and funds movement. Next, Concord added products and services for financial institutions related to the cards that initiate the electronic transactions, such as card processing and authorization services and a payments network with a national debit brand. Most recently, Concord expanded its services into closely related areas that add value to its core services, such as risk management services provided at the point of account opening, the point of deposit and the point of sale. This vertical integration allows Concord to offer a wide-ranging package of services to its customers, to maintain a higher level of quality at all points in the transaction flow, to capture multiple fees for

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certain transactions, to identify specific needs for new products and services and to more easily distribute new products and services.

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**INTERESTS OF CONCORD S DIRECTORS AND EXECUTIVE OFFICERS IN THE MERGER**

Members of the board of directors and executive officers of Concord may have interests in the merger that are different from, or are in addition to, the interests of Concord shareholders generally. The Concord board of directors was aware of these interests and considered them, among other matters, in approving the amended merger agreement and in determining to recommend to Concord s shareholders to vote for the approval and adoption of the amended merger agreement.

**New Employment Agreements with Edward A. Labry III and Dan M. Palmer**

In connection with the signing of the original merger agreement, Concord entered into separate employment agreements, each dated as of April 1, 2003, with Edward A. Labry III and Dan M. Palmer. In this section, Mr. Labry and Mr. Palmer are sometimes referred to individually as the executive or together as the executives. The initial term under each new employment agreement begins on the completion of the merger and terminates 24 months after the merger, unless earlier terminated. Accordingly, the effectiveness of the employment agreements is conditioned on the merger occurring. Pursuant to the employment agreements, Mr. Labry and Mr. Palmer will serve as Special Advisors to the Chief Executive Officer of First Data.

Under the terms of Mr. Labry s employment agreement, Mr. Labry will receive an annual base salary of \$750,000. Under the terms of Mr. Palmer s employment agreement, Mr. Palmer will receive an annual base salary of \$650,000. In addition, both executives will be entitled to participate in benefit plans, including, but not limited to, health, disability and group life benefit plans. During the term of the employment agreements, the executives will be reimbursed for all proper expenses incurred during the performance of their duties.

In the event that during the term of his employment either of the executives employment is terminated by Concord without cause (as defined in the agreement) or by the executive for good reason (as such term is defined below) or due to the death or disability of the executive, the executive involved in such termination, or one or more of his respective beneficiaries, will be entitled to receive (i) payment equal to the base salary and vacation pay to which he is entitled through the date of termination of employment, (ii) employee benefits to which he is entitled upon termination of employment in accordance with Concord s plans and programs and (iii) payment of one year s base salary. In addition, in the event that the executive s employment is terminated by Concord without cause or by the executive for good reason, the executive shall continue to have the right to exercise vested but unexercised stock options within the two-year period after the merger, plus an additional 90-day period as provided in the applicable option plans.

Under the employment agreements, the term good reason means:

Action by Concord resulting in a substantial diminution of the executive s titles or positions with Concord after the merger;

Any reduction in the executive s base salary; or

Any relocation of the executive more than 50 miles from Memphis, Tennessee.

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In the employment agreements, each executive has agreed not to compete with Concord during the term of his employment, the period (if any) during which the executive is receiving termination payments from Concord and for a period of one year thereafter (but not beyond the third anniversary of the merger), and each executive has agreed to abide by confidentiality obligations.

### **Other Executive Employment Agreements**

In addition to the new employment agreements with Mr. Labry and Mr. Palmer, Concord and its subsidiaries maintain employment agreements with the following executive officers of Concord: Bond R. Isaacson, J. Richard Buchignani, P. Norman Bennett, Ronald V. Congemi, Paul W. Finch, Jr., Edward T. Haslam and E. Miles Kilburn. As described below, J. Richard Buchignani, Ronald V. Congemi, Paul W. Finch, Jr., Edward T. Haslam and E. Miles Kilburn are entitled to payments and benefits in the event of a change of control of Concord or in the event the executive officers are terminated by Concord without cause (as defined in the respective employment agreements) or by the executive officer for good reason (as defined below). The amounts shown below reflect the

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payment amounts to which these executive officers would have been entitled if the merger had been completed and the terminations had occurred on December 29, 2003.

*Mr. Buchignani.* Under the terms of Mr. Buchignani's employment agreement, in the event that Concord terminates Mr. Buchignani, relocates him, or fails to retain him at his current position, or in the event of a change of control of Concord, Mr. Buchignani is entitled to receive a payment equal to one year's salary, or \$350,000. Mr. Buchignani's stock options will continue to vest during this one-year period. For purposes of this employment agreement, the completion of the merger constitutes a change in control.

*Mr. Haslam.* Under the terms of Mr. Haslam's amended and restated employment agreement, upon the earlier of 60 days after the completion of the merger or March 31, 2004, or in the event of his involuntary termination prior to such date, Mr. Haslam will be entitled to receive the following transition package:

six months' salary and stay bonus (\$175,000), which is payable on the earlier of 60 days after the completion of the merger or March 31, 2004;

one year's salary (\$350,000) and benefits; and

one year of continued vesting of stock options beginning on the earlier of 60 days after the completion of the merger or March 31, 2004, plus an additional 90 days after the end of such one-year period to exercise all vested stock options.

In the event of Mr. Haslam's earlier involuntary termination, Mr. Haslam will also be entitled to receive salary and benefits until the earlier of 60 days after the completion of the merger or March 31, 2004. In the event of Mr. Haslam's earlier voluntary termination, Mr. Haslam would not be entitled to the above amounts and has agreed that the 100,000 options granted to him in 2003 would automatically expire and not be exercisable. In addition, as consideration for these entitlements, Mr. Haslam has agreed that he will not receive any payment under the retention bonus program described below.

*Mr. Congemi.* Under the terms of Mr. Congemi's employment agreement, upon his termination without cause or for good reason, the severance benefits to which he is entitled include:

his current base salary accrued through the date of termination;

a pro-rated bonus (\$226,249);

an amount equal to the sum (\$975,000) of three times his current base salary and the sum (\$277,700) of the annual incentive bonuses paid to him during the last three fiscal years, payable over a two-year period; and

all other unpaid amounts to which he is then entitled under any compensation or benefit plan of Concord.

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*Mr. Finch.* Under the terms of Mr. Finch's employment agreement, upon his termination without cause or for good reason, the severance benefits to which he is entitled include:

his current base salary and vacation pay accrued through the date of termination;

a pro rated bonus;

payment equal to the base salary that he would have earned had he been employed through the remainder of the employment term (\$568,125);

payment equal to the average annual bonus he earned during the three prior fiscal years, or if he was not employed by Concord for at least three fiscal years, the average annual bonus he earned during the employment period;

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continued participation in Concord's group health and life insurance plans for one year; and

any other benefits to which he is entitled upon termination in accordance with Concord's plans and programs.

*Mr. Kilburn.* Under the terms of Mr. Kilburn's employment agreement, upon his termination without cause or for good reason, the severance benefits to which he is entitled include:

his current base salary accrued through the date of termination;

a pro rated bonus (\$346,161);

payment (\$700,000) equal to two times his current base salary;

continued participation in Concord's life insurance and health and medical coverage plans for one year; and

any other unpaid benefits to which he is entitled upon termination in accordance with Concord's plans and programs.

In addition, under the terms of Mr. Kilburn's employment agreement, in the event that Mr. Kilburn voluntarily terminates his employment for any reason on or after March 1, 2004, Concord is obligated to pay one year's base salary (\$350,000) to Mr. Kilburn. Mr. Kilburn's unvested stock options will continue to vest during the one-year period following any such voluntary resignation, and will be exercisable until 90 days thereafter.

In compensation for Mr. Kilburn's accepting the role as head of Concord's transition planning in connection with the merger and his promotion in April 2003 from Senior Vice President to Executive Vice President, Mr. Kilburn also will receive a cash payment of \$150,000 upon the completion of the merger.

Under the employment agreement with Mr. Congemi, "good reason" means:

a material breach of the terms of the agreement by Concord;

action by Concord resulting in a substantial diminution of the nature of the executive officer's titles or positions; or

any reduction in the executive officer's base salary.

Under the employment agreement with Mr. Kilburn, "good reason" means:



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a material breach of the terms of the agreement by Concord; or

any reduction in the executive officer's base salary.

Under the employment agreement with Mr. Finch, "good reason" means:

action by Concord resulting in a substantial diminution of the nature of the executive officer's titles or positions;

any reduction in the executive officer's base salary; or

relocation of Mr. Finch more than 50 miles from Scottsdale, Arizona.

The aggregate cash amounts payable to the executive officers (excluding Mr. Labry and Mr. Palmer) under these employment agreements in the event of a change in control or in the event of a termination without cause by Concord or for good reason by the executive officer would have been approximately \$4.0 million if the merger had been completed and such terminations had occurred on December 29, 2003.

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### **Security Ownership of Beneficial Owners and Management of Concord**

For information regarding beneficial ownership of Concord common stock by each current Concord director, executive officers of Concord and all directors and executive officers as a group, see Concord's proxy statement used in connection with its 2003 annual meeting of shareholders, which is incorporated by reference into this document.

### **Treatment of Concord Stock Options**

Under the terms of the Concord EFS, Inc. 2002 Stock Option Plan and the Concord EFS, Inc. 1993 Incentive Stock Option Plan, all outstanding options to purchase Concord common stock become immediately exercisable in full in the event of a change of control. For purposes of these plans, completion of the merger constitutes a change of control. During March, April and May 2003, directors and executive officers were granted options to purchase 1,096,839 shares of Concord common stock, with a weighted average exercise price of \$11.74. As of December 29, 2003, the directors and executive officers of Concord held options to purchase 38,654,435 shares of Concord common stock, with a weighted average exercise price of \$10.82 per share. Of these securities, options to purchase 28,446,846 shares of Concord common stock had vested as of such date with a weighted average exercise price of \$8.85. Of the 28,446,846 currently vested options, the following executive officers hold those options in the following respective amounts: Mr. Labry, 12,445,148; Mr. Palmer, 13,841,552 (including 3,000,000 options held by a family entity, as to which Mr. Palmer disclaims beneficial ownership); Mr. Isaacson, 100,000; Mr. Buchignani, 78,375; Mr. Bennett, 9,375; Mr. Congemi, 231,250; Mr. Finch, 0; Mr. Haslam, 266,250; and Mr. Kilburn, 131,250.

Pursuant to the merger, each outstanding Concord stock option for Concord common stock will be converted into an option to purchase First Data common stock. Each outstanding Concord stock option will become vested and fully exercisable upon completion of the merger. The number of shares of First Data common stock underlying the new First Data option will equal the number of shares of Concord common stock for which the corresponding Concord option was exercisable, multiplied by 0.365, rounded to the nearest whole share. The per share exercise price of each new First Data option will be equal to the exercise price of the corresponding Concord option divided by 0.365, rounded to the nearest whole cent. All other terms of the Concord stock option will remain unchanged after the conversion. As described above, as of December 29, 2003, Concord's executive officers and directors held unvested options to purchase 10,207,589 shares of Concord's common stock, with a weighted average exercise price of \$16.33 per share, that will become vested upon the completion of the merger. The dollar amount of in-the-money options held by Concord's executive officers and directors that will become vested upon the completion of the merger is approximately \$30.9 million, based on the closing sale price of First Data common stock on December 29, 2003.

### **Indemnification; Directors and Officers Insurance**

To the fullest extent permitted by applicable law, First Data has agreed that for six years after the completion of the merger, it will (subject to certain limitations) indemnify, as if it were Concord, former Concord directors, officers, employees and agents for liabilities arising from their acts or omissions occurring prior to closing as provided under Concord's certificate of incorporation or by-laws in effect on April 1, 2003, and First Data will honor all indemnification agreements in effect on April 1, 2003 with Concord's former directors, officers, employees and agents.

In addition, for six years after the completion of the merger, First Data will maintain Concord's existing officers and directors liability insurance so long as the annual premium for the insurance does not exceed 300% of the last annual premium that Concord paid prior to April 1, 2003. If Concord's existing insurance policy expires, is terminated or cancelled during the six-year period or if the annual premium exceeds the 300% limitation, First Data will cause Concord to use its reasonable best efforts to obtain as much insurance as can be obtained for the remainder of the six-year period without exceeding the 300% premium limitation.

**Retention Bonus Program**

In the amended merger agreement, First Data and Concord agreed that Concord may implement a retention plan for the benefit of Concord employees selected by the compensation committee of the Concord board of directors. The plan involves aggregate benefits of up to \$10 million. First Data and Concord have agreed that 100% of the benefits payable under the plan will be in the form of cash and that 50% of the cash benefits will be payable to

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Concord employees on the closing date, with the remaining 50% of the benefits generally payable no earlier than the six-month anniversary of the closing date of the merger. The allocation of the aggregate benefits among the employees was proposed by the compensation committee of the Concord board of directors and approved by First Data. Notwithstanding the foregoing, on the closing date of the merger, the following executive officers will receive cash payments in the following respective amounts, which will constitute a portion of the \$10 million retention plan and the only amounts payable to such individuals under the retention plan: Bond R. Isaacson, \$752,213; E. Miles Kilburn, \$405,038; Edward A. Labry, \$694,350; and Dan M. Palmer, \$752,213. Other Concord executive officers who participate in the retention plan are expected to receive 50% of their respective payments on the closing date and the remaining 50% at the six-month anniversary of the closing date, consistent with the payment schedule applicable to other employees.

## **Termination of Split Dollar Arrangements**

Concord executive officers Ronald V. Congemi, Vickie L. Brown, Edward T. Haslam, E. Miles Kilburn, Edward A. Labry III, Steve Lynch, Dan M. Palmer and Christopher Reckert are parties to agreements that provide the executive with company-paid split dollar life insurance. Concord has not paid premiums for such insurance coverage since August 2001. Concord has obtained or is seeking to obtain agreements to terminate each split dollar agreement from each individual and trust that is party to such agreement, without making or agreeing to make any payment of any amounts by Concord to any other person or waiving or agreeing to waive any rights. First Data and Concord have agreed in the amended merger agreement that the termination of the split dollar agreements may be conditioned upon completion of the merger.

Concord is in discussions with Mr. Labry, Mr. Palmer, Mr. Congemi and the trustees for separate trusts that benefit their respective families to terminate the split dollar agreements to which these executive officers and trusts are party that apply to the split dollar life insurance policies owned by the trusts. There can be no assurance, however, that Concord will be able to attain such termination agreements. On November 30, 2003, the life insurance policies subject to these split dollar agreements and owned by the separate trusts that benefit the families of Mr. Labry, Mr. Palmer and Mr. Congemi had cash surrender values of \$1.6 million, \$3.2 million and \$1.2 million, respectively.

## **Termination of Concord 401(k) Plan**

Concord currently maintains a 401(k) Plan for the benefit of eligible employees, including executive officers. Concord has agreed in the amended merger agreement to terminate the 401(k) Plan immediately prior to the completion of the merger. After the completion of the merger, Concord employees will be entitled to participate in the First Data Corporation Incentive Savings Plan on substantially the same terms as similarly situated employees of First Data (with a grant of past service credit for vesting and eligibility) and to roll over any distributions they are eligible to receive from the Concord 401(k) Plan (including outstanding loans) to the First Data Corporation Incentive Savings Plan. With respect to each employee of Concord who, prior to completion of the merger, is eligible for and receiving a 50% employer matching contribution between 3% and 6% of that employee's compensation under the 401(k) Plan maintained by Concord, First Data will, after completion of the merger, increase the compensation of that employee in an amount to compensate for the fact that the employee's participation in the First Data Incentive Savings Plan following completion of the merger will not allow for an employer match. In the event that the merger is not completed, the Concord 401(k) Plan will not be terminated.

## **Ownership of First Data Common Stock by Executive Officers and Directors of Concord**

Edward A. Labry III, Concord's President and director, personally owns 3,500 shares of First Data common stock. In addition, 300 shares of First Data common stock are currently held in trust for family members of Mr. Labry. E. Miles Kilburn, Concord's Executive Vice President, Chief Strategy Officer and Head of Integration, and Christopher S. Reckert, Concord's Senior Vice President, Chief Marketing Officer, and President

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of Payment Services, own 185 and 400 shares of First Data common stock, respectively. Angelica S. Harter, the wife of Richard M. Harter, a member of Concord's board of directors, is the principal beneficiary of a trust that holds 600 shares of First Data common stock. Mrs. Harter and her sister also possess equal interests in 300 shares of First Data common stock held in a discretionary account. No other executive officers or directors of Concord own any shares of First Data common stock.

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**Other Relationships**

Richard P. Kiphart, the non-executive chairman of the board of directors of Concord, is the manager of the corporate finance department and a principal at William Blair & Company, L.L.C., one of the investment banks retained by Concord to advise Concord in connection with its consideration of the proposed merger. William Blair has received customary fees from Concord in connection with the delivery of a fairness opinion with respect to the merger, and will receive additional customary fees from Concord if the merger is completed. See The Proposed Merger Opinions of Concord's Financial Advisors.

Richard M. Harter, one of Concord's directors, was a partner in Bingham McCutchen LLP (formerly known as Bingham Dana LLP) until December 31, 2001, and now serves as of counsel to that firm. Bingham McCutchen is one of the firms that has provided, and continues to provide, legal services to First Data in connection with the merger. Bingham McCutchen will receive customary fees in connection with these services.

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**THE AMENDED MERGER AGREEMENT**

*The following is a summary of the material terms of the original merger agreement, entered into on April 1, 2003, as amended by the amendment and abeyance agreement, entered into on December 14, 2003, which we refer to collectively herein as the amended merger agreement. This summary does not purport to describe all the terms of the amended merger agreement and is qualified by reference to the complete original merger agreement and amendment and abeyance agreement which are attached as Annex A and Annex B, respectively, to this proxy statement/prospectus and incorporated by reference. All Concord shareholders are urged to read the original merger agreement and the amendment and abeyance agreement carefully and in their entirety.*

**General**

The amended merger agreement provides for the merger of a newly-formed, wholly owned subsidiary of First Data with and into Concord, with Concord continuing as the surviving corporation. As a result of the merger, Concord will become a wholly owned subsidiary of First Data.

**Closing Matters**

*Closing.* Unless the parties agree otherwise, the closing of the merger will take place not later than the second business day after all closing conditions have been satisfied or waived, unless the amended merger agreement has been terminated or another time or date is agreed to in writing by the parties. See The Amended Merger Agreement Conditions below for a more complete description of the conditions that must be satisfied or waived prior to closing.

*Completion of the Merger.* As soon as practicable after the satisfaction or waiver of the conditions to the merger, First Data and Concord will file a certificate of merger with the Delaware Secretary of State in accordance with the relevant provisions of the Delaware General Corporation Law and make all other required filings or recordings. The merger will become effective when the certificate of merger is filed or at such later time as First Data and Concord agree and specify in the certificate of merger.

We are working hard to complete the merger quickly. We currently expect that the merger will be completed during the first quarter of 2004. However, we cannot predict the actual timing.

**Consideration to be Received Pursuant to the Merger; Treatment of Stock Options**

The amended merger agreement provides that, at the completion of the merger:

each share of Concord common stock issued and outstanding immediately prior to the completion of the merger, but excluding shares of Concord common stock owned by First Data, Concord or any of their respective subsidiaries, will be converted into 0.365 shares of

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First Data common stock. The exchange ratio in the merger will be adjusted to reflect any stock split, stock dividend, recapitalization, subdivision, reclassification, combination or similar transaction involving First Data common stock having a record date after April 1, 2003 and prior to the completion of the merger; and

each outstanding option to purchase shares of Concord common stock granted under the Concord 2002 Stock Option Plan, the Concord 1993 Incentive Stock Option Plan and the Star Systems, Inc. 2000 Equity Incentive Plan (which we refer to in this proxy statement/prospectus collectively as the Concord stock plans) will be assumed by First Data and converted into an option to purchase shares of First Data common stock. Each outstanding Concord stock option will become vested and fully exercisable upon completion of the merger. The number of shares of First Data common stock underlying the new First Data option will equal the number of shares of Concord common stock for which the corresponding Concord option was exercisable, multiplied by 0.365 (rounded to the nearest whole share). The per share exercise price of each new First Data option will equal the exercise price of the corresponding Concord option divided by 0.365 (rounded to the nearest whole cent). For a further discussion of the treatment of Concord stock options and other employee benefit plans under the amended merger agreement, see [The Amended Merger Agreement](#) [Covenants](#) [Employee Matters](#) and [Interests of Concord's Directors and Executive Officers in the Merger](#).

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### **Exchange of Certificates Pursuant to the Merger**

Before the closing of the merger, First Data will appoint Wells Fargo Bank Minnesota, National Association, or another banking or financial institution selected by First Data (which must be reasonably acceptable to Concord), as exchange agent to handle the exchange of Concord stock certificates for certificates representing shares of First Data common stock and the payment of cash for fractional shares. As soon as practicable after the closing of the merger, the exchange agent will send a letter of transmittal to each former Concord shareholder who holds one or more stock certificates. The letter of transmittal will contain instructions explaining the procedure for surrendering Concord stock certificates. **You should not return stock certificates with the enclosed proxy card.**

Concord shareholders who surrender their stock certificates, together with a properly completed letter of transmittal, will receive, in book entry form, shares of First Data common stock into which their shares of Concord common stock were converted pursuant to the merger. If requested, Concord shareholders may receive certificates for shares of First Data common stock in lieu of receiving shares of First Data common stock in book entry form.

After the merger, each certificate that previously represented shares of Concord common stock will only represent the right to receive:

certificates representing the shares of First Data common stock into which those shares of Concord common stock have been converted;

cash in lieu of any fractional share of First Data common stock; and

dividends or other distributions, if any, of First Data common stock which Concord shareholders are entitled to under the terms of the amended merger agreement.

First Data will not pay dividends declared with a record date after the completion of the merger to any holder of any Concord stock certificates until the holder surrenders the Concord stock certificates. However, once those certificates are surrendered, First Data will pay to the holder, without interest, any dividends that have been declared and paid after the closing date of the merger on the shares into which those Concord shares have been converted.

After the completion of the merger, Concord will not register any transfers of shares of Concord common stock.

### **Fractional Shares**

No fractional shares of First Data common stock will be issued pursuant to the merger. Instead, the exchange agent will pay each of those Concord shareholders who would have otherwise been entitled to a fractional share of First Data common stock an amount in cash determined by multiplying the fractional share interest by the closing price for a share of First Data common stock on the NYSE Composite Tape on the date of the completion of the merger, as reported by *The Wall Street Journal* (Northeast edition) or, if not reported in that paper, any other authoritative source.

**Listing of First Data Stock**

First Data has agreed to use its reasonable best efforts, promptly after the date of the amended merger agreement, to cause the shares of First Data common stock to be issued pursuant to the merger to be approved for listing on the NYSE, subject to official notice of issuance. First Data's symbol "FDC" will be used for the shares, assuming the listing application is approved. Approval for listing on the NYSE of the shares of First Data common stock issuable to the Concord shareholders pursuant to the merger, subject only to official notice of issuance, is a condition to the obligations of First Data and Concord to complete the merger. First Data also has agreed to use its reasonable best efforts to cause the shares of First Data common stock issuable upon the exercise of Concord stock options assumed by First Data pursuant to the terms of the amended merger agreement to be approved for listing on the NYSE promptly after completion of the merger.

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### **Covenants**

We have each undertaken certain covenants in the amended merger agreement concerning the conduct of our respective businesses between April 1, 2003 and the completion of the merger. The following summarizes the more significant of these covenants:

*No Solicitation.* Concord has agreed that Concord and its subsidiaries will not, and will not permit their respective officers, directors, employees, agents or representatives to:

solicit, initiate or knowingly encourage, including by way of furnishing non-public information, any inquiries regarding, or the making of any proposal or offer which constitutes a takeover proposal of the type described below;

enter into any letter of intent or agreement related to a takeover proposal, other than a confidentiality agreement;

participate in any discussions or negotiations regarding a takeover proposal; or

take any other action knowingly to facilitate any inquiries or the making of any proposal that constitutes, or that would reasonably be expected to lead to, any takeover proposal.

Under the amended merger agreement, Concord agreed to cease all existing activities, discussions or negotiations as of April 1, 2003 with any parties with respect to a takeover proposal. Concord also agreed to promptly notify First Data if it receives a takeover proposal and to keep First Data informed of the status of any discussions or negotiations relating to the takeover proposal and the terms of the takeover proposal.

However, Concord is permitted to participate in negotiations with, and furnish information (including non-public information) with respect to Concord to, a person making a takeover proposal, if:

Concord's shareholder meeting to vote on the adoption of the amended merger agreement has not occurred;

the Concord board of directors concludes in good faith that the takeover proposal is, or is reasonably likely to lead to the delivery of, a superior proposal of the type described below; and

prior to furnishing any information (including non-public information) to a person making a takeover proposal, the proposing person first signs a confidentiality agreement with Concord containing confidentiality provisions no more favorable to the proposing person than those in the confidentiality agreement between First Data and Concord.

Additionally, the provision described above will not restrict Concord from complying with Rules 14d-9 or 14e-2 under the Securities Exchange Act of 1934.

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A *takeover proposal* for Concord means any inquiry, proposal or offer from any person (other than First Data and its affiliates) relating to:

any direct or indirect acquisition or purchase of 25% or more of the assets of Concord and its subsidiaries or 25% or more of the voting power of the outstanding capital stock of Concord or its subsidiaries;

any tender offer or exchange offer that if completed would result in any person beneficially owning 25% or more of the voting power of the outstanding capital stock of Concord or its subsidiaries; or

any merger, consolidation, business combination, recapitalization, liquidation, dissolution or similar transaction involving Concord, other than the transactions contemplated by the amended merger agreement with First Data.

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A *superior proposal* for Concord means any bona fide takeover proposal made by any person (other than First Data and its affiliates) to acquire, directly or indirectly, for consideration consisting of cash and/or securities:

more than 50% of the voting power of the outstanding common stock of Concord; or

all or substantially all the assets of Concord:

and otherwise on terms which the Concord board of directors determines in good faith would, if completed, result in a transaction that would, or would be reasonably likely to, be more favorable to Concord's shareholders than the transactions contemplated by the amended merger agreement. In making a determination as to whether a takeover proposal constitutes a superior proposal, the Concord board of directors may take into account any factors that it in good faith deems relevant, including the identity of the offeror and all legal, financial, regulatory and other aspects of the proposal, including the terms of any financing and the likelihood that the transaction will be completed.

*Board of Directors Covenant to Recommend.* In the amendment and abeyance agreement, Concord has agreed that, subject to its board of directors' fiduciary obligations under applicable law, its board of directors will recommend adoption of the amended merger agreement to the Concord shareholders.

Even if the Concord board withdraws or modifies its recommendation of the merger, Concord is still required to submit the amended merger agreement at the special meeting of its shareholders for consideration, unless the amended merger agreement is otherwise terminated. See *The Amended Merger Agreement Termination of Amended Merger Agreement* for a discussion of each party's ability to terminate the amended merger agreement.

*Operations of First Data and Concord Pending Closing.* As explained below, we have each undertaken a separate covenant that places restrictions on ourselves and our respective subsidiaries and other controlled entities until either the completion of the merger or the termination of the amended merger agreement.

*Restrictions on First Data's Business Pending Closing.* First Data has agreed that (except as contemplated by the amended merger agreement or required by applicable law), without the prior written consent of Concord (which shall not be unreasonably withheld or delayed), it will not and will not permit any of its subsidiaries or other controlled entities to:

make any change in or amendment to its certificate of incorporation that changes any material term or provision of First Data's common stock;

make any material change in or amendment to the merger subsidiary's certificate of incorporation;

engage in any recapitalization, restructuring or reorganization with respect to its capital stock, including by way of any extraordinary dividend on, or other extraordinary distributions with respect to, its capital stock;

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take any action or omit to take any action that would reasonably be expected to cause any of First Data's representations and warranties in the amended merger agreement (see "The Amended Merger Agreement - Representations and Warranties") to become untrue such that the closing condition requiring that those representations and warranties be true at closing (see "The Amended Merger Agreement - Conditions") would not be satisfied;

enter into any agreement to acquire or purchase (whether by merger, acquisition of equity or assets, joint venture or otherwise) any person or any interest in any person if the acquisition or purchase would cause a material delay in or prevent the receipt of any antitrust or competition law approval necessary for the completion of the merger, unless prior to taking such action First Data reasonably determines that the action would not be reasonably expected to cause such effect; or

authorize or enter into any contract to do any of the foregoing.

To the extent the restrictions described in the fourth, fifth and sixth bullet points above apply to any alliance (as defined below) of First Data, those restrictions on the alliance will be subject to applicable fiduciary duties and contractual restrictions with respect to the alliance. Additionally, unless First Data has received the prior

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written consent of Concord (not to be unreasonably withheld or delayed), First Data shall, and shall cause its subsidiaries and other controlled entities to (to the extent it may do so under applicable fiduciary duties, contractual restrictions and applicable law), vote any voting equity interest it holds in any alliance against any proposal by any alliance to take any of the actions referred to in the fourth, fifth and sixth bullet points above.

As used with respect to the restrictions on First Data and its subsidiaries or other controlled entities described above, an alliance means any venture (in any form, including in corporate, partnership or limited liability company form) or contractual alliance between First Data or any of its affiliates and one or more third parties:

pursuant to which the third party has the contractual or other legal right to block major actions by the venture or contractual alliance;  
or

to whom First Data or any of its affiliates owe a fiduciary duty.

*Restrictions on Concord's Business Pending Closing.* In general, until either the closing of the merger or the termination of the amended merger agreement, Concord and its subsidiaries are required to carry on their businesses in all material respects in the ordinary course and to use reasonable best efforts to preserve their business organization substantially intact and maintain their existing relations with customers, suppliers, distributors, creditors, lessors, employers and business associates. Concord also has agreed that (except as contemplated by the amended merger agreement or required by applicable law), without the prior written consent of First Data (which shall not be unreasonably withheld or delayed), it will not and will not permit any of its subsidiaries or other controlled entities to:

amend Concord's certificate of incorporation or by-laws;

other than in the case of any direct or indirect wholly owned subsidiary, split, combine or reclassify its outstanding shares of capital stock;

declare, set aside or pay any dividend or distribution payable in cash, stock or property in respect of any capital stock other than dividends or distributions from direct or indirect wholly owned subsidiaries;

except in connection with the Concord stock plans, repurchase, redeem or otherwise acquire, or permit any subsidiaries to purchase or otherwise acquire, any shares of Concord capital stock or any securities convertible into or exchangeable or exercisable for any shares of Concord capital stock;

issue, sell, pledge, dispose of or encumber any shares of, or securities convertible into or exchangeable or exercisable for, or options, warrants, calls, commitments or rights of any kind to acquire, any shares of Concord capital stock (other than (1) the issuance of shares of Concord common stock and Concord stock options to employees of Concord or any of its subsidiaries pursuant to the Concord stock plans in amounts previously disclosed to First Data, (2) shares issuable under Concord stock options outstanding as of April 1, 2003 or (3) the issuance by any of Concord's direct or indirect wholly owned subsidiaries of its capital stock to Concord or another of Concord's wholly owned subsidiaries);

other than products or services sold in the ordinary course of business, transfer, lease, license, guarantee, sell, mortgage, pledge, dispose of or encumber any other property or assets;

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incur or modify any indebtedness (other than (1) indebtedness existing solely between Concord and its wholly owned subsidiaries or between Concord's wholly owned subsidiaries or (2) incremental indebtedness to the extent the incremental indebtedness, together with all other indebtedness of Concord and its subsidiaries, is materially consistent with the historical debt-to-equity ratio of Concord and its subsidiaries, taken as a whole (adjusting for the sale of the demand deposits of EFS National Bank to Union Planters Bank, N.A. pursuant to the Agreement to Purchase Assets and Assume Liabilities dated November 14, 2002));

make or authorize or commit to any capital expenditures beyond specified limitations;

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by any means, make any purchase or acquisition (including by way of merger or other business combination) of, or investment in (1) the capital stock of or other interest in, any other person other than a wholly owned subsidiary of Concord or (2) except in the ordinary course of business consistent with past practice, assets of any other person (other than (x) the completion of an acquisition publicly announced prior to April 1, 2003 or (y) acquisitions (including acquisitions of additional non-publicly traded equity interests in any person in which Concord or any of its subsidiaries already owns any equity interest) that individually involve aggregate consideration not exceeding \$10,000,000);

make any loans, advances or capital contributions to any other person (other than to Concord or any of its wholly owned subsidiaries) outside of the ordinary course of business;

except as required by the terms of the amended merger agreement, (1) terminate, establish, adopt, enter into, make any new grants or awards under, amend or otherwise modify, any benefit plans or compensation commitments, (2) increase the compensation of any officer or any other employee earning annual compensation of more than \$200,000 (other than pursuant to contracts currently in force and previously disclosed to First Data) and (3) hire any employee at a compensation level expected to be more than \$200,000 a year;

pay, discharge, settle, compromise or satisfy any material claims, liabilities or other obligations (absolute, accrued, asserted or unasserted, contingent or otherwise), other than in the ordinary course of business consistent with past practice or in accordance with their terms existing on April 1, 2003, or waive, release or assign any material rights or claims other than in the ordinary course of business consistent with past practice. Concord also has agreed that it will not settle certain specified claims without First Data's consent regardless of whether the claims are material or settled in the ordinary course of business consistent with past practice;

modify, amend or terminate any material contracts if the modification, amendment or termination would be materially adverse to Concord, other than (i) customer contracts or (ii) contracts entered in the ordinary course of business consistent with past practice;

implement or adopt any change in accounting principles or accounting practices, in all cases other than as may be required by a change in generally accepted accounting principles or as recommended by Concord's outside auditors;

prepare or file any tax return inconsistent in any material respect with past practice or, on any such tax return, take any position, make any election, or adopt any method that is materially inconsistent with positions taken, elections made or methods used in preparing or filing similar tax returns in prior periods;

enter into any contract that would restrict, after completion of the merger, First Data and its subsidiaries (other than Concord and its subsidiaries) with respect to engaging or competing in any line of business or in any geographic area;

enter into any contract that would restrict, after completion of the merger, Concord and its subsidiaries with respect to (A) engaging or competing in any of First Data's core businesses or in any geographic area or (B) pricing, to the extent the contract contains a provision which restricts pricing in any of First Data's core businesses;

enter into any material contract that contains a change of control provision which would be applicable to the merger or the transactions contemplated by the amended merger agreement;

take any action or omit to take any action that would reasonably be expected to cause any of Concord's representations and warranties in the amended merger agreement (see "The Amended Merger Agreement - Representations and Warranties") to become untrue such that the closing condition requiring that those representations and warranties be true at closing (see "The Amended Merger Agreement - Conditions") would not be satisfied; or

authorize or enter into any contract to do any of the foregoing.

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*Reasonable Best Efforts Covenant.* We have each agreed to cooperate with each other and to use our (and cause our respective subsidiaries to use) reasonable best efforts to take or cause to be taken all actions and do or cause to be done all things necessary, proper or advisable under the amended merger agreement and applicable laws to complete the merger and the other transactions contemplated by the amended merger agreement as soon as practicable, including obtaining as promptly as practicable all necessary regulatory approvals. In the amendment and abeyance agreement, each of us confirmed that as of December 14, 2003 the other party had complied with the foregoing reasonable best efforts provision. Furthermore, in the amendment and abeyance agreement each of us waived any claim that any action or the failure to take any action prior to December 14, 2003 by the other party constituted a failure by such party to comply with the foregoing reasonable best efforts provision.

We also have agreed to use our reasonable best efforts to avoid the institution of an action or proceeding to prohibit the merger, to contest and resist an action or proceeding to prohibit the merger and to have vacated, lifted, reversed or overturned any temporary, preliminary or permanent decree, judgment, injunction or other order that is in effect and that prohibits, prevents, delays or otherwise restricts the merger. This obligation of the parties to contest and resist an action described above ceases in the event a permanent decree, judgment, injunction or other order is issued or is in effect that is nonappealable and prohibits, prevents, delays or restricts completion of the merger.

First Data does not intend to become, and will use its reasonable best efforts to avoid becoming, a bank holding company or financial holding company under the Bank Holding Company Act of 1956, as amended, on an ongoing basis as a result of the merger. Concord in turn has agreed to assist First Data in this regard, including cooperating with First Data to reorganize or restructure Concord EFS National Bank either after the closing of the merger or immediately before if necessary to effectuate First Data's intent not to become a bank or financial holding company. For further discussion of how this will be accomplished see *The Proposed Merger - Regulatory Matters Relating to the Merger*.

*Employee Matters.* In the amended merger agreement, First Data has agreed that, following the merger, it will:

allow Concord employees to participate in First Data employee benefit plans on substantially the same terms and conditions as similarly situated employees of First Data;

waive any pre-existing condition exclusions or requirements for evidence of insurability with respect to coverage requirements applicable to Concord employees under the First Data benefit plans;

subject to certain exceptions, grant Concord employees credit under First Data benefit plans for purposes of benefit accrual, eligibility and vesting for their prior service to the same extent that their service was credited under comparable Concord benefit plans;

allow Concord employees to elect to roll over any distributions they are eligible to receive from the Concord 401(k) Plan (including outstanding loans) to the First Data Corporation Incentive Savings Plan (see *Interests of Concord's Directors and Executive Officers in the Merger*);

grant Concord employees credit under First Data benefit plans for co-payments and payments under a deductible limit made by them during the applicable plan year of the Concord benefit plans;

assume the Concord stock plans with the result that all outstanding Concord stock options will be converted into options to purchase First Data common stock (for a further discussion of how this will be accomplished see *The Amended Merger Agreement - Consideration to be Received Pursuant to the Merger; Treatment of Stock Options*); and

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honor all (1) binding compensation and employee benefit obligations to current and former Concord employees under the Concord benefit plans, (2) severance plans or policies in existence on April 1, 2003 and (3) employment or severance agreements entered into by Concord or adopted by the Concord board of directors prior to April 1, 2003, in each case as previously disclosed to First Data.

We also have agreed that Concord may implement a retention plan for the benefit of certain Concord employees selected by the compensation committee of the Concord board of directors. The plan involves aggregate

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benefits of up to \$10 million. The amended merger agreement provides that not less than 75% of the benefits payable under the plan will be in the form of cash, with the remaining benefits payable in the form of First Data stock options (the value of which would be determined by the Black-Scholes valuation model on the date of grant) which would be granted within 90 days after the closing date of the merger. We have now agreed that 100% of the benefits payable under the retention plan will be in the form of cash, and that 50% of the cash benefits will be payable to Concord employees on the closing date of the merger, with the remaining portion generally payable no earlier than the six-month anniversary of the closing date. The allocation of the aggregate benefits among the employees was proposed by the compensation committee of the Concord board of directors and approved by First Data. Notwithstanding the foregoing, on the closing date of the merger, the following executive officers will receive cash payments in the following respective amounts, which will constitute a portion of the \$10 million retention plan and the only amounts payable to such individuals under the retention plan: Bond R. Isaacson, \$752,213; E. Miles Kilburn, \$405,038; Edward A. Labry, \$694,350; and Dan M. Palmer, \$752,213. Other Concord executive officers who participate in the retention plan are expected to receive 50% of their respective payments on the closing date and the remaining 50% at the six-month anniversary of the closing date, consistent with the payment schedule applicable to other employees.

*Indemnification and Insurance.* To the fullest extent permitted by applicable law, First Data has agreed that:

for six years after the completion of the merger, it will (subject to certain limitations) indemnify, as if it were Concord, former Concord directors, officers, employees and agents for liabilities arising from their acts or omissions occurring prior to closing as provided under Concord's certificate of incorporation or by-laws in effect on April 1, 2003;

it will honor all indemnification agreements in effect on the April 1, 2003 with Concord's former directors, officers, employees and agents; and

for six years after the completion of the merger, First Data will maintain Concord's existing officers' and directors' liability insurance so long as the annual premium for the insurance does not exceed 300% of the last annual premium that Concord paid prior to April 1, 2003. If Concord's existing insurance policy expires, is terminated or cancelled during the six-year period or if the annual premium exceeds the 300% limitation, First Data will cause Concord to use its reasonable best efforts to obtain as much insurance as can be obtained for the remainder of the six-year period without exceeding the 300% premium limitation.

For a further discussion of officer and director indemnification and insurance see *Interests of Concord's Directors and Executive Officers in the Merger* *Indemnification; Directors' and Officers' Insurance.*

## **Other Covenants and Agreements**

*Expenses.* We have each agreed to pay our own costs and expenses incurred in connection with the merger and the amended merger agreement, with the exception that we will each pay 50% of any expenses (other than attorneys' and accounting fees and expenses) incurred in printing and filing with the SEC the registration statement of which this proxy statement/prospectus forms a part.

*Election to First Data Board of Directors.* At or prior to the completion of the merger, First Data will expand its board of directors by one member and, immediately after the completion of the merger, appoint an existing Concord director (whose selection will be mutually agreed to by First Data and Concord) to fill that vacancy.

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*Other Covenants.* The amended merger agreement contains certain other covenants, including covenants relating to public announcements and employee communications, access to information, state takeover laws and tax matters.

*No Knowledge of Breach.* In the amendment and abeyance agreement, each of us confirmed that as of December 14, 2003, we did not have knowledge of facts and circumstances constituting a breach in any material respect by the other party of any of its covenants contained in the original merger agreement.

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**Representations and Warranties**

The amended merger agreement contains customary representations and warranties, generally qualified by material adverse effect, made by each of us to the other. The representations and warranties relate to:

corporate existence, qualification to conduct business and corporate standing and power;

ownership of subsidiaries;

capital structure;

corporate authority to enter into, and carry out the obligations under, the original merger agreement and enforceability of the original merger agreement;

absence of a breach of the certificate of incorporation, by-laws, law or material agreements as a result of the merger;

filings with the SEC;

absence of certain changes or events;

information supplied for use in the joint proxy statement/prospectus distributed in connection with the October 28, 2003 special meetings;

compliance with laws;

tax matters;

absence of undisclosed liabilities;

litigation;

employee benefit plans;

required shareholder votes;

inapplicability of anti-takeover statutes;

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payment of fees to finders or brokers in connection with the amended merger agreement; and

opinions of financial advisors.

Representations and warranties made solely by Concord relate to environmental and intellectual property matters, compliance with bank regulatory and credit card association regulations, customers and material contracts.

The amended merger agreement also contains certain representations and warranties of First Data with respect to its wholly owned merger subsidiary, including corporate authorization, absence of a breach of the certificate of incorporation or the by-laws, lack of prior business activities and capitalization.

In the amendment and abeyance agreement, each of us represented that to our knowledge, as of December 14, 2003, except to the extent that a representation or warranty speaks as of another date, our respective representations and warranties relating to capital structure and corporate authority contained in the original merger agreement were true and correct with respect to those matters that were qualified by material adverse effect or materiality and were true and correct in all material respects with respect to those matters that were not so qualified. We each also represented that to our knowledge, as of December 14, 2003, except to the extent that the representation or warranty speaks as of another date, our respective representations and warranties set forth in the original merger agreement, other than those listed in the preceding sentence, were true and correct unless the



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inaccuracies (without giving effect to any materiality or material adverse effect qualifications or exceptions) in respect of those representations and warranties did not result in a material adverse effect on Concord or First Data, as the case may be.

The amendment and abeyance agreement also contains representations and warranties from each of us to the other relating to:

corporate authority to enter into, and carry out the obligations under, the amendment and abeyance agreement and enforceability of the amendment and abeyance agreement;

information supplied for use in this proxy statement/prospectus;

required shareholder votes; and

opinions of financial advisors.

As used in the amended merger agreement, the term *material adverse effect* or *material adverse change* means with respect to either First Data or Concord, as applicable, any effect, change or development that is or would reasonably be expected to be material and adverse to the financial condition, business, operations or results of operations of such company and its subsidiaries, taken as a whole. However, to the extent any effect, change or development is caused by or results from any of the following, it will not be taken into account in determining whether there has been (or would reasonably be expected to be) a *material adverse effect* or *material adverse change* :

the announcement of the execution of the amended merger agreement or the performance of obligations under the amended merger agreement;

factors affecting the economy or financial markets as a whole or generally affecting the payment services industry, except to the extent Concord or First Data, as the case may be, is materially and adversely affected in a disproportionate manner as compared to other comparable participants in the industry;

failure to meet analyst financial forecasts, in and of itself, or the trading price of Concord common stock or First Data common stock, as the case may be, in and of itself (however, the facts or occurrences giving rise or contributing to the effect, change or development which affects or otherwise relates to the failure to meet analyst financial forecasts or the trading price, as the case may be, may be deemed to constitute, or be taken into account in determining whether there has been, or would reasonably be expected to be, a *material adverse change* or *material adverse effect*); and

the commencement, occurrence or continuation of any war, armed hostilities or acts of terrorism involving or affecting any part of the United States of America.

First Data and Concord also agreed in the amended merger agreement that the following occurrences would in any event be deemed to constitute a *material adverse effect* or *material adverse change* under the amended merger agreement with respect to either First Data or Concord:

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a criminal indictment or criminal information or similar proceeding or action against a party or its subsidiaries or against any of their respective officers or directors relating to actions within the scope of the party's business;

an SEC enforcement action against a party, its subsidiaries or their respective officers or directors relating to actions within the scope of the party's business; or

an SEC formal investigation that is not resolved by the earlier of 90 days after its commencement or April 30, 2004, of a party, its subsidiaries or their respective officers or directors relating to actions within the scope of the party's business.

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In the amendment and abeyance agreement, each of us confirmed to the other that as of December 14, 2003 there had not been (and agreed not to assert that there had been as of December 14, 2003) a material adverse change or material adverse effect with respect to the other party, subject to the accuracy of a number of the representations we each made in the amended merger agreement.

### **Conditions**

Our respective obligations to complete the merger are subject to the satisfaction or, to the extent legally permissible, the waiver of the following conditions:

the adoption of the amended merger agreement by the Concord shareholders;

the absence of any law, judgment, injunction or other order by a governmental entity that is in effect prohibiting completion of the merger;

the approval for listing by the NYSE of the First Data common stock to be issued pursuant to the merger, subject to official notice of issuance;

the SEC having declared effective the First Data registration statement, of which this proxy statement/prospectus forms a part; and

the making of all material blue sky securities filings and the receipt of all permits and approvals necessary under applicable law.

In addition, individually, our respective obligations to effect the merger are subject to the satisfaction or, to the extent legally permissible, the waiver of the following additional conditions:

the representations and warranties of the other party with respect to capital structure and authority contained in the amended merger agreement which are qualified by material adverse effect or materiality, being, to the knowledge of such party as of December 14, 2003, true and correct as of December 14, 2003, and the portions of those representations and warranties that are not qualified by material adverse effect or materiality being, to the knowledge of such party as of December 14, 2003, true and correct as of December 14, 2003 in all material respects, except to the extent that the representation or warranty speaks as of another date;

the representations and warranties of the other party (other than the representations and warranties with respect to capital structure and authority) contained in the amended merger agreement being, to the knowledge of such other party as of December 14, 2003, true and correct unless as of December 14, 2003 the inaccuracies (without giving effect to any materiality or material adverse effect qualifications or exceptions) in respect of those representations and warranties, taking all the inaccuracies in respect of those representations and warranties together in their entirety, do not result in a material adverse effect on the other party, except to the extent that the representation or warranty speaks as of another date;

the representations and warranties of the other party with respect to capital structure contained in the amended merger agreement which are qualified by material adverse effect or materiality being true and correct, and the portions of those representations and warranties that are not qualified by material adverse effect or materiality being true and correct in all material respects, as of the closing date of the merger, except to the extent that the representation or warranty speaks as of another date;

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the representations and warranties of the other party with respect to SEC documents and other reports and compliance with laws and permits contained in the amended merger agreement being true and correct unless the inaccuracies (without giving effect to any materiality or material adverse effect qualifications or exceptions) in respect of those representations and warranties, taking all the inaccuracies in respect of those representations and warranties together in their entirety, do not result in a material adverse effect on the other party, as of the closing date of the merger, except to the extent that the representation or warranty speaks as of another date;

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the other party having performed in all material respects all material obligations and complied in all material respects with all material agreements and covenants required to be performed and complied with by it under the amended merger agreement; and

the receipt of an opinion of the party's counsel which provides that the merger will qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code.

With respect to the first four bullet points above, First Data and Concord agreed in the amended merger agreement that during any period of time when a party is under formal investigation by the SEC the party that is not under investigation (and whose subsidiaries and their respective officers and directors are not under investigation) shall not be required by the party under investigation to complete the merger.

First Data's obligation to complete the merger also is subject to the additional condition that First Data shall be reasonably satisfied that neither it nor any of its subsidiaries shall become a bank holding company or financial holding company under the Bank Holding Company Act of 1956, as amended, on an ongoing basis as a result of the merger; provided, however, that this condition will be deemed to be satisfied upon the merger of Concord's national bank with and into Concord's interim Colorado industrial loan company.

In the amendment and abeyance agreement, each of us agreed not to exercise any rights with respect to the condition relating to the accuracy of the representations and warranties contained in original merger agreement if the exercise of any rights with respect to that condition would be inconsistent with that condition as amended by the amendment and abeyance agreement. Each of us further agreed to waive that condition if the failure to waive that condition would be inconsistent with the condition as amended by the amendment and abeyance agreement.

## **Termination of Amended Merger Agreement**

*Right to Terminate.* The amended merger agreement may be terminated at any time prior to the completion of the merger in any of the following ways:

by our mutual written consent;

by either one of us:

if the merger has not been completed by the earlier of (1) April 30, 2004 or (2) three business days after the conclusion of the special meeting; except that a party may not terminate the amended merger agreement if the cause of the merger not being completed is that party's failure to fulfill its obligations under the amended merger agreement; or

if a governmental entity issues an order, decree or ruling or takes any other action permanently enjoining, restraining or otherwise prohibiting the merger and the order, decree or ruling or other action has become final and nonappealable.  
by First Data:

if the Concord board of directors either fails to recommend the merger to its shareholders or the board or any committee of the board modifies its recommendation in any manner adverse to First Data;

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if the Concord board of directors or any committee of the board approves or recommends any takeover proposal other than the merger with First Data;

if there has been a breach of any representation, warranty, covenant or other agreement made by Concord in the amended merger agreement, or if any such representation and warranty becomes untrue after April 1, 2003 and, in either case, the breach or failure to be true:

would result in the applicable closing condition to the merger not being satisfied; and

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is not curable or, if curable, is not cured within 30 days after written notice is given by First Data to Concord.

by Concord:

if there has been a breach of any representation, warranty, covenant or other agreement made by First Data or its wholly owned merger subsidiary in the amended merger agreement, or if any such representation and warranty becomes untrue after April 1, 2003 and, in either case, the breach or failure to be true:

would result in the applicable closing condition to the merger not being satisfied; and

is not curable or, if curable, is not cured within 30 days after written notice is given by Concord to First Data.

if (1) the Concord board of directors authorizes Concord, subject to complying with the terms of the amended merger agreement, to enter into a definitive agreement concerning a transaction that constitutes a *superior proposal* (see *The Amended Merger Agreement Covenants No Solicitation* for a discussion of this term) and Concord notifies First Data in writing that it intends to enter into the agreement, (2) First Data does not make, within three business days of receipt of Concord's written notification of its intention to enter into a definitive agreement for a superior proposal, an offer that the Concord board of directors determines, in good faith after consultation with its financial advisors, is at least as favorable, in the aggregate, to Concord's shareholders as the superior proposal and (3) prior to or concurrently with the termination of the amended merger agreement Concord pays to First Data in immediately available funds the termination fee described in *Termination Fees Payable by Concord* below. Concord also agreed (A) that it will not enter into a definitive agreement referred to in clause (1) above until at least the fourth business day after it has provided the requisite notice to First Data and (B) to notify First Data promptly in writing if its intention to enter into the definitive agreement referred to in its notification changes at any time after giving the notification.

*Termination Fees Payable by Concord.* Concord has agreed to pay First Data a termination fee of \$210 million if the amended merger agreement is terminated under one of the following circumstances:

the amended merger agreement is terminated by First Data because the Concord board of directors or any committee of the board approves or recommends any takeover proposal other than the merger with First Data;

the amended merger agreement is terminated by Concord because it enters into a definitive agreement for a superior proposal pursuant to the provision described in the second hashmark above concerning Concord's termination rights;

(1) the amended merger agreement is terminated by First Data because the Concord board of directors either fails to recommend the merger with First Data to its shareholders or the board or any committee of the board modifies its recommendation in any manner adverse to First Data and (2) concurrently with the termination or within nine months of the termination, Concord enters into a definitive agreement with respect to a takeover proposal or completes a takeover proposal; or

(1) after December 14, 2003, a takeover proposal for Concord has been publicly disclosed or any person has publicly disclosed that, subject to Concord's merger with First Data being disapproved by Concord's shareholders or otherwise rejected, it will make a takeover proposal with respect to Concord, (2) Concord's shareholders subsequently fail to adopt the amended merger agreement and the amended merger agreement is terminated by Concord or First Data and (3) concurrently with the termination or within nine months of the termination, Concord enters into a definitive agreement with respect to a takeover proposal or completes a takeover proposal.

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The termination fee is required to be paid by Concord at different times, depending on what provision is used to terminate the amended merger agreement. If the termination fee becomes payable pursuant to the first bullet

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point above, the fee is required to be paid to First Data one business day after the date of termination. If the termination fee is payable pursuant to the second bullet point above, the fee is required to be paid to First Data on the date of termination. If the agreement is terminated as provided in either the third or fourth bullet points above, the fee is required to be paid to First Data upon the earlier of Concord entering into a definitive agreement with respect to a takeover proposal or completing a takeover proposal. In any case, the termination fee is payable to First Data by wire transfer of immediately available funds.

*Termination Fees Payable by First Data.* First Data has agreed to pay Concord a fee of \$25 million if the amended merger agreement is terminated by First Data or Concord:

due to the entry of a permanent order, decree or ruling (which has become final and nonappealable) enjoining, restraining or otherwise prohibiting the merger on antitrust grounds; or

in the event that the merger has not been completed by the earlier of (i) April 30, 2004 or (ii) three business days after the special meeting, solely as a result of the failure to obtain necessary antitrust approvals.

In either of the above circumstances, First Data is required to pay the termination fee to Concord one business day after termination if the amended merger agreement is terminated by Concord, or on the date of termination if the amended merger agreement is terminated by First Data.

## **Amendments, Extensions and Waivers**

*Amendments.* The amended merger agreement may be amended by the parties at any time prior to the completion of the merger, except that any amendment after a shareholders' meeting which requires approval by shareholders may not be made without such approval. All amendments to the amended merger agreement must be in writing signed by each party.

*Extensions and Waivers.* At any time prior to the completion of the merger, any party to the amended merger agreement may:

extend the time for the performance of any of the obligations or other acts of any other party to the amended merger agreement;

waive any inaccuracies in the representations and warranties of any other party contained in the amended merger agreement or in any document delivered pursuant to the amended merger agreement; or

waive compliance by any other party with any of the agreements or conditions contained in the amended merger agreement.

All extensions and waivers must be in writing and signed by the party against whom the extension or waiver is to be effective.

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**CHAPTER TWO**

**PRO FORMA FINANCIAL DATA**

**FIRST DATA AND CONCORD UNAUDITED PRO FORMA CONDENSED**

**COMBINED CONSOLIDATED FINANCIAL STATEMENTS**

The Unaudited Pro Forma Condensed Combined Consolidated Statements of Income combine the historical consolidated statements of income of First Data and Concord, giving effect to the merger and the treatment of NYCE Corporation as a discontinued operation as if they had occurred on January 1 of each period presented. The Unaudited Pro Forma Condensed Combined Consolidated Balance Sheet combines the historical consolidated balance sheet of First Data and the historical consolidated balance sheet of Concord, giving effect to the merger and the treatment of NYCE Corporation as a discontinued operation as if they had occurred on September 30, 2003. We have adjusted the historical consolidated financial information to give effect to pro forma events that are (1) directly attributable to the merger, (2) factually supportable and (3) with respect to the statements of income, expected to have a continuing impact on the combined results. You should read this information in conjunction with the:

accompanying notes to the Unaudited Pro Forma Condensed Combined Consolidated Financial Statements;

separate historical unaudited financial statements of First Data as of and for the nine months ended September 30, 2003 included in First Data's Quarterly Report on Form 10-Q for the nine month period ended September 30, 2003, which is incorporated by reference into this document;

separate historical financial statements of First Data as of and for the year ended December 31, 2002 included in First Data's Annual Report on Form 10-K for the year ended December 31, 2002, which is incorporated by reference into this document;

separate historical unaudited financial statements of Concord as of and for the nine months ended September 30, 2003 included in Concord's Quarterly Report on Form 10-Q for the nine month period ended September 30, 2003, which is incorporated by reference into this document; and

separate historical financial statements of Concord as of and for the year ended December 31, 2002 included in Concord's Annual Report on Form 10-K for the year ended December 31, 2002, which is incorporated by reference into this document.

We present the unaudited pro forma condensed combined consolidated financial information for informational purposes only. The unaudited pro forma information is not necessarily indicative of what our financial position or results of operations actually would have been had we completed the merger at the dates indicated. In addition, the unaudited pro forma condensed combined consolidated financial information does not purport to project the future financial position or operating results of the combined company.

We prepared the unaudited pro forma condensed combined consolidated financial information using the purchase method of accounting with First Data treated as the acquirer. As described in Note 1, Basis of Pro Forma Presentation, First Data's cost to acquire Concord will be allocated to the assets acquired and liabilities assumed based upon their estimated fair values as of the date of acquisition. The allocation is dependent

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upon certain valuations and other studies that have not progressed to a stage where there is sufficient information to make a definitive allocation. Accordingly, the purchase price allocation pro forma adjustments are preliminary and have been made solely for the purpose of providing unaudited pro forma condensed combined consolidated financial information.

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**Table of Contents****UNAUDITED PRO FORMA CONDENSED COMBINED CONSOLIDATED****STATEMENT OF INCOME****For the Year Ended December 31, 2002**

	<u>First Data Corporation</u>	<u>Concord EFS, Inc.</u>	<u>Reclassifi- cations</u>	(4)	<u>Pro Forma Adjustments</u>	(4)	<u>Pro Forma Combined</u>
(in millions, except per share data)							
<b>REVENUES</b>							
Transaction and processing service fees	\$ 6,566.2	\$ 1,966.6	\$ (809.8)	(a)	\$ (122.7)	(c)	\$ 7,514.9
			(74.5)	(b)	(10.9)	(d)	
Other non-transaction based revenue (1)	275.7		1.7	(b)			277.4
Product sales and other	275.3		45.1	(b)			320.4
Reimbursable postage and other	519.0		29.8	(b)	(12.5)	(c)	536.3
	<u>7,636.2</u>	<u>1,966.6</u>	<u>(807.7)</u>		<u>(146.1)</u>		<u>8,649.0</u>
<b>EXPENSES</b>							
Cost of services	3,809.6	1,366.5	(796.9)	(a)	(81.9)	(c)	4,359.9
			(47.1)	(b)	120.6	(e)	
					(10.9)	(d)	
Cost of products sold	189.5		13.5	(b)			203.0
Selling, general and administrative	1,282.7	123.9	(12.9)	(a)	(12.2)	(c)	1,379.3
					(2.2)	(f)	
Reimbursable postage and other	519.0		29.8	(b)	(12.5)	(c)	536.3
Other operating expenses (2)	73.9	86.2					160.1
	<u>5,874.7</u>	<u>1,576.6</u>	<u>(813.6)</u>		<u>0.9</u>		<u>6,638.6</u>
Operating profit	<u>1,761.5</u>	<u>390.0</u>	<u>5.9</u>		<u>(147.0)</u>		<u>2,010.4</u>
Other income / (expense) (3)	9.9	86.4	(5.9)	(b)	(2.5)	(g)	83.6
					(1.4)	(h)	
					(2.9)	(i)	
Interest expense	(117.1)	(11.6)			0.5	(c)	(116.1)
					3.8	(g)	
					8.3	(i)	
Income before income taxes, minority interest and equity earnings in affiliates	<u>1,654.3</u>	<u>464.8</u>			<u>(141.2)</u>		<u>1,977.9</u>
Income taxes	432.2	163.1			(50.4)	(j)	544.9
Minority interest	(102.8)	(0.9)			6.2	(c)	(97.5)
Equity earnings in affiliates	118.6						118.6
Net income from continuing operations (5)	<u>\$ 1,237.9</u>	<u>\$ 300.8</u>			<u>\$ (84.6)</u>		<u>\$ 1,454.1</u>
Basic earnings per share from continuing operations	\$ 1.63	\$ 0.59				(k)	\$ 1.54

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Diluted earnings per share from continuing operations	\$ 1.61	\$ 0.57	(k)	\$ 1.51
<i>Weighted average shares outstanding:</i>				
Basic	757.5	507.3	(k)	942.7
Diluted	771.8	524.7	(k)	963.3

- (1) Other non-transaction based revenue includes investment income, professional services and software licensing and maintenance.
- (2) Other operating expenses include restructuring charges, net, impairments and litigation and regulatory settlements.
- (3) Other income / (expense) includes interest income, investment gains and (losses) and divestitures, net.
- (4) Refer to the Notes to Unaudited Pro Forma Condensed Combined Consolidated Financial Statements Note 2. Pro Forma Adjustments.
- (5) Amounts in the historical columns represent net income as previously reported. Amount in the pro forma combined column represents net income from continuing operations reflecting the treatment of NYCE Corporation as a discontinued operation.

See Accompanying Notes to Unaudited Pro Forma Condensed Combined Consolidated Financial Statements, which are an integral part of these statements.

**Table of Contents****UNAUDITED PRO FORMA CONDENSED COMBINED CONSOLIDATED****STATEMENT OF INCOME**

For the Nine Months Ended September 30, 2003

	First Data Corporation	Concord EFS, Inc.	Reclassifi- cations	(4)	Pro Forma Adjustments	(4)	Pro Forma Combined
(in millions, except per share data)							
<b>REVENUES</b>							
Transaction and processing service fees	\$ 5,331.8	\$ 1,678.4	\$ (733.1)	(a)	\$ (95.4)	(c)	\$ 6,116.0
			(53.3)	(b)	(18.5)	(d)	
					6.1	(e)	
Other non-transaction based revenue (1)	217.8		0.8	(b)			218.6
Product sales and other	247.0		30.1	(b)			277.1
Reimbursable postage and other	466.2		22.4	(b)	(11.3)	(c)	477.3
	<u>6,262.8</u>	<u>1,678.4</u>	<u>(733.1)</u>		<u>(119.1)</u>		<u>7,089.0</u>
<b>EXPENSES</b>							
Cost of services	3,169.6	1,220.8	(719.8)	(a)	(44.7)	(c)	3,655.5
			(37.2)	(b)	(18.5)	(d)	
					85.3	(e)	
Cost of products sold	152.6		14.8	(b)			167.4
Selling, general and administrative	1,028.0	100.4	(13.3)	(a)	(18.7)	(c)	1,097.3
			18.4	(b)	(17.3)	(l)	
					(0.2)	(f)	
Reimbursable postage and other	466.2		22.4	(b)	(11.3)	(c)	477.3
Other operating expenses (2)	34.7	17.4	(18.4)	(b)			33.7
	<u>4,851.1</u>	<u>1,338.6</u>	<u>(733.1)</u>		<u>(25.4)</u>		<u>5,431.2</u>
Operating profit	<u>1,411.7</u>	<u>339.8</u>			<u>(93.7)</u>		<u>1,657.8</u>
Other income / (expense) (3)	6.3	60.0			(0.1)	(g)	63.7
					(0.8)	(h)	
					(1.7)	(i)	
Interest expense	(81.0)	(6.3)			0.3	(g)	(81.1)
					5.9	(i)	
Income before income taxes, minority interest and equity earnings in affiliates	<u>1,337.0</u>	<u>393.5</u>			<u>(90.1)</u>		<u>1,640.4</u>
Income taxes	344.1	136.3			(30.8)	(j)	449.6
Minority interest	(89.3)	(0.8)			7.4	(c)	(82.7)
Equity earnings in affiliates	103.7						103.7
Net income from continuing operations (5)	<u>\$ 1,007.3</u>	<u>\$ 256.4</u>			<u>\$ (51.9)</u>		<u>\$ 1,211.8</u>
	<u>\$ 1.36</u>	<u>\$ 0.53</u>				(k)	<u>\$ 1.32</u>

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Basic earnings per share from continuing operations				
Diluted earnings per share from continuing operations	\$ 1.33	\$ 0.52	(k)	\$ 1.29
<u>Weighted average shares outstanding:</u>				
Basic	743.3	482.8	(k)	919.5
Diluted	756.6	493.4	(k)	936.7

- (1) Other non-transaction based revenue includes investment income, professional services and software licensing and maintenance.
- (2) Other operating expenses include restructuring charges, net, impairments and litigation and regulatory settlements and merger-related expenses (Concord historical).
- (3) Other income / (expense) includes interest income, investment gains and (losses) and divestitures, net.
- (4) Refer to the Notes to Unaudited Pro Forma Condensed Combined Consolidated Financial Statements Note 2. Pro Forma Adjustments.
- (5) Amounts in the historical columns represent net income as previously reported. Amount in the pro forma combined column represents net income from continuing operations reflecting the treatment of NYCE Corporation as a discontinued operation.

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*See Accompanying Notes to Unaudited Pro Forma Condensed Combined Consolidated Financial Statements, which are an integral part of these statements.*

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**Table of Contents****UNAUDITED PRO FORMA CONDENSED COMBINED CONSOLIDATED****STATEMENT OF INCOME**

For the Nine Months Ended September 30, 2002

	First Data Corporation	Concord EFS, Inc.	Reclassifi- cations	(4)	Pro Forma Adjustments	(4)	Pro Forma Combined
(in millions, except per share data)							
<b>REVENUES</b>							
Transaction and processing service fees	\$ 4,796.4	\$ 1,424.3	\$ (578.7)	(a)	\$ (90.7)	(c)	\$ 5,490.8
			(54.3)	(b)	(6.2)	(d)	
Other non-transaction based revenue (1)	201.8		1.6	(b)			203.4
Product sales and other	209.2		33.9	(b)			243.1
Reimbursable postage and other	370.3		22.2	(b)	(8.9)	(c)	383.6
	<u>5,577.7</u>	<u>1,424.3</u>	<u>(575.3)</u>		<u>(105.8)</u>		<u>6,320.9</u>
<b>EXPENSES</b>							
Cost of services	2,802.0	981.0	(569.6)	(a)	(62.4)	(c)	3,205.5
			(32.5)	(b)	(6.2)	(d)	
					93.2	(e)	
Cost of products sold	140.5		7.8	(b)			148.3
Selling, general and administrative	942.3	88.4	(9.1)	(a)	(7.6)	(c)	1,013.7
					(0.3)	(f)	
Reimbursable postage and other	370.3		22.2	(b)	(8.9)	(c)	383.6
Other operating expenses (2)	48.4	86.3					134.7
	<u>4,303.5</u>	<u>1,155.7</u>	<u>(581.2)</u>		<u>7.8</u>		<u>4,885.8</u>
Operating profit	<u>1,274.2</u>	<u>268.6</u>	<u>5.9</u>		<u>(113.6)</u>		<u>1,435.1</u>
Other income / (expense) (3)	6.3	67.7	(5.9)	(b)	(2.5)	(g)	62.3
					(1.1)	(h)	
					(2.2)	(i)	
Interest expense	(88.0)	(8.8)			0.5	(c)	(87.1)
					3.2	(g)	
					6.0	(i)	
Income before income taxes, minority interest and equity earnings in affiliates	<u>1,192.5</u>	<u>327.5</u>			<u>(109.7)</u>		<u>1,410.3</u>
Income taxes	319.6	115.0			(39.3)	(j)	395.3
Minority interest	(73.2)	(0.7)			4.3	(c)	(69.6)
Equity earnings in affiliates	85.7						85.7
Net income from continuing operations (5)	<u>\$ 885.4</u>	<u>\$ 211.8</u>			<u>\$ (66.1)</u>		<u>\$ 1,031.1</u>

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Basic earnings per share from continuing operations	\$ 1.17	\$ 0.41	(k)	\$ 1.09
Diluted earnings per share from continuing operations	\$ 1.14	\$ 0.40	(k)	\$ 1.07
<u>Weighted average shares outstanding:</u>				
Basic	759.4	511.0	(k)	945.9
Diluted	774.6	530.3	(k)	968.2

- (1) Other non-transaction based revenue includes investment income, professional services and software licensing and maintenance.
- (2) Other operating expenses include restructuring charges, net, impairments and litigation and regulatory settlements.
- (3) Other income / (expense) includes interest income, investment gains and (losses) and divestitures, net.
- (4) Refer to the Notes to Unaudited Pro Forma Condensed Combined Consolidated Financial Statements Note 2. Pro Forma Adjustments.
- (5) Amounts in the historical columns represent net income as previously reported. Amount in the pro forma combined column represents net income from continuing operations reflecting the treatment of NYCE Corporation as a discontinued operation.

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*See Accompanying Notes to Unaudited Pro Forma Condensed Combined Consolidated Financial Statements, which are an integral part of these statements.*

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**Table of Contents****UNAUDITED PRO FORMA CONDENSED COMBINED CONSOLIDATED****BALANCE SHEET**

As of September 30, 2003

	<u>First Data Corporation</u>	<u>Concord EFS, Inc.</u>	<u>Reclassi- fications</u>	(1) (in millions)	<u>Pro Forma Adjustments</u>	(1)	<u>Pro Forma Combined</u>
<b>ASSETS</b>							
Cash and cash equivalents	\$ 1,066.1	\$ 521.7	\$ (174.3)	(m)	\$ (57.7)	(c)	\$ 1,119.0
					1.6	(f)	
					(63.3)	(h)	
					(165.1)	(i)	
					(10.0)	(q)	
Settlement assets	15,952.1	39.9	164.6	(m)			16,156.6
Accounts receivable, net	1,392.8	133.8	8.3	(n)	(13.1)	(c)	1,519.5
					(2.3)	(d)	
Property and equipment, net	691.3	347.6	(168.7)	(o)	(9.8)	(c)	860.4
Goodwill	3,997.3	265.0			(309.9)	(c)	8,363.8
					4,411.4	(r)	
Other intangibles, less accumulated amortization	1,498.3	46.9	240.6	(o)	(99.9)	(c)	2,965.2
					1,279.3	(e)	
Investment in affiliates	767.6	3.2					770.8
Other assets	927.5	1,080.9	(71.9)	(o)	(4.8)	(c)	1,883.4
			(8.3)	(n)	(7.5)	(f)	
			(15.8)	(p)	(16.7)	(h)	
Assets held for sale					495.2	(c)	495.2
<b>Total Assets</b>	<b>\$ 26,293.0</b>	<b>\$ 2,439.0</b>	<b>\$ (25.5)</b>		<b>\$ 5,427.4</b>		<b>\$ 34,133.9</b>
<b>LIABILITIES AND STOCKHOLDERS EQUITY</b>							
<b>LIABILITIES:</b>							
Settlement obligations	\$ 15,572.4	\$ 202.6	\$ 1.9	(m)			\$ 15,776.9
Accounts payable and other liabilities	3,010.9	233.9	(15.8)	(p)	(120.8)	(c)	3,661.7
			(11.6)	(m)	(2.3)	(d)	
					567.4	(s)	
Borrowings	3,570.0	149.8			(165.1)	(i)	3,570.0
					15.3	(i)	
Liabilities related to assets held for sale					120.8	(c)	120.8
<b>Total Liabilities</b>	<b>22,153.3</b>	<b>586.3</b>	<b>(25.5)</b>		<b>415.3</b>		<b>23,129.4</b>
<b>Stockholders Equity</b>	<b>4,139.7</b>	<b>1,852.7</b>			<b>5,012.1</b>	(t)	<b>11,004.5</b>
<b>Total Liabilities and Stockholders Equity</b>	<b>\$ 26,293.0</b>	<b>\$ 2,439.0</b>	<b>\$ (25.5)</b>		<b>\$ 5,427.4</b>		<b>\$ 34,133.9</b>

(1) Refer to the Notes to Unaudited Pro Forma Condensed Combined Consolidated Financial Statements Note 2. Pro Forma Adjustments.

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*See Accompanying Notes to Unaudited Pro Forma Condensed Combined Consolidated Financial Statements, which are an integral part of these statements.*

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**NOTES TO UNAUDITED PRO FORMA CONDENSED COMBINED  
CONSOLIDATED FINANCIAL STATEMENTS**

**Note 1. Basis of Pro Forma Presentation**

First Data and Concord entered into a merger agreement, dated as of April 1, 2003, and amended as of December 14, 2003, which, subject to the terms and conditions included in the agreement, as amended, will result in Concord becoming a wholly owned subsidiary of First Data in a transaction to be accounted for using the purchase method of accounting. Pursuant to the amended merger agreement, each share of Concord common stock will be converted into 0.365 of a share of First Data common stock.

The unaudited pro forma condensed combined consolidated financial statements provide for the issuance of approximately 170 million shares of First Data common stock, based upon an exchange ratio of 0.365 of a share of First Data common stock for each outstanding share of Concord common stock as of September 30, 2003. The actual number of shares of First Data common stock to be issued will be determined based on the actual number of shares of Concord common stock outstanding at the completion of the merger. The average market price per share of First Data common stock of \$38.82 is based on an average of trading days (December 11, December 12, December 16 and December 17) around the December 15, 2003 announcement date of the amended terms of the proposed merger. First Data has agreed to assume Concord's outstanding stock options and, based on the total number of Concord options outstanding at September 30, 2003, First Data would issue options to purchase approximately 21 million shares of First Data common stock, at a weighted average exercise price of \$36.31. The actual number of options to be issued will be determined based on the actual number of Concord options outstanding at the completion of the merger.

The estimated total purchase price of the merger, based on this \$38.82 per share price of First Data common stock, is as follows (in millions):

Value of First Data common stock issued	\$ 6,591
Assumption of Concord options	274
	<hr/>
Total value of First Data common stock	6,865
Estimated direct transaction costs	80
	<hr/>
Total estimated purchase price	<u>\$ 6,945</u>

Under the purchase method of accounting, the total estimated purchase price, as shown in the table above, is allocated to Concord's net tangible and intangible assets based on their estimated fair values as of the date of the completion of the merger. The fair value of the net tangible assets approximates Concord's book value and, therefore, no fair value adjustment to the respective assets and liabilities was necessary other than for debt, a change-of-control payment which may be owed by Concord and the cash surrender value of split-dollar life insurance assumed to be paid to trusts. The fair value of these assets and liabilities is subject to change pending additional information that may come to our knowledge and restructuring decisions made upon completion of the merger. Certain assets classified in property and equipment (\$168.7 million) and other assets (\$71.9 million) on Concord's balance sheet were reclassified in the accompanying unaudited pro forma condensed combined consolidated balance sheet to intangible assets to conform to First Data's presentation. The fair market values assigned to Concord's intangible assets in our preliminary allocation of acquisition purchase price are based on a preliminary independent valuation, other than \$46 million of purchased software for which book value approximates fair market value. These fair market values are subject to change pending receipt of the final independent valuation and other factors as described in the introduction to these unaudited pro forma condensed combined consolidated financial statements. The preliminary estimated purchase price is allocated as follows (in millions):

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Net tangible assets	\$ 1,269*
Identifiable intangible assets:	
Customer relationships	1,140
Proprietary software	107
Tradename	320
Goodwill	4,676
Deferred tax liability related to identifiable intangible assets	(567)
	<hr/>
Total preliminary estimated purchase price allocation	\$ 6,945
	<hr/>

\* Net tangible assets is calculated based on Concord's historical stockholders' equity of \$1.853 billion less goodwill of \$265 million, identifiable intangible assets of \$288 million, a fair market value adjustment to debt of

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\$15 million, a \$10 million change of control payment which may be owed by Concord and a \$6 million adjustment for the cash surrender value of split-dollar life insurance assumed to be paid to trusts.

Of the total estimated purchase price, a preliminary estimate of approximately \$1.3 billion has been allocated to net tangible assets acquired and approximately \$1.6 billion has been allocated to identifiable intangible assets acquired. The estimated useful lives assigned to customer relationships range from six to 13 years. The estimated useful lives assigned to proprietary software and the STAR<sub>sm</sub> tradename are five years and 25 years, respectively. The amortization related to identifiable intangible assets (excluding the \$46 million of purchased software) is reflected as a pro forma adjustment in the unaudited pro forma condensed combined consolidated statements of income.

Customer relationships represent Concord's presently existing contractual relationships in the Network Services and Payment Services segments. Certain of these contractual relationships are in various stages of being renegotiated. To the extent certain of these contractual relationships are not renewed, the value of such relationships in the final valuation will be different than the preliminary value.

Proprietary and other software primarily represents software being used in Concord's operations that is expected to be used by First Data.

Of the total estimated purchase price, approximately \$4.7 billion has been allocated to goodwill. Goodwill represents the excess of the purchase price for the acquired business over the fair value of the underlying net tangible and identifiable intangible assets. In accordance with Statement of Financial Accounting Standards No. 142, *Goodwill and Other Intangible Assets*, goodwill will not be amortized, but instead will be tested for impairment at least annually (more frequently if certain indicators are present). In the event management of the combined company determines that the value of goodwill has become impaired, the combined company will incur an accounting charge for the amount of impairment during the fiscal quarter in which the determination is made.

## **Note 2. Pro Forma Adjustments**

Pro forma adjustments are necessary to (i) reflect the estimated purchase price, (ii) adjust amounts related to Concord's identifiable intangible assets to a preliminary estimate of their fair values, (iii) reflect the amortization expense related to the estimated identifiable intangible assets, (iv) eliminate inter-company transactions between First Data and Concord and (v) reflect the income tax effect of the pro forma adjustments. In addition, certain reclassifications have been made to conform Concord's historical presentation to First Data's.

The unaudited pro forma condensed combined consolidated financial statements reflect NYCE Corporation as a discontinued operation because of the required divestiture under the proposed agreement with the Antitrust Division of the Department of Justice. The assets and liabilities of NYCE are classified as held for sale in the unaudited pro forma condensed combined consolidated balance sheet, and NYCE's results of operations are treated as income from discontinued operations, net of tax, and excluded from the unaudited pro forma condensed combined consolidated statements of income.

The unaudited pro forma condensed combined consolidated balance sheet does not include any fair value adjustments for assets and liabilities other than for borrowings to be repaid upon completion of the merger, a change of control payment which may be owed by Concord, the cash surrender value of split-dollar life insurance assumed to be paid to trusts and identifiable intangible assets. The fair value of the remaining assets and liabilities approximates Concord's book value and, therefore, no fair value adjustment is necessary. The fair value of these assets and liabilities is subject to change pending additional information that may come to our knowledge and restructuring decisions made upon



completion of the merger.

The unaudited pro forma condensed combined consolidated financial statements do not include any adjustments for liabilities resulting from restructuring activities, as management is assessing these activities and estimating the associated costs. First Data and Concord are competing in the marketplace and, as such, are restricted from sharing certain types of sensitive data until after the completion of the merger. With certain decisions being delayed by such restrictions, First Data's management expects to finalize the restructuring and integration plan shortly after the completion of the merger.

The costs of restructuring activities that will be recorded as liabilities assumed in the purchase business combination upon the completion of the merger will include the following:

closure of some Concord facilities due to the consolidation of duplicative functions;

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terminating some Concord contracts for services that are duplicative; and

severing some of the Concord employees associated with such facilities and other Concord employees in duplicative positions.

Other restructuring, merger and integration costs will be charged to expense as incurred. Such costs will not be recorded upon the completion of the merger and are not included in the unaudited pro forma condensed combined consolidated financial statements. These costs include, but are not limited to, the following:

closure of some First Data facilities due to the consolidation of duplicative functions;

terminating some First Data contracts for services that are duplicative;

severing some of the First Data employees associated with such facilities and other First Data employees in duplicative positions; and

migrating customers from either a Concord operating platform to a First Data operating platform or from a First Data operating platform to a Concord platform.

In addition, these pro forma condensed combined consolidated financial statements do not reflect any anticipated synergies that will occur subsequent to the completion of the merger.

Because these unaudited pro forma condensed combined consolidated financial statements have been prepared based on preliminary estimates of fair values and do not include liabilities which are not presently estimable, as discussed above, the actual amounts recorded as of the completion of the merger may differ materially from the information presented in these unaudited pro forma condensed combined consolidated financial statements. In addition to the receipt of the final valuation, the impact of ongoing integration activities, the timing of completion of the merger and other changes in Concord's net tangible and intangible assets which occur prior to completion of the merger could cause material differences in the information presented.

The pro forma and reclassification adjustments included in the unaudited pro forma condensed combined consolidated financial statements are as follows (in millions):

- (a) Historical Concord revenue amounts were reclassified to present revenues net of interchange and assessments charged by credit card associations, payments to independent sales organizations related to residual interests they have retained in certain merchant contracts and certain other fees.
- (b) Historical Concord revenue and expense amounts were reclassified according to First Data income statement classifications primarily relating to terminal equipment sales and reimbursable postage and other. In the third quarter of 2003, Concord began recognizing revenue from product sales when title to the equipment passes to the customer. Prior to the third quarter of 2003, Concord had recognized revenue from product sales when the equipment was shipped. This change in method of recognizing revenue did not necessitate a restatement of Concord's financial statements because the impact of the change was not material.

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- (c) An adjustment to reflect NYCE Corporation as a discontinued operation because of the required divestiture under the proposed agreement with the Antitrust Division of the Department of Justice. The assets and liabilities of NYCE are classified as held for sale and NYCE's results of operations are treated as income from discontinued operations, net of tax, and excluded from the unaudited pro forma condensed combined consolidated statements of income.
- (d) Adjustment to eliminate inter-company transactions between Concord and First Data and/or their consolidated affiliates primarily relating to Concord providing debit transaction and front-end processing to First Data, and First Data providing front-end processing and terminal equipment sales and services to Concord.

	<b>At September 30, 2003</b>	<b>For the Year-ended December 31, 2002</b>	<b>For the Nine months-ended September 30, 2002</b>	<b>For the Nine months-ended September 30, 2003</b>
To eliminate inter-company transaction and processing service fees		\$ (10.9)	\$ (6.2)	\$ (18.5)

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To eliminate inter-company cost of services	(10.9)	(6.2)	(18.5)
To eliminate inter-company receivable / payable	\$ (2.3)		

- (e) Adjustment to record the preliminary estimate of the fair value of Concord's identifiable intangible assets and the resulting adjustments to amortization expense:

	<i>Amortization Effect</i>			
	<u>At September 30, 2003</u>	<u>For the Year-ended December 31, 2002</u>	<u>For the Nine months-ended September 30, 2002</u>	<u>For the Nine months-ended September 30, 2003</u>
To reflect Concord's intangible assets at a preliminary estimate of fair value and related amortization expense	\$1,521.1	\$153.1	\$114.8	\$114.8
To eliminate Concord's historical intangible assets and related amortization expense	(241.8)	(32.5)	(21.6)	(29.5)
	<u>\$1,279.3</u>	<u>\$120.6</u>	<u>\$93.2</u>	<u>\$85.3</u>
To eliminate Concord's historical conversion assistance amortization expense recorded as contra-revenue				(6.1)

- (f) Adjustment to eliminate the \$7.5 million cash surrender value of split-dollar life insurance at September 30, 2003 and the related expense of \$2.2 million, \$0.3 million and \$0.2 million for the year-ended December 31, 2002 and the nine-months ended September 30, 2002 and 2003, respectively. The amended merger agreement contemplates that all split-dollar agreements will be terminated prior to completion of the merger. Concord expects to receive a minimum of \$1.6 million upon termination of the agreements. The remaining \$5.9 million will either be received by Concord or retained by trusts that benefit the families of the named executives. For purposes of the unaudited pro forma condensed combined consolidated balance sheet, the \$5.9 million is assumed to be paid to the trusts that benefit the families of such executives.

- (g) Adjustment to eliminate the revenues and expenses associated with Concord's retail banking activities as this business will be terminated prior to the completion of the merger.

	<u>For the Year-ended December 31, 2002</u>	<u>For the Nine months-ended September 30, 2002</u>	<u>For the Nine months-ended September 30, 2003</u>
To eliminate Concord's interest income on loans held by the bank	\$(2.5)	\$(2.5)	\$(0.1)
To eliminate Concord's interest expense on deposits held by the bank	(3.8)	(3.2)	(0.3)

- (h) Adjustment to reflect the \$80.0 million of estimated direct transaction costs, of which \$16.7 million has been incurred as of September 30, 2003 and recorded in First Data's other assets, and a corresponding reduction in interest income of \$1.4 million, \$1.1 million and \$0.8 million for the year-ended December 31, 2002 and the nine-months ended September 30, 2002 and 2003, respectively.

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- (i) Adjustment to reflect the repayment of the Federal Home Loan Bank ( FHLB ) balance at September 30, 2003 of \$165.1 million, and a corresponding reduction in interest income of \$2.9 million, \$2.2 million and \$1.7 million for the year-

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ended December 31, 2002 and the nine-months ended September 30, 2002 and 2003, respectively, and a reduction in interest expense of \$8.3 million, \$6.0 million and \$5.9 million for the year-ended December 31, 2002 and the nine-months ended September 30, 2002 and 2003, respectively. The repayment of the FHLB loan will occur upon the completion of the merger and will include a \$15.3 million market value premium. The repayment premium has been reflected in the fair value of the debt (see Note 1).

- (j) Adjustment to record the income tax effect of pro forma adjustments at a combined federal and state statutory tax rate of 37.3%. The effective tax rate of the combined company will be in excess of First Data's historical effective tax rate due to, among other potential factors, First Data's tax exempt investment income representing a lesser portion of the combined company's pre-tax income. First Data's and Concord's historical effective tax rates for 2002 were 25.9% and 35.1%, respectively.
- (k) Pro forma basic and diluted earnings per common share are based on the weighted average number of shares of First Data common stock outstanding during each period and the weighted average number of shares of Concord common stock outstanding during each period multiplied by the 0.365 exchange ratio. First Data historical and pro forma per-share amounts reflect the retroactive effect of the May 20, 2002 2-for-1 stock split that was distributed to First Data shareholders on June 4, 2002.
- (l) Adjustment to reflect the elimination of merger related transaction costs recognized by Concord.
- (m) Historical Concord cash, accounts receivable and accounts payable amounts related to settlement operations were reclassified to settlement assets and settlement liabilities.
- (n) Historical Concord interest receivable amounts were reclassified to accounts receivable.
- (o) Historical Concord capitalized and purchased software and customer conversion costs recorded in property and equipment and other assets were reclassified to other intangibles.
- (p) Historical Concord deferred tax assets were reclassified to accounts payable and other liabilities.
- (q) Adjustment to reflect an amount that will be payable by Concord on account of a change-of-control agreement with an unaffiliated third party that requires the payment of \$5.0 million, plus an additional amount of \$5.0 million depending on the amount of certain revenues during the six-month period immediately preceding the completion of the merger. For purposes of the unaudited pro forma condensed combined consolidated balance sheet, the \$10.0 million is assumed to be paid because Concord believes that a payment of such amount is probable as of September 30, 2003.
- (r) Adjustment to goodwill:

To reflect the initial purchase price in excess of the preliminary estimate of fair value of Concord's net assets	\$ 4,676.4
To eliminate Concord's historical goodwill	(265.0)
	<u>          </u>
	<u>\$ 4,411.4</u>

- (s) Adjustment to record the \$567.4 million deferred tax liability on the preliminary estimate of the fair value of identifiable intangible assets.

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- (t) Adjustment to eliminate Concord's historical stockholders' equity and reflect the issuance of First Data common stock and granting of First Data stock options as consideration pursuant to the merger:

To reflect the issuance of First Data common stock and granting of First Data stock options	\$ 6,864.8
To eliminate Concord's historical stockholders' equity	(1,852.7)
	<u>5,012.1</u>

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**CHAPTER THREE**

**INFORMATION ABOUT THE MEETING AND VOTING**

The Concord board of directors is using this proxy statement/prospectus to solicit proxies from the holders of Concord common stock for use at the special meeting of Concord's shareholders.

**Matters Relating to The Meeting**

*Time and Place.* Concord will hold a special meeting of stockholders on [•], 2004 at [•] local time, at [•].

*Purpose.* The purpose of the special meeting is to adopt the amended merger agreement and, by doing so, approve the proposed merger, and to transact such other business as may properly come before the special meeting and any adjournment or postponement of the special meeting.

*Record Date.* The record date for holders of shares entitled to vote is [•], 2004.

*Outstanding Shares Held.* As of [•], 2004, the record date for the special meeting, there were [•] shares of Concord common stock outstanding (excluding treasury stock).

*Shares Entitled to Vote.* Shares entitled to vote at the special meeting are Concord common stock as of the close of business on the record date, [•], 2004. Each share of Concord common stock is entitled to one vote. Shares held by Concord in its treasury are not voted.

*Quorum Requirement.* A quorum of shareholders is necessary to hold a valid meeting. The presence in person or by proxy at the meeting of holders of a majority of the issued and outstanding shares entitled to vote at the meeting is a quorum. Abstentions and broker non-votes count as present for establishing a quorum. Shares held by Concord in its treasury do not count toward a quorum. A broker non-vote occurs on an item when a broker is not permitted to vote on that item without instruction from the beneficial owner of the shares and no instruction is given.

*Shares Beneficially Owned by Concord Directors and Executive Officers as of [•], 2004.* Concord directors and officers beneficially owned and had the right to vote [•] shares of Concord common stock on the record date. These shares represent in total [•]% of the total voting power of Concord's voting securities outstanding and entitled to vote. For more information regarding beneficial ownership of Concord common stock by each current Concord director, certain executive officers of Concord and all directors and executive officers of Concord as a group, see Concord's proxy statement used in connection with its 2003 annual meeting of shareholders, which is incorporated by reference into this document.



**Vote Necessary to Approve the Proposal**

Adoption of the amended merger agreement requires the affirmative vote of at least a majority of the outstanding votes represented by the shares of Concord common stock. Abstentions and broker non-votes have the effect of a vote against the proposal.

Under New York Stock Exchange rules, if your broker holds your shares in its name, your broker may not vote your shares on the proposal to adopt the amended merger agreement absent instructions from you. Without your voting instructions on those items, a broker non-vote will occur.

**Proxies**

*Submitting Your Proxy.* If you are a shareholder of record, you may vote in person by ballot at the special meeting or by submitting a proxy. We recommend you submit your proxy even if you plan to attend the special meeting. If you attend the special meeting, you may vote by ballot, which cancels any proxy previously submitted. If your shares are held in the name of your bank, broker, custodian or other recordholder, you must obtain a proxy, executed in your favor, from the holder of record to be able to vote at the special meeting.

Voting instructions are included on your proxy card. If you properly give your proxy and submit it to us in time to vote, one of the individuals named as your proxy will vote your shares as you have directed. You may vote for or against the proposals or abstain from voting.

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### How To Vote By Proxy

*By Mail.* If you are a shareholder of record and choose to submit your proxy by mail, please mark each proxy card you receive, date and sign it, and return it in the prepaid envelope which accompanied that proxy card. If you are a beneficial owner, please refer to your proxy card or the information provided to you by your bank, broker, custodian or recordholder.

*By Telephone.* If you are a shareholder of record, you can submit your proxy by telephone by calling the toll-free telephone number on your proxy card. Telephone voting is available 24 hours a day and will be accessible until [•] (C.T.) on [•], 2004. Easy-to-follow voice prompts allow you to submit your proxy and confirm that your instructions have been properly recorded. Our telephone voting procedures are designed to authenticate shareholders by using individual control numbers. If you are a beneficial owner, please refer to your proxy card or the information provided by your bank, broker, custodian or recordholder for information on telephone voting. **If you submit your proxy by telephone, please do not mail your proxy card. If you are located outside the United States, Canada and Puerto Rico, see your proxy card or other materials for additional instructions. If you hold shares through a broker or other custodian, please check the voting form used by that firm to see if it offers telephone voting.**

If you sign and date your proxy but do not make specific choices, your proxy will follow the Concord board of director recommendations and vote your shares FOR adoption of the amended merger agreement and FOR any proposal by the board of directors to adjourn the special meeting.

*Revoking Your Proxy.* You may revoke your proxy at any time prior to the time your shares are voted. If you are a shareholder of record, your proxy can be revoked in several ways:

by timely delivery of a written revocation to Concord's secretary;

by submitting another valid proxy bearing a later date; or

by attending the special meeting and voting your shares in person.

If your shares are held in the name of your bank, broker, custodian or other recordholder, you must contact the holder of record in order to revoke your proxy.

*Proxy Solicitation.* In addition to this mailing, proxies may be solicited by directors, officers or employees of First Data and Concord in person or by telephone or electronic transmission. None of the directors, officers or employees will be directly compensated for such services. Concord has retained Georgeson Shareholder Communications, Inc. to assist in the distribution and solicitation of proxies. Concord will pay Georgeson Shareholder Communications, Inc. a base fee of \$[•] (excluding fees for additional shareholder services), plus reasonable expenses, for these services.

The extent to which these proxy soliciting efforts will be necessary depends entirely upon how promptly proxies are submitted. You should submit your proxy without delay by mail or by telephone. We also reimburse brokers and other nominees for their expenses in sending these

materials to you and getting your voting instructions.

Do not send in any stock certificates with your proxy cards. The exchange agent will mail to you transmittal forms with instructions for the surrender of stock certificates for Concord common stock as soon as practicable after the completion of the merger.

**Other Business; Adjournments**

We are not currently aware of any other business to be acted upon at the special meeting. If, however, other matters are properly brought before the special meeting, or any adjourned meeting, your proxies include discretionary authority on the part of the individuals appointed to vote your shares or act on those matters according to their best judgment, including to adjourn the special meeting.

Adjournments may be made for the purpose of, among other things, soliciting additional proxies. Any adjournment may be made from time to time by approval of the holders of shares representing a majority of the votes present in person or by proxy at the special meeting, whether or not a quorum exists, without further notice

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other than by an announcement made at the special meeting. We do not currently intend to seek an adjournment of the special meeting.

**Shareholder Account Maintenance**

Concord's transfer agent is Equiserve Trust Company, N.A. All communications concerning accounts of Concord shareholders of record, including address changes, name changes, inquiries as to requirements to transfer shares of common stock and similar issues can be handled by calling the Concord Investor Relations department at (302) 791-8111, or by visiting Equiserve Trust Company, N.A.'s web site at [www.equiserve.com](http://www.equiserve.com). For other information about Concord, shareholders can visit Concord's web site at [www.concordefs.com](http://www.concordefs.com).

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## CHAPTER FOUR

## CERTAIN LEGAL INFORMATION

## COMPARISON OF FIRST DATA/CONCORD SHAREHOLDER RIGHTS

The rights of Concord shareholders under the Delaware General Corporation Law, the Concord restated certificate of incorporation and the Concord by-laws prior to the completion of the merger are similar to the rights that they will have as First Data shareholders following the completion of the merger under the Delaware General Corporation Law, the First Data second amended and restated certificate of incorporation and the First Data by-laws. Below we have summarized the material differences between the current rights of Concord shareholders and the rights those shareholders will have as First Data shareholders following the merger.

Copies of the Concord restated certificate of incorporation, the Concord by-laws, the First Data second amended and restated certificate of incorporation and the First Data by-laws are incorporated by reference and will be sent to holders of shares of Concord common stock upon request. See [Where You Can Find More Information](#). The summary in the following chart is not complete and it does not identify all differences that may, under given situations, be material to shareholders and is subject in all respects, and is qualified by reference to the Delaware General Corporation Law, the Concord restated certificate of incorporation, the Concord by-laws, the First Data second amended and restated certificate of incorporation and the First Data by-laws.

	<u>First Data Shareholder Rights</u>	<u>Concord Shareholder Rights</u>
<i>Corporate Governance:</i>	Upon completion of the merger, the rights of First Data and former Concord shareholders will be governed by the DGCL, First Data's second amended and restated certificate of incorporation and First Data's by-laws. The second amended and restated certificate of incorporation and by-laws of First Data after the merger will be identical in all respects to those of First Data prior to the merger.	The rights of Concord shareholders are currently governed by the DGCL, Concord's restated certificate of incorporation and Concord's by-laws.
<i>Authorized Capital Stock:</i>	The authorized capital stock of First Data is discussed under <a href="#">Description of First Data Capital Stock</a> <a href="#">Authorized Capital Stock</a> .	The authorized capital stock of Concord consists of 1.5 billion shares of common stock, par value \$0.33 1/3 per share.
<i>Number of Directors:</i>	The First Data board of directors currently consists of 11 directors. The directors are divided into three classes, each class consisting as nearly as possible of one-third of the total number of directors, subject to certain exceptions included in First Data's second amended and restated certificate of incorporation. Directors are elected for three year terms, with one class of directors up for election each year.	The Concord board of directors currently consists of 12 directors.  Under Concord's by-laws, the number of directors shall not be fewer than one nor greater than 13, with the exact number to be determined by resolution of the board of directors or by the shareholders at the annual meeting of shareholders.

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Under First Data's second amended and restated certificate of incorporation, the number of directors shall consist of no less than one nor more than 15, with the exact number to be determined from time

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	<b>First Data Shareholder Rights</b>	<b>Concord Shareholder Rights</b>
	<p>to time by resolution adopted by an affirmative vote of the majority of the entire board of directors.</p> <p>At or prior to the completion of the merger, First Data will expand its board of directors by one member and, immediately prior to the completion of the merger, appoint an existing Concord director (whose selection will be mutually agreed to by First Data and Concord) to fill that vacancy.</p>	
<i>Rights of Preferred Shareholders:</i>	<p>First Data has not issued any of its authorized preferred stock.</p>	<p>Concord has not authorized or issued any preferred stock.</p>
<i>Nomination of Directors for Election:</i>	<p>First Data's by-laws provide that nominations for directors may be made at annual meetings by the board of directors or by a shareholder who complies with the notice procedures in First Data's by-laws. A shareholder who nominates a director must be a shareholder of record on the date that he or she gives the nomination notice to First Data and on the record date for the determination of shareholders entitled to vote at the annual meeting where the director will be voted on.</p> <p>The notice procedure in First Data's by-laws requires that a shareholder's notice must be given timely and in proper written form to First Data's Secretary.</p> <p>In order to be timely, the notice must be delivered to or mailed and received at First Data's principal executive offices:</p> <p style="padding-left: 40px;">not less than 90 days nor more than 120 days prior to the anniversary date of the immediately preceding year's annual meeting; or</p> <p style="padding-left: 40px;">if the annual meeting is called for a date that is not within 30 days before or after the anniversary date of the preceding year's meeting, the shareholder's notice must be received no later than the close of business on the tenth day following the day on which the</p>	<p>Neither Concord's restated certificate of incorporation nor its by-laws establish procedures for the nomination of directors. However, the proxy rules of the SEC state that for a shareholder proposal to be included in the annual meeting, including a proposal for the nomination of directors, notice must be given to Concord not less than 120 days before the date of the company's proxy statement was released to shareholders in connection with the previous year's annual meeting. If the submission is for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and mail its proxy materials.</p>

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	<b>First Data Shareholder Rights</b>	<b>Concord Shareholder Rights</b>
	<p>notice of the annual meeting date was mailed to shareholders or when public disclosure of the date of the meeting was made, whichever occurred first.</p>	
	<p>To be in proper written form, the notice must include, among other things, information on the nominating shareholder and information regarding the nominee required by the proxy rules of the SEC. The notice also must be accompanied by a written consent of the proposed nominee consenting to being named as a nominee and to serving as a director if elected.</p>	
<i>Election of Directors:</i>	<p>First Data's by-laws provide that directors are elected by a plurality of the votes of shares present or represented by proxy at the meeting and entitled to vote on the election.</p>	<p>Concord's by-laws provide that directors are elected by a plurality of the votes of shares present or represented by proxy at the meeting and entitled to vote on the election.</p>
<i>Vacancies on the Board of Directors:</i>	<p>First Data's by-laws provide that vacancies of the board of directors be filled in accordance with Delaware law, except that vacancies and newly created directorships resulting from an increase in the authorized number of directors may only be filled by the vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director. If the board of directors fills any vacancy, the new director's term expires at the next election for the director's class.</p>	<p>Concord's by-laws provide that vacancies of the board of directors may be filled only by the affirmative vote of a majority of the remaining directors, although more or less than a quorum of the board of directors. If the board of directors fills a vacancy, the director's term shall be for the remainder of the unexpired term. Where a vacancy is created by increasing the number of directors, the vacancy may be filled by the affirmative vote of a majority of the directors or at the annual meeting of shareholders or at a special meeting called for that purpose.</p>
<i>Removal of Directors:</i>	<p>First Data's second amended and restated certificate of incorporation states that a director may be removed only by the holders of a majority of shares of common stock then entitled to vote at an election of directors and only for cause.</p>	<p>Concord's by-laws state that any director may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors.</p>
<i>Call of Special Meeting of Directors:</i>	<p>First Data's by-laws allow the Chairman of the Board, the Controlling Officer or any directors to call a special meeting with notice by mail 48 hours in advance, by telephone, telegram or in person 24 hours in advance, or shorter notice where the person or persons calling the meeting deem it necessary or</p>	<p>Concord's by-laws allow the Chairman of the Board, the President or the Secretary (upon written request by any two directors) to call a special meeting on two days' notice or a shorter period of time as would be sufficient for the convenient assembly of the directors.</p>



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	<b>First Data Shareholder Rights</b>	<b>Concord Shareholder Rights</b>
	appropriate.	
<i>Indemnification of Directors:</i>	<p>First Data's second amended and restated certificate of incorporation includes an indemnification provision under which First Data is required to indemnify directors, officers, employees or agents of First Data, or those serving as such at another entity at the request of First Data, to the fullest extent permitted under Delaware law. First Data is required to pay, in advance, any expenses a director incurs in defending a civil or criminal suit, and may do the same for officers, trustees, employees or agents, as authorized by the board of directors. Directors are not personally liable to First Data or any shareholder for monetary damages for breach of fiduciary duty unless the director is liable for unlawful payment of dividends or unlawful stock purchase or redemption or unless the director breached his or her duty of loyalty, did not act in good faith, engaged in intentional misconduct or derived an improper personal benefit. These indemnity provisions survive repeal or amendment for claims arising out of periods in which the provisions were effective. Under First Data's by-laws, First Data will indemnify each person made a party to any action, suit or proceeding as a result of being or having been a director, officer or employee of the corporation, or serving or having served as a director, trustee, officer, employee or agent to another entity at First Data's request for expenses, judgments, fines and amounts paid in settlement and reasonably incurred by the person in connection with his or her defense of any action if:</p> <ul style="list-style-type: none"> <li>the person acted in good faith and in a manner that the person reasonably believed to be in or not opposed to the best interests of First Data; and</li> <li>with respect to any criminal action, the person must not have had reasonable cause to believe</li> </ul>	<p>Concord's restated certificate of incorporation includes an indemnification provision under which Concord's directors will not be personally liable to Concord or its shareholders for monetary damages for breach of fiduciary duties except, to the extent required by applicable law, for any breach of the director's duty of loyalty to Concord or its shareholders, for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, for unlawful payment of dividends or unlawful stock purchase or redemption, or any transaction from which the director derived an improper personal benefit. Under Concord's by-laws, Concord will indemnify against all reasonably incurred expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement), each person made or threatened to be made a party to any action, suit or proceeding as a result of being or having been a director or officer of the Concord, or serving or having served as a director, trustee, officer, employee or agent of another entity at Concord's request. Where these actions are initiated by the individual or individuals seeking indemnification, Concord will indemnify only if the action was authorized by the Concord board of directors. In addition, Concord may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent against any expense, liability or loss, whether or not Concord would have the power to indemnify for the expense, liability or loss.</p> <p>Note, however, that federal banking regulations restrict the ability of Concord to indemnify its directors and officers in connection with civil or administrative proceedings initiated by one of the federal</p>

banking agencies.

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**First Data Shareholder Rights**

**Concord Shareholder Rights**

his or her conduct was unlawful.

However, in actions brought by First Data or in First Data's right, First Data will not indemnify for (i) judgments, fines and amounts paid in settlement, or (ii) any expenses if the director or officer is found to be liable to First Data unless the court determines that the person fairly and reasonably is entitled to indemnity for such expenses as the court deems proper. In addition, First Data may purchase insurance for such individuals whether or not it would have the power to indemnify for such expense.

*Call of Special Meetings of Shareholders:*

First Data's by-laws provide that a special meeting of First Data's shareholders may be called by the Chairman of the Board, the Chief Executive Officer, the President, the Secretary, the Chairman of the Executive Committee or any officer at the request in writing of a majority of the board of directors. Written notice must be given not less than ten nor more than sixty days before the date of the special meeting.

Concord's by-laws provide that a special meeting of shareholders may be called by the board of directors, the Chairman of the Board, the President or any Vice President. Written notice, stating the time and place and object of the special meeting, must be given not less than ten nor more than sixty days before the date of the special meeting. To be transacted at the meeting, any business item must have been referred to in the proper notice or supplement to the proper notice or be germane or supplementary to such business items.

*Shareholders Proposals:*

First Data's by-laws provide that in order for a shareholder to bring business before the annual meeting, the shareholder must give timely notice in proper written form to First Data's Secretary. To be timely, a shareholder's notice must be delivered or mailed and received at First Data's principal executive offices:

Concord's by-laws provide that any business may be transacted at the annual meeting, irrespective of whether or not notice was provided, unless notice is required by law.

Concord's by-laws do not provide that a shareholder may bring business before a special meeting.

not less than 90 days nor more than 120 days prior to the anniversary date of the previous year's annual meeting; or

if the annual meeting is called for a date that is not within 30 days before or after the anniversary date of the prior year's meeting, by the close of business on the tenth day following the date on which the

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	<b>First Data Shareholder Rights</b>	<b>Concord Shareholder Rights</b>
	<p>notice of the annual meeting was mailed to shareholders or when public disclosure of the date of the meeting was made, whichever occurs first.</p>	
	<p>To be in proper written form, the notice must include, among other things, a brief description of the shareholder proposal and the reasons for making the proposal. The shareholder making the proposal must have been a shareholder of record on the date of the giving of this notice and on the record date for the determination of shareholders entitled to vote at the meeting.</p>	
<i>Shareholder Action by Written Consent:</i>	<p>First Data's second amended and restated certificate of incorporation prohibits shareholder action by written consent.</p>	<p>Delaware law and Concord's by-laws allow for shareholder action by written consent of the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote were present and voted. No prior notice of such action is required.</p>
<i>Appointment and Removal of Officers:</i>	<p>First Data's by-laws provide that the officers be chosen by the board of directors. Officers shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the board of directors and all officers shall hold office until their successors are chosen and qualified, or until their earlier resignation or removal. Any vacancy occurring in any office shall be filled by the board of directors.</p>	<p>Concord's by-laws provide that the officers shall be chosen by the board of directors. Officers shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the board of directors. Each officer shall hold office until his successor is chosen or qualified, or until his earlier resignation or removal. Any officer elected or appointed by the board of directors may be removed at any time by the board of directors.</p>

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<p><i>Anti-Takeover Provisions and Interested Shareholders:</i></p>	<p>First Data has elected not to be governed by Section 203 of the Delaware General Corporation Law in its second amended and restated certificate of incorporation.</p>	<p>Concord has not opted out of the provisions of Section 203 of the Delaware General Corporation Law. Section 203 prohibits, in certain circumstances, a business combination between the corporation and an interested shareholder for a period of three years following the time that the shareholder became an interested shareholder. An interested shareholder is (i) a person who, directly or indirectly, controls 15% or more of the outstanding voting shares or (ii) a person who is an affiliate of the corporation and was the owner of 15% or more of the outstanding voting shares at any time within the prior three-year period, and the affiliates and associates of this person. A business combination includes (i) a merger or consolidation of the corporation with or caused by an interested shareholder, (ii) a sale or other disposition of assets having an aggregate market value equal to 10% or more of (a) the aggregate market value of the consolidated assets of the corporation or (b) the aggregate market value of the outstanding shares of the corporation and (iii) certain transactions that would increase the interested shareholder's proportionate share ownership in the corporation.</p>
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This provision does not apply where: (i) the business combination or the transaction that resulted in the shareholder becoming an interested shareholder is approved by the corporation's board of directors prior to the time the interested shareholder acquired his or her 15% interest; (ii) upon completion of the transaction which resulted in the shareholder becoming an interested shareholder, the interested shareholder owned at least 85% of the outstanding voting shares of the corporation (excluding shares owned by persons who are directors and also officers and by certain employee stock plans); (iii) the business combination is approved by the board of directors and authorized at an annual or special meeting of shareholders by the affirmative vote

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of at least two-thirds of the outstanding voting shares which are not owned by the interested shareholder; (iv) the corporation does not have a class of voting shares that is listed on a national securities exchange, authorized for quotation on NASDAQ, or held of record by more than 2,000 shareholders unless any of the foregoing results from action taken, directly or indirectly, by an interested shareholder or from a transaction in which a person becomes an interested shareholder; (v) the corporation effectively elects not to be governed by this provision; or (vi) in certain other limited circumstances. Concord has not taken action to elect not to be governed by this provision.

Concord's by-laws state that no contract or transaction between Concord and one or more of its directors or officers, or between Concord and any other corporation, partnership, association or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for conflict of interest, or solely because the director or officer is present at or participates in the meeting of the board of directors or committee of the board of directors which authorized the contract or transaction, or solely because his, her or their votes are counted for such purpose, if: (1) the material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the Concord board of directors or committee of the board of directors and the transaction is then approved in good faith by the affirmative vote of a majority of the disinterested directors, even if less than a quorum, (2) the material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the shareholders entitled to vote on the contract or transaction, and the contract or transaction is specifically approved in good faith by vote of these shareholders or (3)

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		the contract or transaction is fair as to Concord as of the time it is authorized, approved or ratified by the board of directors, a committee of the board of directors or the shareholders.
<i>Amendment to Certificate of Incorporation and By-laws:</i>	First Data's second amended and restated certificate of incorporation may generally be amended by the board of directors adopting a resolution setting forth the amendment proposed, followed by the affirmative vote of the majority of the outstanding shares. However, an affirmative vote of more than 80% of the voting power of voting stock of First Data then outstanding is required to amend the prohibition of shareholder action by written consent.	Concord's restated certificate of incorporation may generally be amended by the board of directors adopting a resolution setting forth the amendment proposed, followed by the affirmative vote of the majority of the outstanding shares at a special or annual meeting.
	First Data's by-laws may be amended by a vote of a majority of the outstanding shares of First Data common stock or by a majority of the board of directors.	Concord's by-laws may be amended by a majority of the outstanding shares of Concord common stock or by majority vote of the board of directors.
<i>Shareholder Rights Plan:</i>	None.	None.

**DESCRIPTION OF FIRST DATA CAPITAL STOCK**

The following summary of the terms of the capital stock of First Data before and after the merger is not meant to be complete and is qualified by reference to First Data's second amended and restated certificate of incorporation and First Data's by-laws. Copies of First Data's second amended and restated certificate of incorporation and First Data's by-laws are incorporated by reference and will be sent to shareholders of Concord upon request. See [Where You Can Find More Information](#).

**Authorized Capital Stock**

Under its second amended and restated certificate of incorporation, First Data has the authority to issue 2,000,000,000 shares of common stock, par value \$0.01 per share, and 10,000,000 shares of preferred stock, par value \$1.00 per share. As of [●], 2004, there were issued and outstanding [●] shares of First Data common stock (excluding treasury stock). No shares of preferred stock are currently outstanding.

**First Data Common Stock**

*First Data Common Stock Outstanding.* The outstanding shares of First Data common stock are, and the shares of First Data common stock issued pursuant to the merger will be, duly authorized, validly issued, fully paid and non-assessable. The rights, preferences and privileges of holders of First Data common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of First Data preferred stock which First Data may designate and issue in the future. Shares of First Data common stock may be certificated or

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uncertificated, as provided by the Delaware General Corporation Law.

*Voting Rights.* Each holder of First Data common stock is entitled to one vote for each share held on all matters submitted to a vote of shareholders of First Data and does not have cumulative voting rights. Accordingly, holders of a majority of the shares of First Data common stock entitled to vote in any election of directors of First Data may elect all of the directors standing for election.

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*Dividend Rights.* The holders of First Data common stock are entitled to receive dividends, if any, as may be declared by the First Data board of directors out of funds legally available for the payment of dividends, subject to any preferential dividend rights of outstanding First Data preferred stock. Upon the liquidation, dissolution or winding up of First Data, the holders of First Data common stock are entitled to share pro rata in the net assets of First Data available after the payment of all debts and other liabilities and subject to the prior rights of any outstanding First Data preferred stock.

*Preemptive Rights.* Under its second amended and restated certificate of incorporation, the holders of First Data common stock have no preemptive, subscription, redemption or conversion rights.

## **First Data Preferred Stock**

*First Data Preferred Stock Outstanding.* As of the date of this proxy statement/prospectus, no shares of First Data preferred stock were issued and outstanding.

*Blank Check Preferred Stock.* Under its second amended and restated certificate of incorporation, the First Data board of directors has the authority to issue preferred stock in one or more classes or series, and to fix for each class or series the voting powers and the distinctive designations, preferences and relative, participation, optional or other special rights and such qualifications, limitations or restrictions, as may be stated and expressed in the resolution or resolutions adopted by the First Data board of directors providing for the issuance of such class or series as may be permitted by the Delaware General Corporation Law, including dividend rates, conversion rights, terms of redemption and liquidation preferences and the number of shares constituting each such class or series, without any further vote or action by the shareholders of First Data.

## **Transfer Agent and Registrar**

Wells Fargo Bank Minnesota, National Association, is the transfer agent and registrar for the First Data common stock.

## **LEGAL MATTERS**

Thomas A. Rossi, Esq., First Data's Associate General Counsel, has opined on the validity of the First Data common stock to be issued to Concord shareholders pursuant to the merger. As of December 1, 2003, Mr. Rossi beneficially owned 41,110 shares of First Data common stock. It is a condition to the completion of the merger that each of First Data and Concord receive an opinion from their respective counsel with respect to the tax treatment of the merger.

## **EXPERTS**

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The consolidated financial statements of First Data appearing in First Data's Annual Report (Form 10-K) for the year ended December 31, 2002, have been audited by Ernst & Young LLP, independent auditors, as discussed in their report included in First Data's Annual Report (Form 10-K) and incorporated in this proxy statement/prospectus by reference. Such consolidated financial statements are incorporated in this proxy statement/prospectus by reference in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

With respect to the unaudited condensed consolidated interim financial information of First Data for the nine-month periods ended September 30, 2003 and September 30, 2002, incorporated in this proxy statement/prospectus by reference, Ernst & Young LLP have reported that they have applied limited procedures in accordance with professional standards for a review of such information. However, their separate report, included in First Data's Quarterly Report on Form 10-Q for the quarter ended September 30, 2003, and incorporated in this proxy statement/prospectus by reference, states that they did not audit and they do not express an opinion on that interim financial information. Accordingly, the degree of reliance on their report on such information should be restricted considering the limited nature of the review procedures applied. The independent auditors are not subject to the liability provisions of Section 11 of the Securities Act of 1933 for their report on the unaudited interim financial information because that report is not a report or a part of the registration statement prepared or certified by the auditors within the meaning of Sections 7 and 11 of the Securities Act of 1933.

The consolidated financial statements of Concord appearing in Concord's Annual Report (Form 10-K) for the year ended December 31, 2002, have been audited by Ernst & Young LLP, independent auditors, as discussed in

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their report included in Concord's Annual Report (Form 10-K) and incorporated in this proxy statement/prospectus by reference. Such consolidated financial statements are incorporated in this proxy statement/prospectus by reference in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

The consolidated financial statements of Star Systems, Inc. and subsidiaries for the year ended December 31, 2000, not presented separately in this proxy statement/prospectus, have been audited by Deloitte & Touche LLP, as stated in their report included in Concord's 2002 Annual Report on Form 10-K, and incorporated in this proxy statement/prospectus by reference. Such consolidated financial statements are incorporated in this proxy statement/prospectus by reference in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

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**CHAPTER FIVE**

**ADDITIONAL INFORMATION FOR SHAREHOLDERS**

**FUTURE CONCORD SHAREHOLDER PROPOSALS**

Concord does not currently expect to hold a 2004 annual meeting of shareholders because Concord will not be a separate public company if the merger has been completed. If the merger is not completed and such a meeting is held, Concord shareholders may propose matters to be presented at the 2004 annual meeting of shareholders and also may nominate persons to be directors. To be considered for inclusion in Concord's 2004 proxy statement, shareholder proposals must have been delivered to Concord on or before December 23, 2003. Any shareholder proposal to be considered at the 2004 annual meeting, but not to be included in the proxy statement, must be submitted in writing by March 16, 2004 or the persons appointed as proxies may exercise their discretionary voting authority with respect to the proposal.

The Corporate Governance & Nominating Committee will review all director nominees recommended by Concord shareholders. Concord shareholders should submit recommendations for director nominees in writing to Office of the General Counsel, Concord EFS, Inc., 5775 Summer Trees Drive, Memphis, Tennessee 38134.

**WHERE YOU CAN FIND MORE INFORMATION**

First Data and Concord file annual, quarterly and special reports, proxy statements and other information with the SEC. You may read and copy any reports, statements or other information we file at the SEC's Public Reference Room located at 450 Fifth Street, N.W., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the Public Reference Room. Our SEC filings also are available to the public from commercial document retrieval services and at the web site maintained by the SEC at [www.sec.gov](http://www.sec.gov).

First Data has filed a registration statement on Form S-4 to register with the SEC the First Data common stock to be issued to Concord shareholders upon completion of the merger. This proxy statement/prospectus is a part of that registration statement and constitutes a prospectus of First Data in addition to being a proxy statement of Concord for the special meeting. As allowed by SEC rules, this proxy statement/prospectus does not contain all the information you can find in the registration statement or the exhibits to the registration statement.

The SEC allows us to incorporate by reference information into this proxy statement/prospectus, which means that we can disclose important information to you by referring you to another document filed separately with the SEC. The information incorporated by reference is deemed to be part of this proxy statement/prospectus, except for any information superseded by information in, or incorporated by reference in, this proxy statement/prospectus. This proxy statement/prospectus incorporates by reference the documents listed below that we have previously filed with the SEC. These documents contain important information about our companies and their finances.

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**First Data SEC filings (File No. 001-11073)**

**Period**

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Annual Report on Form 10-K

Fiscal Year ended December 31, 2002

Quarterly Reports on Form 10-Q

Quarters ended March 31, 2003, June 30, 2003 and September 30, 2003

Current Reports on Form 8-K

Filed on March 4, 2003, March 6, 2003, April 2, 2003, July 23, 2003, July 28, 2003, August 26, 2003, October 21, 2003, October 23, 2003, October 24, 2003, October 24, 2003, December 5, 2003 and December 15, 2003

Proxy Statement on Schedule 14A

Filed on April 7, 2003

The description of the rights agreement, contained in the registration statement on Form 8-A filed pursuant to Section 12 of the Securities Exchange Act of 1934, including any amendment or report filed with the SEC for the purpose of updating this description

Filed on March 24, 1992

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<b>Concord SEC filings (File No. 001-31527)</b>	<b>Period</b>
Annual Report on Form 10-K	Fiscal Year ended December 31, 2002
Quarterly Reports on Form 10-Q	Quarters ended March 31, 2003, June 30, 2003 and September 30, 2003
Current Report on Form 8-K	Filed on April 2, 2003, October 23, 2003, October 24, 2003, October 24, 2003, October 28, 2003 and December 15, 2003
Proxy Statement on Schedule 14A	Filed on April 21, 2003
The description of the Concord common stock, contained in the registration statement on Form 8-A filed pursuant to Section 12 of the Securities Exchange Act of 1934, including any amendment or report filed with the SEC for the purpose of updating this description	Filed on November 4, 2002

We also are incorporating by reference additional documents that First Data and Concord file with the SEC under Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 between the date of this proxy statement/prospectus and the date of the meeting.

All information contained or incorporated by reference in this proxy statement/prospectus relating to First Data has been supplied by First Data, and all information about Concord has been supplied by Concord.

If you are a shareholder, we may have sent you some of the documents incorporated by reference, but you can obtain any of them through us or the SEC. Documents incorporated by reference are available from us without charge, excluding all exhibits unless we have specifically incorporated by reference an exhibit in this proxy statement/prospectus. Shareholders may obtain documents incorporated by reference in this proxy statement/prospectus by requesting them in writing or by telephone from the appropriate party at the following address:

**First Data Corporation**

Investor Relations Department

6200 South Quebec Street

Greenwood Village, CO 80111

(303) 967-6756

**Concord EFS, Inc.**

Investor Relations

1100 Carr Road

Wilmington, DE 19809

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(302) 791-8111

If you are a Concord shareholder and would like to request documents from Concord, please do so by [•], 2004 to receive them before the special meeting.

You also can get more information by visiting First Data's web site at [www.firstdata.com](http://www.firstdata.com) and Concord's web site at [www.concordefs.com](http://www.concordefs.com). Web site materials are not part of this proxy statement/prospectus.

**You should rely only on the information contained or incorporated by reference in this proxy statement/prospectus to vote on the proposals to Concord's shareholders in connection with the merger. We have not authorized anyone to provide you with information that is different from what is contained in this proxy statement/prospectus. This proxy statement/prospectus is dated [•], 2004. You should not assume that the information contained in this proxy statement/prospectus is accurate as of any date other than such date, and neither the mailing of this proxy statement/prospectus to shareholders nor the issuance of shares of First Data common stock as contemplated by the amended merger agreement shall create any implication to the contrary.**

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**AMONG**

**FIRST DATA CORPORATION,**

**MONACO SUBSIDIARY CORPORATION**

**AND**

**CONCORD EFS, INC.**

**DATED AS OF APRIL 1, 2003**



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**AGREEMENT AND PLAN OF MERGER**

AGREEMENT AND PLAN OF MERGER, dated as of April 1, 2003 (this Agreement ) among First Data Corporation, a Delaware corporation (Parent ), Monaco Subsidiary Corporation, a Delaware corporation and a wholly owned subsidiary of Parent (Sub ), and Concord EFS, Inc., a Delaware corporation (the Company ) (Sub and the Company being hereinafter collectively referred to as the Constituent Corporations ). Except as otherwise set forth herein, capitalized (and certain other) terms used herein shall have the meanings set forth in Section 1.1.

**WITNESSETH:**

WHEREAS, the respective Boards of Directors of Parent, Sub and the Company have each approved the merger of Sub with and into the Company (the Merger ), upon the terms and subject to the conditions set forth in this Agreement, whereby the issued and outstanding shares of Common Stock, par value \$0.33 1/3 per share, of the Company ( Company Common Stock, and the shares of Company Common Stock are hereinafter referred to as the Shares ), other than Shares held directly or indirectly by Parent, Sub or the Company (other than such Shares held by Parent, Sub or the Company in a fiduciary, collateral, custodial or similar capacity), will be converted into shares of Common Stock, par value \$0.01 per share, of Parent (the Parent Shares );

WHEREAS, the Board of Directors of the Company has determined that this Agreement is advisable to the Company's stockholders and has recommended that the Company's stockholders adopt this Agreement;

WHEREAS, the Board of Directors of Parent has determined that this Agreement is advisable to Parent's stockholders and has recommended that Parent's stockholders approve the issuance of Parent Shares in the Merger;

WHEREAS, for federal income Tax purposes, it is intended that the Merger shall qualify as a reorganization within the meaning of Section 368(a) of the Code; and

WHEREAS, Parent, Sub and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Merger and also to prescribe various conditions to the Merger.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Parent, Sub and the Company hereby agree as follows:

**ARTICLE I**

**INTERPRETATION; DEFINITIONS**

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Section 1.1 Interpretation: Definitions. When a reference is made in this Agreement to an Article or a Section, such reference shall be to an Article or a Section of this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words include, includes or including are used in this Agreement, they shall be deemed to be followed by the words without limitation. As used in this Agreement, the phrase made available shall mean that the information referred to has been made available if requested by the party to whom such information is to be made available.

As used in this Agreement, the following terms have the meanings specified or referred to in this Section 1.1 and shall be equally applicable to both the singular and plural forms. Any agreement referred to below shall mean such agreement as amended, supplemented or modified from time to time to the extent permitted by the applicable provisions thereof and by this Agreement.

Acquisition Agreement shall have the meaning set forth in Section 6.2(a).

Affiliate shall have the meaning as defined in Rule 12b-2 under the Exchange Act.

Agreement means this Agreement and Plan of Merger among Parent, Sub and the Company.

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**Alliance** shall mean any venture (in any form, including in corporate, partnership or limited liability company form) or contractual alliance between Parent or any of its Affiliates and one or more third parties (i) pursuant to which any such third party venturer or party has the contractual or other legal right to block major actions by such venture or contractual alliance or (ii) to whom Parent or any of its Affiliates owe a fiduciary duty.

**Applicable Law** means all applicable laws, statutes, orders, rules, regulations and all applicable legally binding policies or guidelines promulgated, or judgments, decisions or orders entered, by any Governmental Entity.

**Bank Act** means the Bank Holding Company Act of 1956, as amended, together with the rules and regulations promulgated thereunder.

**Bank Regulatory Authorities** means one or more of the following: the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Colorado Division of Banking or the Tennessee Department of Financial Institutions.

**Benefit Plan** means any bonus, pension, profit sharing, deferred compensation, incentive compensation, stock ownership, stock purchase, stock option, restricted stock, phantom stock, stock appreciation or other equity-based compensation, retirement, vacation, severance, disability, death benefit, hospitalization, medical or other plan, program or arrangement providing compensation or benefits to or in respect of any current or former employee, officer or director of the Company or Parent, as the case may be, or any of their respective Subsidiaries.

**Certificate of Merger** shall have the meaning set forth in Section 2.3.

**Certificates** shall have the meaning set forth in Section 3.3(b).

**Closing Date** shall have the meaning set forth in Section 2.2.

**Code** means the Internal Revenue Code of 1986, as amended.

**Company** shall have the meaning set forth in the introductory paragraph of this Agreement.

**Company Common Stock** shall have the meaning set forth in the first recital provision of this Agreement.

**Company Filed SEC Documents** means the documents (but excluding the exhibits thereto) filed by the Company with the SEC and publicly available since December 31, 2000 and prior to the execution of this Agreement.

**Company Letter** means the letter from the Company to Parent dated the date hereof, which letter relates to this Agreement and is designated therein as the Company Letter.

**Company Material Contract** shall have the meaning set forth in Section 4.18.

**Company Permits** shall have the meaning set forth in Section 4.9(a).

**Company SEC Documents** shall have the meaning set forth in Section 4.6.

**Company Stock Options** shall have the meaning set forth in Section 4.3.

**Company Stock Plans** shall have the meaning set forth in Section 4.3.

**Company Stockholder Approval** shall have the meaning set forth in Section 7.3(a).

**Company Stockholders Meeting** shall have the meaning set forth in Section 7.3(a).



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**Compensation Commitments** shall have the meaning set forth in Section 4.13(a).

**Confidentiality Agreement** shall have the meaning set forth in Section 7.4.

**Constituent Corporations** shall have the meaning set forth in the introductory paragraph of this Agreement.

**Contract** shall mean any written or oral agreement, contract, commitment, lease, license, contract, note, bond, mortgage, indenture, arrangement or other instrument or obligation.

**Current Premium** shall have the meaning set forth in Section 7.9(b).

**D&O Insurance** shall have the meaning set forth in Section 7.9(b).

**DGCL** means the General Corporation Law of the State of Delaware.

**Effective Time** shall have the meaning set forth in Section 2.3.

**Environmental Law** means any federal, state, local or foreign statute, law, regulation, order, decree, permit, authorization, common law or legally binding agency requirement relating to: (i) the protection, investigation or restoration of the environment, health, safety or natural resources, (ii) the handling, use, presence, disposal, release or threatened release of any Hazardous Substance or (iii) noise, odor, indoor air, employee exposure, wetlands, pollution, contamination or any injury or threat of injury to persons or property relating to any Hazardous Substance.

**ERISA** means the Employee Retirement Income Security Act of 1974, as amended, together with the rules and regulations promulgated thereunder.

**ERISA Benefit Plan** means a Benefit Plan which is also an employee pension benefit plan (as defined in Section 3(2) of ERISA) or which is also an employee welfare benefit plan (as defined in Section 3(1) of ERISA).

**Exchange Act** means the Securities Exchange Act of 1934, as amended, together with the rules and regulations promulgated thereunder.

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**Exchange Agent** shall have the meaning set forth in Section 3.3(a).

**Exchange Fund** shall have the meaning set forth in Section 3.3(a).

**Exchange Ratio** shall have the meaning set forth in Section 3.2(c).

**Extended End Date** shall have the meaning set forth in Section 9.1(i).

**Goldman Sachs** shall have the meaning set forth in Section 4.21.

**Governmental Entity** means any federal, state or local government or any court, tribunal, administrative agency or commission or other governmental or other regulatory authority or agency, domestic, foreign or supranational, including the Bank Regulatory Authorities.

**Hazardous Substance** means (i) any substance that is listed, classified, regulated or for which liability is imposed pursuant to any Environmental Law; (ii) any petroleum product or by-product, asbestos-containing material, lead-containing paint or plumbing, polychlorinated biphenyls, radioactive material or radon; and (iii) any other substance which is the subject of regulatory action by any Government Entity in connection with any Environmental Law.

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**HSR Act** means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

**Indemnified Person** shall have the meaning set forth in Section 7.9(a).

**Intellectual Property Rights** shall have the meaning set forth in Section 4.15.

**IRS** means the Internal Revenue Service.

**J.P. Morgan** shall have the meaning set forth in Section 5.18.

**Key Customers** shall have the meaning set forth in Section 4.17.

**Knowledge** shall mean the actual knowledge of the directors or executive officers of the Company or the directors or executive officers of Parent, as the case may be.

**Liens** means any pledges, claims, liens, charges, encumbrances and security interests of any kind or nature whatsoever.

**Material Adverse Change or Material Adverse Effect** means, when used in connection with the Company or Parent, as the case may be, any effect, change or development that, individually or in the aggregate, with other effects, changes or developments, is, or would reasonably be expected to be, material and adverse to the financial condition, business, operations or results of operations of the Company and its Subsidiaries taken as a whole, or Parent and its Subsidiaries taken as a whole, as the case may be; provided, however, that to the extent any effect, change or development is caused by or results from any of the following, it shall not be taken into account in determining whether there has been (or would reasonably be expected to be) a Material Adverse Change and Material Adverse Effect : (A) the announcement of the execution of this Agreement or the performance of obligations under this Agreement, (B) factors affecting the economy or financial markets as a whole or generally affecting the payment services industry, except to the extent the Company or Parent, as the case may be, is materially and adversely affected in a disproportionate manner as compared to other comparable participants in such industry, (C) failure to meet analyst financial forecasts of the Company or Parent, as the case may be, in and of itself, or the trading price of the Company Common Stock or Parent Shares, as the case may be, in and of itself (it being understood that the facts or occurrences giving rise or contributing to any such effect, change or development which affects or otherwise relates to the failure to meet analyst financial forecasts or the trading price, as the case may be, may be deemed to constitute, or be taken into account in determining whether there has been, or would reasonably be expected to be, a Material Adverse Change or Material Adverse Effect), and (D) the commencement, occurrence or continuation of any war, armed hostilities or acts of terrorism involving or affecting the United States of America or any part thereof. The parties hereto agree and understand that, for the avoidance of doubt, a criminal indictment or criminal information or similar proceeding or action against a party or its Subsidiaries or against any of their respective officers or directors relating to actions within the scope of the party's business or an SEC enforcement action, or SEC formal investigation that is not resolved by the earlier of 90 days after its commencement or the Extended End Date (such period being an Investigation Period ), of a party, its Subsidiaries or their respective officers or directors relating to actions within the scope of the party's business will constitute a Material Adverse Effect or Material Adverse Change with respect to the party. The parties hereto further agree and understand that, for the avoidance of doubt, for purposes of Section 8.2(a) and 8.3(a), during any Investigation Period, the party not subject to (and whose Subsidiaries and their respective officers and directors are not subject to) such investigation shall not be required to consummate the transactions contemplated by this Agreement.

**Merger** shall have the meaning set forth in the first recital provision of this Agreement.

**Merrill Lynch** shall have the meaning set forth in Section 5.18.

**NYSE** means the New York Stock Exchange, Inc.

**Order** shall have the meaning set forth in Section 8.1(b).

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**Parent** shall have the meaning set forth in the introductory paragraph of this Agreement.

**Parent Filed SEC Documents** means the documents (but excluding the exhibits thereto) filed by Parent with the SEC and publicly available since December 31, 2000 and prior to the execution of this Agreement.

**Parent Letter** means the letter from Parent to the Company dated the date hereof, which letter relates to this Agreement and is designated therein as the Parent Letter.

**Parent Options** shall have the meaning set forth in Section 7.2(b).

**Parent Permits** shall have the meaning set forth in Section 5.9(a).

**Parent Preferred Stock** shall have the meaning set forth in Section 5.3(a).

**Parent SEC Documents** shall have the meaning set forth in Section 5.6.

**Parent Share Issuance** means the issuance of the Parent Shares upon conversion of the Shares pursuant to Section 3.2(c).

**Parent Shares** shall have the meaning set forth in the first recital provision of this Agreement.

**Parent Stock Equivalents** shall have the meaning set forth in Section 5.3(a).

**Parent Stock Incentive Plans** shall have the meaning set forth in Section 5.3(a).

**Parent Stock Options** shall have the meaning set forth in Section 5.3(a).

**Parent Stockholder Approval** shall have the meaning set forth in Section 7.3(a).

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**Parent Stockholders Meeting** shall have the meaning set forth in Section 7.3(a).

**Person** means any person, employee, individual, corporation, limited liability company, partnership, trust, or any other non-governmental entity or any governmental or regulatory authority or body.

**Proxy Statement** shall have the meaning set forth in Section 4.8.

**Registration Statement** shall have the meaning set forth in Section 4.8.

**SEC** means the Securities and Exchange Commission.

**Sarbanes-Oxley** shall have the meaning set forth in Section 4.9(b).

**Securities Act** means the Securities Act of 1933, as amended, together with the rules and regulations promulgated thereunder.

**Shares** shall have the meaning set forth in the first recital provision of this Agreement.

**Significant Subsidiary** of any Person means a Subsidiary of such Person that would constitute a significant subsidiary of such Person within the meaning of Rule 1.02(v) of Regulation S-X as promulgated by the SEC.

**Stock Equivalents** shall have the meaning set forth in Section 4.3.

**Stockholders Meetings** shall have the meaning set forth in Section 7.3(a).

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**Sub** shall have the meaning set forth in the introductory paragraph of this Agreement.

**Subsidiary** or **subsidiary** of any Person means another Person, an amount of the voting securities, other voting ownership or voting partnership interests of which is sufficient to elect at least a majority of its Board of Directors or other governing body (or, if there are no such voting interests, 50% or more of the equity interests of which) is owned directly or indirectly by such first Person.

**Superior Proposal** shall have the meaning set forth in Section 6.2(a).

**Surviving Corporation** shall have the meaning set forth in Section 2.1.

**Takeover Proposal** shall have the meaning set forth in Section 6.2(a).

**Tax and Taxes** means (i) any federal, state, local or foreign net income, gross income, gross receipts, windfall profit, severance, property, production, sales, use, license, excise, franchise, employment, payroll, withholding, alternative or add-on minimum, ad valorem, value added, transfer, stamp, or environmental tax, or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, addition to tax or additional amount imposed by any Governmental Entity, and (ii) any liability of the Company or any Subsidiary for the payment of amounts with respect to payments of a type described in clause (i) as a result of being a member of an affiliated, consolidated, combined or unitary group, or as a result of any obligation of the Company or any Subsidiary under any tax sharing arrangement or tax indemnity arrangement.

**Tax Return** means any return, report or similar statement required to be filed with respect to any Tax including any information return, claim for refund, amended return or declaration of estimated Tax.

**Termination Fee** shall have the meaning set forth in Section 9.2(b).

**Transfer Taxes** shall have the meaning set forth in Section 7.7.

**William Blair** shall have the meaning set forth in Section 4.21.

**ARTICLE II**

**THE MERGER**

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Section 2.1 The Merger. Upon the terms and subject to the conditions hereof, and in accordance with the DGCL, Sub shall be merged with and into the Company at the Effective Time. Following the Effective Time, the separate corporate existence of Sub shall cease and the Company shall continue as the surviving corporation (the Surviving Corporation ) and shall succeed to and assume all the rights and obligations of Sub and the Company in accordance with the DGCL.

Section 2.2 Closing. The closing of the Merger will take place at 10:00 a.m. on a date mutually agreed to by Parent and the Company, which shall be no later than the second business day after satisfaction or waiver of the conditions set forth in Article VIII (the Closing Date ), at the offices of Sidley Austin Brown & Wood, Bank One Plaza, 10 South Dearborn Street, Chicago, Illinois 60603, unless another date, time or place is agreed to by the parties hereto.

Section 2.3 Effective Time. The Merger shall become effective when a Certificate of Merger (the Certificate of Merger ), executed in accordance with the relevant provisions of the DGCL, is duly filed with the Secretary of State of the State of Delaware, or at such other time as Sub and the Company shall agree should be specified in the Certificate of Merger. When used in this Agreement, the term Effective Time shall mean the later of the date and time at which the Certificate of Merger is duly filed with the Secretary of State of the State of Delaware or such later time established by the Certificate of Merger. The filing of the Certificate of Merger shall be made as soon as practicable after the satisfaction or waiver of the conditions to the Merger set forth in Article VIII.

Section 2.4 Effects of the Merger. The Merger shall have the effects set forth in the DGCL.



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Section 2.5 Certificate of Incorporation and Bylaws; Officers and Directors.

(a) The Restated Certificate of Incorporation of the Company, as in effect immediately prior to the Effective Time, shall be the Certificate of Incorporation of the Surviving Corporation until thereafter changed or amended as provided therein or by the DGCL.

(b) The Bylaws of the Company, as in effect immediately prior to the Effective Time, shall be the Bylaws of the Surviving Corporation until thereafter changed or amended as provided by the Restated Certificate of Incorporation of the Surviving Corporation or by the DGCL.

(c) The directors of Sub immediately prior to the Effective Time shall be the directors of the Surviving Corporation, until the next annual meeting of stockholders (or the earlier of their resignation or removal) and until their respective successors are duly elected and qualified, as the case may be.

(d) The officers of the Company immediately prior to the Effective Time shall be the officers of the Surviving Corporation until the earlier of their resignation or removal and until their respective successors are duly elected and qualified, as the case may be.

**ARTICLE III**

**EFFECT OF THE MERGER ON THE STOCK OF THE CONSTITUENT CORPORATIONS;**

**EXCHANGE OF CERTIFICATES**

Section 3.1 Effect on Stock. As of the Effective Time, by virtue of the Merger and without any action on the part of any of Sub, the Company or the holders of any securities of the Constituent Corporations, the capital stock of the Constituent Corporations shall be treated as set forth in this Article III and in accordance with the terms of this Agreement.

Section 3.2 Conversion. a) Capital Stock of Sub. Each issued and outstanding share of capital stock of Sub shall be converted into and become one validly issued, fully paid and nonassessable share of Common Stock, \$0.33 <sup>1</sup>/<sub>3</sub> par value, of the Surviving Corporation.

(b) Treasury Stock and Parent Owned Stock. Each Share that is held by the Company or by any wholly owned Subsidiary of the Company and each Share that is held by Parent, Sub or any other wholly owned Subsidiary of Parent (other than such Shares held by Parent, Sub or the Company in a fiduciary, collateral, custodial or similar capacity, which will be converted pursuant to Section 3.2(c)) shall automatically be cancelled and retired and shall cease to exist, and no consideration shall be delivered in exchange therefor.

(c) Conversion of Shares. Each Share issued and outstanding (other than Shares to be cancelled in accordance with Section 3.2(b)) shall be converted into 0.40 of a duly authorized, validly issued, fully paid and non-assessable Parent Share (the Exchange Ratio ). As of the Effective Time, all such Shares, when so converted, shall no longer be outstanding and shall automatically be cancelled and retired, and each holder of a certificate formerly representing any such Shares shall cease to have any rights with respect thereto, except the right to receive any dividends or

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distributions in accordance with Section 3.3(c), certificates representing the Parent Shares into which such Shares are converted and any cash, without interest, in lieu of fractional shares to be issued or paid in consideration therefor upon the surrender of such certificate in accordance with Section 3.3(d).

Section 3.3 Exchange of Certificates. (a) At the Effective Time, Parent shall deposit, or shall cause to be deposited, with Wells Fargo Bank Minnesota, National Association or with a banking or other financial institution selected by Parent and reasonably acceptable to the Company (and on terms reasonably acceptable to the Company) (the Exchange Agent ), for the benefit of the holders of Shares, for exchange in accordance with this Article III, certificates representing the Parent Shares to be issued in connection with the Merger and an amount of cash sufficient to permit the Exchange Agent to make the necessary payments of cash in lieu of fractional shares (such cash and certificates for Parent Shares, together with any dividends or distributions with respect thereto (relating to record dates for such dividends or distributions after the Effective Time), being hereinafter referred to as the

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Exchange Fund ) to be issued pursuant to Section 3.2 and paid pursuant to this Section 3.3 in exchange for outstanding Shares.

(b) Exchange Procedure. As soon as practicable after the Effective Time, Parent shall cause the Exchange Agent to mail to each holder of record of a certificate or certificates that immediately prior to the Effective Time represented Shares (the Certificates ) (i) a letter of transmittal (which shall be in customary form and specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Exchange Agent) and (ii) instructions for use in effecting the surrender of the Certificates in exchange for the consideration (and any unpaid distributions and dividends) contemplated by Section 3.2 and this Section 3.3, including cash in lieu of fractional shares. Upon surrender of a Certificate for cancellation to the Exchange Agent, together with such letter of transmittal, duly executed, and such other documents as may reasonably be required by the Exchange Agent, the holder of such Certificate shall be entitled to receive promptly in exchange therefor (x) a certificate representing that number of whole Parent Shares and (y) a check representing the amount of cash in lieu of fractional shares, if any, and unpaid dividends and distributions with respect to the Parent Shares as provided for in Section 3.3(c), if any, that such holder has the right to receive in respect of the Certificate surrendered pursuant to the provisions of this Article III, after giving effect to any required withholding Tax. No interest will be paid or accrued on the cash payable to holders of Shares. In the event of a transfer of ownership of Shares that is not registered in the transfer records of the Company, a certificate representing the proper number of Parent Shares, together with a check for the cash to be paid pursuant to this Section 3.3 may be issued to such a transferee if such Certificate shall be properly endorsed or otherwise be in proper form for transfer and the transferee shall pay any transfer or other Taxes required by reason of the payment to a Person other than the registered holder of such Certificate or establish to the satisfaction of Parent that such Tax has been paid or is not applicable. Parent or the Exchange Agent shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement such amounts as Parent or the Exchange Agent is required to deduct and withhold with respect to the making of such payment under the Code or under any provision of state, local or foreign Tax law. To the extent that amounts are so withheld by Parent or the Exchange Agent, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

(c) Dividends. No dividends or other distributions declared with a record date after the Effective Time on Parent Shares shall be paid with respect to any Shares represented by a Certificate until such Certificate is surrendered for exchange as provided herein or a Person claiming a Certificate to be lost, stolen or destroyed has complied with the provisions of Section 3.6. Promptly following surrender of any such Certificate, there shall be paid to the holder of the certificates representing whole Parent Shares issued in exchange therefor, without interest, (i) at the time of such surrender, the amount of dividends or other distributions with a record date after the Effective Time theretofore payable with respect to such whole Parent Shares and not paid, less the amount of any withholding Taxes which may be required thereon, and (ii) at the appropriate payment date or as promptly as practicable thereafter, the amount of dividends or other distributions with a record date after the Effective Time but prior to such surrender and a payment date subsequent to such surrender payable with respect to such whole Parent Shares, less the amount of any withholding Taxes which may be required thereon. Parent will, no later than the applicable dividend or distribution payment dates, provide the Exchange Agent with the cash necessary to make the payments contemplated by this Section 3.3(c).

(d) No Fractional Securities. No fractional Parent Shares shall be issued pursuant hereto. In lieu of the issuance of any fractional share of Parent Shares, cash adjustments will be paid to holders in respect of any fractional share of Parent Shares that would otherwise be issuable, and the amount of such cash adjustment shall be equal to the product obtained by multiplying such stockholder's fractional share of Parent Shares that would otherwise be issuable by the closing price per share of Parent Shares on the New York Stock Exchange Composite Tape on the Closing Date as reported by The Wall Street Journal (Northeast edition) (or, if not reported thereby, any other authoritative source).

(e) No Further Ownership Rights in Shares. All Parent Shares issued upon the surrender for exchange of Certificates in accordance with the terms of this Article III (including any cash paid pursuant to this Section 3.3) shall be deemed to have been issued in full satisfaction of all rights pertaining to the Shares theretofore represented by such Certificates. At the Effective Time, the stock transfer books of the Company shall be closed, and there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of the Shares that were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates are

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presented to the Surviving Corporation or the Exchange Agent for any reason, they shall be cancelled and exchanged as provided in this Article III.

(f) Termination of Exchange Fund. Any portion of the Exchange Fund (including the proceeds of any investments thereof and any Parent Shares) which remains undistributed to the holders of Shares for six months after the Effective Time may be delivered to Parent, upon demand, and any holders of Shares who have not theretofore complied with this Article III and the instructions set forth in the letter of transmittal mailed to such holders after the Effective Time shall thereafter look only to Parent or its agent (subject to abandoned property, escheat or other similar laws) for payment of their Parent Shares, cash and unpaid dividends and distributions on Parent Shares deliverable in respect of each Share such stockholder holds as determined pursuant to this Agreement, in each case, without any interest thereon.

(g) No Liability. None of Parent, Sub, the Company or the Exchange Agent shall be liable to any Person in respect of any amount properly delivered to a public official pursuant to any applicable abandoned property, escheat or similar law.

Section 3.4 Tax Consequences. It is intended by the parties hereto that the Merger shall constitute a reorganization within the meaning of Section 368(a) of the Code, and the parties hereto adopt this Agreement as a plan of reorganization for such purposes.

Section 3.5 Adjustment of Exchange Ratio. In the event that Parent changes or establishes a record date for changing the number of Parent Shares issued and outstanding as a result of a stock split, stock dividend, recapitalization, subdivision, reclassification, combination or similar transaction with respect to the outstanding Parent Shares and the record date therefor shall be prior to the Effective Time, the Exchange Ratio applicable to the Merger and any other calculations based on or relating to Parent Shares shall be appropriately adjusted to reflect such stock split, stock dividend, recapitalization, subdivision, reclassification, combination or similar transaction.

Section 3.6 Lost Certificates. If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by Parent or the Exchange Agent, the posting by such Person of a bond, in such reasonable amount as Parent or the Exchange Agent may direct as indemnity against any claim that may be made against them with respect to such Certificate, the Exchange Agent will issue in exchange for such lost, stolen or destroyed Certificate the Parent Shares, any cash in lieu of fractional shares of Parent Shares to which the holders thereof are entitled pursuant to Section 3.3(b) and any dividends or other distributions to which the holders thereof are entitled pursuant to Section 3.3(c).

Section 3.7 Further Assurances. If at any time after the Effective Time the Surviving Corporation shall consider or be advised that any deeds, bills of sale, assignments or assurances or any other acts or things are necessary, desirable or proper (a) to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation its right, title or interest in, to or under any of the rights, privileges, powers, franchises, properties, permits, licenses or assets of either of the Constituent Corporations, or (b) otherwise to carry out the purposes of this Agreement, the Surviving Corporation and its proper officers and directors or their designees shall be authorized to execute and deliver, in the name and on behalf of either of the Constituent Corporations, all such deeds, bills of sale, assignments and assurances and to do, in the name and on behalf of either Constituent Corporation, all such other acts and things as may be necessary, desirable or proper to vest, perfect or confirm the Surviving Corporation's right, title or interest in, to or under any of the rights, privileges, powers, franchises, properties or assets of such Constituent Corporation and otherwise to carry out the purposes of this Agreement.

## ARTICLE IV

**REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

The Company represents and warrants to Parent and Sub as follows, except as set forth in the Company Letter or as disclosed in the Company Filed SEC Documents (it being understood that any matter set forth in the Company Filed SEC Documents shall be deemed to qualify any representation or warranty in this Article IV only to the extent that the description of such matter in the Company Filed SEC Documents would be reasonably inferred to be a qualification with respect to such representation or warranty):

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Section 4.1 Organization. The Company and each of its Subsidiaries are duly organized, validly existing and in good standing under the laws of the jurisdiction of their respective organization and have requisite power and authority to carry on their respective businesses as now being conducted, except where the failure to be so organized, existing and in good standing or to have such power and authority would not have a Material Adverse Effect on the Company. The Company and each of its Subsidiaries are duly qualified or licensed to do business and in good standing in each jurisdiction in which the nature of their respective businesses or the ownership or leasing of their respective properties makes such qualification or licensing necessary, except in such jurisdictions where the failure to be so duly qualified or licensed and in good standing would not have a Material Adverse Effect on the Company. The Company has delivered to Parent complete and correct copies of its Restated Certificate of Incorporation and Bylaws and has made available to Parent the charter and bylaws (or similar organizational documents) of each of its Significant Subsidiaries.

Section 4.2 Subsidiaries. As of the date of this Agreement, Exhibit 21 to the Company's Annual Report on Form 10-K for the year ended December 31, 2002, as filed with the SEC, is a true, accurate and complete statement in all material respects of all of the information required to be set forth therein by Regulation S-K as promulgated by the SEC. All of the outstanding shares of capital stock of each Significant Subsidiary of the Company that is a corporation have been validly issued and are fully paid and nonassessable. All of the outstanding shares of capital stock of each Subsidiary of the Company are owned by the Company, by one or more Subsidiaries of the Company or by the Company and one or more Subsidiaries of the Company, free and clear of all Liens. Except for the capital stock of its Subsidiaries, the Company does not own, directly or indirectly, any capital stock or other ownership interest in any corporation, partnership, joint venture, limited liability company or other entity which is material to the business of the Company and its Subsidiaries, taken as a whole.

Section 4.3 Capital Structure. The authorized capital stock of the Company consists of 1,500,000,000 Shares. At the close of business on March 28, 2003, (i) 486,483,143 Shares were issued and outstanding, all of which were validly issued, fully paid and nonassessable and free of preemptive rights, (ii) no Shares were held by the Company in its treasury, (iii) 58,239,379 Shares were reserved for issuance pursuant to outstanding options to purchase Company Common Stock (options to purchase Company Common Stock being Company Stock Options) granted under the Company's 2002 Stock Option Plan, the Company's 1993 Incentive Stock Option Plan and the Star Systems, Inc. 2000 Equity Incentive Plan (together, and each as amended, the Company Stock Plans) and (iv) 34,717,849 Shares were reserved for the grant of additional awards under the Company Stock Plans. As of the close of business on March 28, 2003, except as set forth above, no Shares were issued, reserved for issuance or outstanding, no Company Stock Options have been granted and there are not any phantom stock or other contractual rights the value of which is determined in whole or in part by the value of any capital stock of the Company (Stock Equivalents). Since March 28, 2003 and on or prior to the date of this Agreement, except for the exercise of any Company Stock Options referred to in clause (iii) above, the Company has not issued any Shares or made any grant of awards under the Company Stock Plans or authorized or entered into any Contract to do any of the foregoing. There are no outstanding stock appreciation rights with respect to the capital stock of the Company. Each outstanding Share is, and each Share which may be issued pursuant to the Company Stock Plans will be, when issued, duly authorized, validly issued, fully paid and nonassessable and not subject to preemptive rights. Other than the Company Common Stock, there are no other authorized classes of capital stock of the Company. There are no outstanding bonds, debentures, notes or other indebtedness of the Company having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matter on which the Company's stockholders may vote. Except as set forth above, as of the date of this Agreement, there are no securities, options, warrants, calls, rights, commitments, agreements, arrangements or undertakings of any kind to which the Company or any of its Significant Subsidiaries is a party or by which any of them is bound obligating the Company or any of its Significant Subsidiaries to issue, deliver or sell or create, or cause to be issued, delivered or sold or created, additional shares of capital stock, Company Stock Options or other voting securities or Stock Equivalents of the Company or of any of its Significant Subsidiaries or obligating the Company or any of its Significant Subsidiaries to issue, grant, extend or enter into any such security, option, warrant, call, right, commitment, agreement, arrangement or undertaking. As of the date of this Agreement, there are no outstanding contractual obligations of the Company or any of its Significant Subsidiaries to repurchase, redeem or otherwise acquire any shares of capital stock of the Company or any of its Significant Subsidiaries. There are no outstanding agreements to which the Company, its Significant Subsidiaries or any of their respective officers or directors is a party concerning the voting of any capital stock of the Company or any of its Significant Subsidiaries.

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Section 4.4 **Authority**. On or prior to the date of this Agreement, the Board of Directors of the Company unanimously approved this Agreement, declared this Agreement and the Merger advisable to the Company and its stockholders, resolved to recommend the approval and adoption of this Agreement by the Company's stockholders and directed that this Agreement be submitted to the Company's stockholders for approval and adoption (all in accordance with the DGCL). The Company has all requisite corporate power and authority to execute and deliver this Agreement and, subject to adoption by the Company's stockholders of this Agreement, to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the Merger and of the other transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Company, subject to adoption by the Company's stockholders of this Agreement. This Agreement has been duly executed and delivered by the Company and (assuming the valid authorization, execution and delivery of this Agreement by Parent and Sub) constitutes the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except that such enforceability (i) may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting or relating to the enforcement of creditors' rights generally and (ii) is subject to general principles of equity.

Section 4.5 **Consents and Approvals: No Violations**. Except for filings, permits, authorizations, consents and approvals as may be required under, and other applicable requirements of, the Exchange Act, the Securities Act, the HSR Act, the DGCL, the laws applied by the Bank Regulatory Authorities, state takeover laws and foreign and supranational laws relating to antitrust and anticompetition clearances, and except as may be required in connection with the Taxes described in **Section 7.7**, neither the execution, delivery or performance of this Agreement by the Company nor the consummation by the Company of the transactions contemplated hereby will (i) conflict with or result in any breach of any provision of the Restated Certificate of Incorporation or Bylaws of the Company or of the similar organizational documents of any of its Subsidiaries, (ii) require any filing or registration with, or permit, authorization, consent or approval of, any Governmental Entity on the part of the Company or any of its Subsidiaries, (iii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, amendment, cancellation or acceleration) under, any of the terms, conditions or provisions of any Contract to which the Company or any of its Subsidiaries is a party or by which any of them or any of their properties or assets may be bound or (iv) violate any order, writ, injunction, decree, statute, rule or regulation applicable to the Company, any of its Subsidiaries or any of their properties or assets, except in the case of clauses (ii), (iii) and (iv) for failures, violations, breaches or defaults that would not have a Material Adverse Effect on the Company.

Section 4.6 **SEC Documents and Other Reports**. The Company has timely filed with the SEC all documents required to be filed by it since December 31, 2000 under the Securities Act or the Exchange Act (the **Company SEC Documents**). As of their respective filing dates, the Company SEC Documents complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, each as in effect on the date so filed, and at the time filed with the SEC none of the Company SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The financial statements of the Company included in the Company SEC Documents complied as of their respective dates in all material respects with the then applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, were prepared in accordance with generally accepted accounting principles (except in the case of the unaudited statements, as permitted by Form 10-Q under the Exchange Act) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto) and fairly present in all material respects the consolidated financial position of the Company and its consolidated Subsidiaries as at the dates thereof and the consolidated results of their operations and their consolidated cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein).

Section 4.7 **Absence of Material Adverse Change**. Since December 31, 2002, the Company and its Subsidiaries have conducted their respective businesses in all material respects only in the ordinary course, and there has not been (i) any Material Adverse Change with respect to the Company, (ii) any declaration, setting aside or payment of any dividend or other distribution with respect to its capital stock, (iii) any split, combination or reclassification of any of its capital stock or any issuance or the authorization of any issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock, (iv) any change in accounting methods, principles or practices by the Company, (v) any material damage, destruction or other casualty loss with respect to

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any material asset or property owned, leased or otherwise used by the Company or any of its Subsidiaries which is not covered by insurance or (vi) any material amendment of any of the Benefit Plans of the Company or any of its Subsidiaries other than amendments in the ordinary course.

Section 4.8 Information Supplied. None of the information supplied or to be supplied by the Company specifically for inclusion or incorporation by reference in Parent's registration statement on Form S-4 (together with any amendments or supplements thereto, the Registration Statement), pursuant to which Parent Shares issuable in the Merger will be registered, or the joint proxy statement/prospectus (together with any amendments or supplements thereto, the Proxy Statement) relating to the Stockholders Meetings, will, in the case of the Registration Statement, at the time it becomes effective, and, in the case of the Proxy Statement, at the time it is first mailed to the stockholders of the Company or Parent and at the time of the Stockholders Meetings, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading or necessary to correct any statement in any earlier communication by the Company with respect to the solicitation of proxies for the Stockholders Meetings which has become false or misleading. The Proxy Statement will comply as to form in all material respects with the requirements of the Exchange Act, except that no representation or warranty is made by the Company with respect to statements made or incorporated by reference in the Proxy Statement based on information supplied by Parent or Sub or any of their representatives specifically for inclusion or incorporation by reference therein or based on information which is not made in or incorporated by reference in the Proxy Statement but which should have been disclosed by Parent pursuant to Section 5.8.

Section 4.9 Compliance with Laws; Permits. (a) The businesses of the Company and its Subsidiaries are not being conducted in violation of any law, ordinance or regulation of any Governmental Entity, except for possible violations that would not have a Material Adverse Effect on the Company. Each of the Company and its Subsidiaries is in possession of all franchises, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, approvals and orders of any Governmental Entity necessary for the Company or any of its Subsidiaries to own, lease and operate its properties or to carry on its business as it is now being conducted (the Company Permits), except where the failure to have any of the Company Permits would not have a Material Adverse Effect on the Company, and, as of the date of this Agreement, no suspension or cancellation of any of the Company Permits is pending or, to the Knowledge of the Company, threatened, except where the suspension or cancellation of any of the Company Permits would not have a Material Adverse Effect on the Company.

(b) The Company and each of its officers and directors have complied in all material respects with (i) the applicable provisions of the Sarbanes-Oxley Act of 2002 and the related rules and regulations promulgated under such Act or the Exchange Act (Sarbanes-Oxley) and (ii) the applicable listing and corporate governance rules and regulations of the NYSE. The Company has previously disclosed to Parent any of the information required to be disclosed by the Company and certain of its officers to the Company's Board of Directors or any committee thereof pursuant to the certification requirements contained in Form 10-K and Form 10-Q under the Exchange Act. From the period beginning January 1, 2000 through the enactment of Sarbanes-Oxley, neither the Company nor any of its Affiliates made any loans to any executive officer or director of the Company equal to or in excess of \$60,000. Since the enactment of Sarbanes-Oxley, neither the Company nor any of its Affiliates has made any loans to any executive officer or director of the Company.

(c) Each executive officer and director of the Company has complied with all Applicable Laws in connection with or relating to actions within the scope of the Company's business, except where the failure to comply would not have a Material Adverse Effect on the Company. No executive officer or director of the Company is a party to or the subject of any pending or threatened suit, action, proceeding or investigation by any Governmental Entity that would have a Material Adverse Effect on the Company, except as disclosed in the Company Filed SEC Documents.

Section 4.10 Tax Matters. (a) (i) The Company and each of its Subsidiaries has timely filed (after taking into account any extensions to file properly obtained) all Tax Returns required to be filed by them either on a separate or combined or consolidated basis, except where the failure to timely file would not have a Material Adverse Effect on the Company; (ii) all such Tax Returns are complete and accurate in all respects, except where the failure to be complete or accurate would not have a Material Adverse Effect on the Company; (iii) each of the Company and its Subsidiaries has duly and timely paid all Taxes that are required to be paid, and all Taxes which





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the Company or any Subsidiary is required to withhold or collect for payment have been duly withheld or collected and paid to the appropriate Governmental Entity, except where the failure to do so would not have a Material Adverse Effect on the Company; (iv) no deficiencies for any Taxes have been asserted, proposed or assessed against the Company or any of its Subsidiaries that have not been fully paid or otherwise fully settled, except for deficiencies asserted, proposed or assessed which, if fully paid, would not have a Material Adverse Effect on the Company; and (v) neither the Company nor any of its Subsidiaries has waived any statute of limitations with respect to any material Taxes or, to the extent related to material Taxes, agreed to any extensions of time with respect to a Tax assessment or deficiency, in each case to the extent such waiver or agreement is currently in effect, (vi) with respect to all tax years ending on or before December 31, 1998, the Tax Returns referred to in clause (i), to the extent related to federal income, or material state, local or foreign income or franchise, Taxes, have been examined by the IRS or the appropriate state, local or foreign Taxing authority or the period for assessment of the Taxes in respect of which such Tax Returns were required to be filed has expired, (vii) as of the date of this Agreement, there are no material audits, examinations, investigations or other proceedings pending or threatened in writing in respect of Taxes or Tax matters of the Company or any of its Subsidiaries, (viii) there are no material Liens relating to Taxes on any of the assets of the Company or any of its Subsidiaries, except for Liens relating to current Taxes not yet due and payable or relating to Taxes that are being contested in good faith, (ix) neither the Company nor any predecessor to the Company has made with respect to the Company, or any predecessor of the Company, any consent under Section 341 of the Code, (x) during the last three years, none of the Company or any of its Subsidiaries has been a party to any transaction (other than a transaction described in Section 355(e)(2)(C) of the Code) treated by the parties thereto as one to which Section 355 of the Code (or any similar provision of state, local or foreign law) applied, (xi) neither the Company nor any Subsidiary has ever been a member of a group of corporations filing Tax Returns on a consolidated, combined or unitary basis other than the group, if any, of which it is currently a member and (xii) except in the case of any transaction or arrangement that could not reasonably be expected to affect the Tax or other liability of the Company or any of its Subsidiaries, neither the Company nor any of its Subsidiaries has been a party to, or a promoter or organizer of, any tax shelter or similar transaction (including, without limitation, any transaction or arrangement a principal purpose of which was the reduction of federal income taxes or any so-called listed transaction identified by the IRS).

(b) No payment or other benefit, and no acceleration of the vesting of any options, payments or other benefits, will be, as a direct or indirect result of the transactions contemplated by this Agreement (or under Section 280G of the Code and the Treasury Regulations thereunder be presumed to be) a parachute payment to a disqualified individual as those terms are defined in Section 280G of the Code and the Treasury Regulations thereunder, without regard to whether such payment or acceleration is reasonable compensation for personal services performed or to be performed in the future.

(c) Neither the Company nor any of its Affiliates has taken or agreed to take any action that, to the Knowledge of the Company, will (or will be reasonably likely to) prevent the Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code. To the Knowledge of the Company, the representations set forth in the Company Tax Certificate attached to the Company Letter, if made on the date hereof (assuming the Merger were consummated on the date hereof and based on reasonable estimates in the case of certain information not available on the date hereof), would be true and correct in all material respects.

Section 4.11 Liabilities. Since December 31, 2002, neither the Company nor any of its Subsidiaries has incurred any liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise), other than liabilities or obligations incurred in the ordinary course of business since December 31, 2002 and liabilities or obligations which would not have a Material Adverse Effect on the Company.

Section 4.12 Litigation. As of the date of this Agreement, there is no suit, action, proceeding or investigation pending against the Company or any of its Subsidiaries that would have a Material Adverse Effect on the Company. Neither the Company nor any of its Subsidiaries is subject to any outstanding judgment, order, writ, injunction or decree that would have a Material Adverse Effect on the Company.

Section 4.13 Benefit Plans. (a) Item 4.13(a) of the Company Letter sets forth a true and complete list of each material Benefit Plan (including each ERISA Benefit Plan) maintained by the Company or any of its Subsidiaries. Except as required by law, neither the Company nor any of its Subsidiaries has adopted or amended in any material respect any Benefit Plan since the date of the most recent audited financial statements included in the



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Company Filed SEC Documents. None of the Company, its Subsidiaries or any trade or business which has been, during the six-year period preceding the date hereof, treated as a single employer with the Company under Section 414(b), (c), (m) or (o) of the Code has during such time contributed to any ERISA Benefit Plan that is a multiemployer plan (as defined in Section 3(37) of ERISA) or maintained any ERISA Benefit Plan that is subject to Title IV of ERISA or Section 412 of the Code. As of the date of this Agreement there exist no material agreement, commitment, understanding, plan, policy or arrangement of any kind, whether written or oral, with or for the benefit of any current or former officer or director ( Compensation Commitments ). Neither the Company nor any of its Subsidiaries maintains or contributes to any employee benefit plans, programs or arrangements or employs any employees outside of the United States.

(b) With respect to each Benefit Plan listed in Item 4.13(a) of the Company Letter, correct and complete copies, where applicable, of the following documents have been made available to Parent: (i) all Benefit Plan documents and amendments, trust agreements and insurance and annuity contracts and policies, (ii) the most recent IRS determination letter or opinion letter if the Benefit Plan is intended to satisfy the requirements for Tax favored treatment pursuant to Sections 401-417 of the Code, (iii) the Annual Reports (Form 5500 Series) and accompanying schedules, as filed, for the three most recently completed plan years, (iv) any discrimination or coverage tests performed during the last two (2) plan years and (v) the current summary plan description. True and complete copies of all written Compensation Commitments and of all related insurance and annuity policies and contracts and other documents with respect to each Compensation Commitment have been made available to Parent.

(c) Each Benefit Plan listed in Item 4.13(a) of the Company Letter which is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS that such plan is so qualified under the Code or has been established pursuant to a prototype plan that has received a favorable opinion letter from the IRS, and no circumstance exists which might cause such plan to cease being so qualified except for any circumstance that would not have a Material Adverse Effect on the Company. Each Benefit Plan listed in Item 4.13(a) of the Company Letter complies and has been maintained in all respects with its terms and all requirements of law and regulations applicable thereto, and there has been no notice issued by any Governmental Entity questioning or challenging such compliance, except for any noncompliance or other circumstance that would not have a Material Adverse Effect on the Company. Neither the Company nor any of its Subsidiaries has taken any action to take corrective action or make a filing under any voluntary correction program of the IRS, Department of Labor or any other Governmental Entity with respect to any Benefit Plan or Compensation Commitment, and neither the Company nor any of its Subsidiaries has any Knowledge of any material plan defect which would qualify for correction under any such program. There is no dispute, arbitration, grievance, action, suit or claim (other than routine claims for benefits) pending or, to the Knowledge of the Company, threatened involving such Benefit Plans or the assets of such plans. Neither the Company nor any of its Subsidiaries is a party to any collective bargaining agreement. The Company does not have any obligations under any welfare plans or otherwise to provide health or death benefits to or in respect of former employees of the Company, except as specifically required by the continuation requirements of Part 6 of Title I of ERISA or applicable state law. The Company has no liability on account of (i) any violation of the health care requirements of Part 6 of Title I of ERISA or Section 4980B of the Code, (ii) under Section 502(i) or Section 502(l) of ERISA or Section 4975 of the Code, (iii) under Section 302 of ERISA or Section 412 of the Code or (iv) under Title IV of ERISA, except in the case of clauses (i) or (ii) for any circumstance that would not have a Material Adverse Effect on the Company. No amounts will become payable as a result of the Merger for which the Company or any of its Subsidiaries will bear any liability.

(d) Prior to the date hereof, the Company has terminated (it being understood that such terminations may be conditioned upon the consummation of the Merger) all split dollar agreements to which the Company or any of its Subsidiaries was a party (including obtaining consents to such terminations by the executives who are parties to such agreements) without making or agreeing to make any payment of any amounts by the Company to any Person or waiving or agreeing to waive any rights.

Section 4.14 Environmental Matters. Except for matters that would not have a Material Adverse Effect on the Company: (i) the Company and its Subsidiaries are in compliance with all applicable Environmental Laws; (ii) no property currently owned or operated by the Company or any of its Subsidiaries (including soils, groundwater, surface water, buildings or other structures) is contaminated with any Hazardous Substance which contamination could reasonably be expected to require remediation pursuant to any Environmental Law; (iii) to the Knowledge of the Company, no property formerly owned or operated by the Company or any of its Subsidiaries was contaminated



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with any Hazardous Substance during or prior to such period of ownership or operation which contamination could reasonably be expected to require remediation pursuant to any Environmental Law; (iv) to the Knowledge of the Company, neither the Company nor any of its Subsidiaries is liable for any Hazardous Substance disposal or contamination on any third party property; (v) neither the Company nor any of its Subsidiaries has received any written notice, demand, letter, claim or request for information alleging that the Company or any of its Subsidiaries may be in violation of or subject to liability under any Environmental Law; (vi) neither the Company nor any of its Subsidiaries is subject to any written order, decree, injunction or indemnity with any Governmental Entity or any third party relating to liability under any Environmental Law or relating to Hazardous Substances; and (vii) to the Knowledge of the Company, there are no other circumstances or conditions involving the Company or any of its Subsidiaries that could reasonably be expected to result in any claim, liability, investigation, cost or restriction on the ownership, use, or transfer of any property pursuant to any Environmental Law. Sections 4.5 and 4.14 set forth the sole representations and warranties of the Company with respect to environmental or workplace health or safety matters, including all matters arising under Environmental Laws.

Section 4.15 Intellectual Property. The Company and its Subsidiaries own or have a valid right to use all patents, trademarks, trade names, service marks, domain names, copyrights, and any applications and registrations therefor, technology, trade secrets, know-how, computer software and tangible and intangible proprietary information and materials (collectively, Intellectual Property Rights ) as are necessary in connection with the business of the Company and its Subsidiaries, taken as a whole, except where the failure to so own or have a valid right to use such Intellectual Property would not have a Material Adverse Effect on the Company. Neither the Company nor any of its Subsidiaries has infringed, misappropriated or violated in any material respect any Intellectual Property Rights of any third party, except where such infringement, misappropriation or violation would not have a Material Adverse Effect on the Company. No third party infringes, misappropriates or violates any Intellectual Property Rights owned or exclusively licensed by or to the Company or any of its Subsidiaries, except where such infringement, misappropriation or violation would not have a Material Adverse Effect on the Company.

Section 4.16 Banking; Credit Card Associations. The Company is registered as a financial holding company pursuant to the Bank Act and satisfies all eligibility requirements for financial holding companies set forth thereunder, except where the failure to satisfy such eligibility requirements would not have a Material Adverse Effect on the Company. None of the operations of the Company, any of its Subsidiaries or any of their respective businesses are being conducted in violation of the Bank Act or any other law applied by the Bank Regulatory Authorities, except for possible violations that would not have a Material Adverse Effect on the Company. Neither the Company nor any of its Subsidiaries owns or controls, directly or indirectly or acting in concert with others, more than 5% of the voting stock of any insured depository institution. Neither the Company nor any of its Subsidiaries is in default under or in violation of any provisions of the rules and regulations of VISA U.S.A., Inc., VISA International, Inc., MasterCard International, Inc. and any successor organizations or associations, except where such default or violation would not have a Material Adverse Effect on the Company.

Section 4.17 Customers. Item 4.17 of the Company Letter sets forth a list (without specifying the identity of any customer listed thereon) for the twelve months ended December 31, 2002 of the top 25 revenue producing network services customers and the top 25 revenue producing payment services customers, in each case of the Company and its Subsidiaries (collectively, the Key Customers ), including the amount of revenue received from such Key Customers for the twelve months ended December 31, 2002. Since January 1, 2002 there has been no actual or, to the Knowledge of the Company, threatened termination, cancellation or limitation of, or any modification or change in, the business relationship of the Company or any of its Subsidiaries with any one or more of the Key Customers, other than as would not have a Material Adverse Effect on the Company. To the Knowledge of the Company, there exists no present condition or state of facts or circumstances involving any Key Customer and their relationships with the Company or any of its Subsidiaries which would have a Material Adverse Effect on the Company or prevent the conduct of its business after the consummation of the transactions contemplated by this Agreement in essentially the same manner in which such business has heretofore been conducted.

Section 4.18 Material Contracts. Except as filed as exhibits to the Company Filed SEC Documents prior to the date of this Agreement, neither the Company nor any of its Subsidiaries is a party to or bound by any Contract that (i) is a material contract (as such term is defined in Item 601(b)(10) of Regulation S-K promulgated by the SEC) or (ii) materially limits or otherwise materially restricts the Company or any of its Subsidiaries or that would, after the Effective Time, materially limit or otherwise materially restrict Parent or any of its Subsidiaries (including



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the Surviving Corporation and its Subsidiaries) or any successor thereto, from engaging or competing in any material line of business in any geographic area or that contains most favored nation pricing provisions or exclusivity or non-solicitation provisions with respect to customers. Each Contract of the type described in this Section 4.18, whether or not set forth in Item 4.18 of the Company Letter, is referred to herein as a Company Material Contract. Neither the Company nor any of its Subsidiaries has Knowledge of, or has received notice of, any violation of or default under (or any condition which with the passage of time or the giving of notice would cause such a violation of or default under) any Company Material Contract or any other Contract to which it is a party or by which it or any of its properties or assets is bound, except for violations or defaults that would not have a Material Adverse Effect on the Company or, after giving effect to the Merger, Parent. As of the date of this Agreement, neither the Company nor any of its Subsidiaries is a party to any standstill or similar agreement with any Person which relates to any transaction that could constitute a Takeover Proposal.

Section 4.19 Required Vote of Company Stockholders. The affirmative vote of the holders of a majority of the outstanding shares of Company Common Stock approving this Agreement is the only vote of the holders of any class or series of the Company's capital stock necessary to approve this Agreement and the transactions contemplated by this Agreement.

Section 4.20 State Takeover Statutes. The action of the Board of Directors of the Company in approving the Merger and this Agreement is sufficient to render inapplicable to Parent, Sub, the Merger and this Agreement the provisions of Section 203 of the DGCL. To the Knowledge of the Company, no fair price, moratorium, control share acquisition or other similar anti-takeover statute or regulation or any anti-takeover provision in the Company's Restated Certificate of Incorporation or Bylaws is, or at the Effective Time will be, applicable to the Company, the Company Common Stock, the Parent Shares, Parent, Sub or the Merger.

Section 4.21 Brokers. No broker, investment banker, financial advisor or other Person, other than William Blair & Company, L.L.C. (William Blair) and Goldman, Sachs & Co. (Goldman Sachs), the fees and expenses of which will be paid by the Company (and are reflected in an agreement between William Blair and the Company and an agreement between Goldman Sachs and the Company, complete copies of which have been furnished to Parent), is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company.

Section 4.22 Opinions of Financial Advisors. The Company has received the opinions of William Blair and Goldman Sachs to the effect that, as of the date thereof, the Exchange Ratio is fair to the Company's holders of the Company Common Stock from a financial point of view.

## **ARTICLE V**

### **REPRESENTATIONS AND WARRANTIES OF PARENT AND SUB**

Parent and Sub represent and warrant to the Company as follows, except as set forth in the Parent Letter or as disclosed in the Parent Filed SEC Documents (it being understood that any matter set forth in the Parent Filed SEC Documents shall be deemed to qualify any representation or warranty in this Article V only to the extent that the description of such matter in the Parent Filed SEC Documents would be reasonably inferred to be a qualification with respect to such representation or warranty):

Section 5.1 Organization. Parent and each of its Significant Subsidiaries are duly organized, validly existing and in good standing under the laws of the jurisdiction of their respective organization and have the requisite corporate power and authority to carry on their respective businesses as now being conducted, except where the failure to be so organized, existing and in good standing or to have such power and authority would not have a Material Adverse Effect on Parent. Parent and each of its Significant Subsidiaries are duly qualified or licensed to do business and in



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good standing in each jurisdiction in which the nature of their respective businesses or the ownership or leasing of their respective properties makes such qualification or licensing necessary, except in such jurisdictions where the failure to be so duly qualified or licensed and in good standing would not have a Material Adverse Effect on Parent. Parent has delivered to the Company complete and correct copies of its Second

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Amended and Restated Certificate of Incorporation and By-laws and the Certificate of Incorporation and By-laws of Sub.

Section 5.2 Subsidiaries. As of the date of this Agreement, Exhibit 21 to Parent's Annual Report on Form 10-K for the year ended December 31, 2002, as filed with the SEC, is a true, accurate and complete statement in all material respects of all of the information required to be set forth therein by Regulation S-K as promulgated by the SEC. All of the outstanding shares of capital stock of each Significant Subsidiary of Parent that is a corporation have been validly issued and are fully paid and nonassessable. All of the outstanding shares of capital stock of each Subsidiary of Parent are owned by Parent, by one or more Subsidiaries of Parent or by Parent and one or more Subsidiaries of Parent, free and clear of all Liens. Except for the capital stock of its Subsidiaries, Parent does not own, directly or indirectly, any capital stock or other ownership interest in any corporation, partnership, joint venture, limited liability company or other entity which is material to the business of Parent and its Subsidiaries, taken as a whole.

Section 5.3 Capital Structure. (a) The authorized capital stock of Parent consists of 2,000,000,000 Parent Shares and 10,000,000 shares of Preferred Stock, par value \$1.00 per share (Parent Preferred Stock). At the close of business on March 28, 2003, (i) 747,788,465 Parent Shares were issued and outstanding, all of which were validly issued, fully paid and nonassessable and free of preemptive rights, (ii) 150,125,817 Parent Shares were held by Parent in its treasury, (iii) 65,769,847 Parent Shares were reserved for issuance pursuant to outstanding options to purchase Parent Shares (options to purchase Parent Shares being Parent Stock Options) granted under Parent's 2002 Long-Term Incentive Plan, 1992 Long-Term Incentive Plan or 1993 Directors' Stock Option Plan (together with Parent's Employee Stock Purchase ESPP, the Parent Stock Incentive Plans), (iv) 61,985,645 Parent Shares were reserved for the grant of additional awards under the Parent Stock Incentive Plans and (v) no shares of Parent Preferred Stock were issued and outstanding. As of the date of this Agreement, except as set forth above, no Parent Shares were issued, reserved for issuance or outstanding, no Parent Stock Options have been granted and there are not any phantom stock or other contractual rights the value of which is determined in whole or in part by the value of any capital stock of Parent (Parent Stock Equivalents). Since March 28, 2003 and on or prior to the date of this Agreement, except for the exercise of any Parent Stock Options referred to in clause (iii) above, Parent has not issued any Parent Shares or made any grant of awards under the Parent Stock Incentive Plans or authorized or entered into any Contract to do any of the foregoing. There are no outstanding stock appreciation rights with respect to the capital stock of Parent. Each outstanding Parent Share is, and each Parent Share which may be issued pursuant to Parent Stock Incentive Plans will be, when issued, duly authorized, validly issued, fully paid and nonassessable and not subject to preemptive rights. Other than the Parent Shares and the Parent Preferred Stock, there are no other authorized classes of capital stock of Parent. Other than Parent's 4/8% Convertible Notes due 2005 and 2% Senior Convertible Contingent Debt Securities due 2008, there are no outstanding bonds, debentures, notes or other indebtedness of Parent having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matter on which Parent's stockholders may vote. Other than the warrants held by iFormation Group Holdings, LP and an Affiliate of J.P. Morgan & Chase Co. and as set forth above, as of the date of this Agreement, there are no securities, options, warrants, calls, rights, commitments, agreements, arrangements or undertakings of any kind to which Parent or any of its Significant Subsidiaries is a party or by which any of them is bound obligating Parent or any of its Significant Subsidiaries to issue, deliver or sell or create, or cause to be issued, delivered or sold or created, additional shares of capital stock, Parent Stock Options or other voting securities or Parent Stock Equivalents of Parent or of any of its Significant Subsidiaries or obligating Parent or any of its Significant Subsidiaries to issue, grant, extend or enter into any such security, option, warrant, call, right, commitment, agreement, arrangement or undertaking. As of the date of this Agreement, there are no outstanding contractual obligations of Parent or any of its Significant Subsidiaries to repurchase, redeem or otherwise acquire any shares of capital stock of Parent or any of its Significant Subsidiaries. There are no outstanding agreements to which Parent, its Significant Subsidiaries or any of their respective officers or directors is a party concerning the voting of any capital stock of Parent or any of its Significant Subsidiaries.

(b) The authorized capital stock of Sub consists solely of 1000 shares of common stock, par value \$0.01 per share, of which, as of the date hereof, 100 were issued and outstanding. All outstanding shares of common stock of Sub have been duly authorized and validly issued and are fully paid and nonassessable, free of any preemptive or other similar right. Sub does not own any securities.

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Section 5.4 **Authority**. On or prior to the date of this Agreement, the Boards of Directors of Parent and Sub approved this Agreement and the Parent Share Issuance, resolved to recommend the Parent Share Issuance to its stockholders for approval and directed that the Parent Share Issuance be submitted to its stockholders for approval. Each of Parent and Sub has all requisite corporate power and authority to execute and deliver this Agreement and, subject to approval by Parent's stockholders of the issuance of Parent Shares in the Merger, to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement by each of Parent and Sub and the consummation by Parent and Sub of the Merger and of the other transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of each of Parent and Sub, subject to approval by Parent's stockholders of the issuance of Parent Shares in the Merger. This Agreement has been approved by Parent as the sole stockholder of Sub. This Agreement has been duly executed and delivered by each of Parent and Sub and (assuming the valid authorization, execution and delivery of this Agreement by the Company) constitutes the valid and binding obligation of each of Parent and Sub enforceable against it in accordance with its terms, except that such enforceability (i) may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting or relating to the enforcement of creditors' rights generally and (ii) is subject to general principles of equity.

Section 5.5 **Consents and Approvals: No Violations**. Except for filings, permits, authorizations, consents and approvals as may be required under, and other applicable requirements of, the Exchange Act, the Securities Act, the HSR Act, the DGCL, the laws applied by the Bank Regulatory Authorities, state takeover laws and foreign and supranational laws relating to antitrust and anticompetition clearances, and except as may be required in connection with the Taxes described in **Section 7.7**, neither the execution, delivery or performance of this Agreement by Parent or Sub nor the consummation by Parent or Sub of the transactions contemplated hereby will (i) conflict with or result in any breach of any provision of the Second Amended and Restated Certificate of Incorporation or By-laws of Parent, the Certificate of Incorporation or By-laws of Sub or of the similar organizational documents of any of Parent's Subsidiaries, (ii) require any filing or registration with, or permit, authorization, consent or approval of, any Governmental Entity on the part of Parent or any of Parent's Subsidiaries, (iii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, amendment, cancellation or acceleration) under, any of the terms, conditions or provisions of any Contract to which Parent or any of its Subsidiaries is a party or by which any of them or any of their properties or assets may be bound or (iv) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Parent, Sub, any of its Significant Subsidiaries or any of their properties or assets, except in the case of clauses (ii), (iii) and (iv) for failures, violations, breaches or defaults that would not have a Material Adverse Effect on Parent.

Section 5.6 **SEC Documents and Other Reports**. Parent has timely filed with the SEC all documents required to be filed by it since December 31, 2000 under the Securities Act or the Exchange Act (the **Parent SEC Documents**). As of their respective filing dates, the Parent SEC Documents complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, each as in effect on the date so filed, and at the time filed with the SEC none of the Parent SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The financial statements of Parent included in the Parent SEC Documents complied as of their respective dates in all material respects with the then applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, were prepared in accordance with generally accepted accounting principles (except in the case of the unaudited statements, as permitted by Form 10-Q under the Exchange Act) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto) and fairly present in all material respects the consolidated financial position of Parent and its consolidated Subsidiaries as at the dates thereof and the consolidated results of their operations and their consolidated cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein).

Section 5.7 **Absence of Material Adverse Change**. Since December 31, 2002, with respect to Parent and its Subsidiaries, there has not been (i) any Material Adverse Change with respect to Parent, (ii) any declaration, setting aside or payment of any dividend or other distribution with respect to its capital stock, other than with respect to the payment of quarterly dividends, (iii) any split, combination or reclassification of any of its capital stock or any issuance or the authorization of any issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock or (iv) any change in accounting methods, principles or practices by Parent.

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Section 5.8 Information Supplied. None of the information supplied or to be supplied by Parent or Sub specifically for inclusion or incorporation by reference in the Registration Statement or the Proxy Statement, will, in the case of the Registration Statement, at the time it becomes effective, and, in the case of the Proxy Statement, at the time it is first mailed to the stockholders of the Company or Parent or at the time of the Stockholders Meetings, contain any untrue statement of a material fact, or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading or necessary to correct any statement in any earlier communication by Parent or Sub with respect to the solicitation of proxies for the Stockholders Meetings which has become false or misleading. The Registration Statement will comply as to form in all material respects with the requirements of the Securities Act and the Proxy Statement will comply as to form in all material respects with the requirements of the Exchange Act, except that no representation or warranty is made by Parent or Sub with respect to statements made or incorporated by reference in the Registration Statement or the Proxy Statement based on information supplied by the Company or any of its representatives specifically for inclusion or incorporation by reference therein or based on information which is not made in or incorporated by reference in the Registration Statement or Proxy Statement but which should have been disclosed by the Company pursuant to Section 4.8.

Section 5.9 Compliance with Laws: Permits. (a) The businesses of Parent and its Subsidiaries are not being conducted in violation of any law, ordinance or regulation of any Governmental Entity, except for possible violations that would not have a Material Adverse Effect on Parent. Each of Parent and its Subsidiaries is in possession of all franchises, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, approvals and orders of any Governmental Entity necessary for Parent or any of its Subsidiaries to own, lease and operate its properties or to carry on its business as it is now being conducted (the Parent Permits ), except where the failure to have any of the Parent Permits would not have a Material Adverse Effect on Parent, and, as of the date of this Agreement, no suspension or cancellation of any of the Parent Permits is pending or, to the Knowledge of Parent, threatened, except where the suspension or cancellation of any of the Parent Permits would not have a Material Adverse Effect on Parent.

(b) Parent and each of its officers and directors have complied in all material respects with (i) the applicable provisions of Sarbanes-Oxley and (ii) the applicable listing and corporate governance rules and regulations of the NYSE. Parent has previously disclosed to the Company any of the information required to be disclosed by Parent and certain of its officers to Parent's Board of Directors or any committee thereof pursuant to the certification requirements contained in Form 10-K and Form 10-Q under the Exchange Act. From the period beginning January 1, 2000 through the enactment of Sarbanes-Oxley, neither Parent nor any of its Affiliates made any loans to any executive officer or director of Parent equal to or in excess of \$60,000. Since the enactment of Sarbanes-Oxley, neither Parent nor any of its Affiliates has made any loans to any executive officer or director of Parent.

(c) Each executive officer and director of Parent has complied with all Applicable Laws in connection with or relating to or actions within the scope of Parent's business, except where the failure to comply would not have a Material Adverse Effect on Parent. No executive officer or director of Parent is a party to or the subject of any pending or threatened suit, action, proceeding or investigation by any Governmental Entity that would have a Material Adverse Effect on Parent, except as disclosed in the Parent Filed SEC Documents.

Section 5.10 Parent Shares. All of the Parent Shares issuable in exchange for Shares in the Merger in accordance with this Agreement have been duly authorized and will be, when so issued, validly issued, fully paid and non-assessable and free of preemptive or other similar rights. The issuance of such Parent Shares will be registered under the Securities Act and registered or exempt from registration under applicable state securities laws. The Parent Shares that will become subject to options to purchase Parent Shares pursuant to Section 7.2(a) have been duly authorized. Upon payment to Parent of the appropriate exercise price, those Parent Shares will be validly issued, fully paid and nonassessable.

Section 5.11 Reorganization. Neither Parent nor any of its Affiliates has taken or agreed to take any action that, to the Knowledge of Parent, will (or will be reasonably likely to) prevent the Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code. To the Knowledge of Parent, the representations set forth in the Parent Tax Certificate attached to the Parent Letter, if made on the date hereof



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(assuming the Merger were consummated on the date hereof and based on reasonable estimates in the case of certain information not available on the date hereof), would be true and correct in all material respects.

Section 5.12 Litigation. As of the date of this Agreement, there is no suit, action, proceeding or investigation pending against Parent or any of its Subsidiaries that would have a Material Adverse Effect on Parent. Neither Parent nor any of its Subsidiaries is subject to any outstanding judgment, order, writ, injunction or decree that would have a Material Adverse Effect on Parent.

Section 5.13 Parent Benefit Plans. Except for any circumstance that would not have a Material Adverse Effect on Parent: (i) each ERISA Benefit Plan of Parent has been maintained and operated in substantial compliance with its terms, the applicable requirements of the Code and ERISA and the regulations issued thereunder; (ii) no material litigation or asserted claims against Parent exist with respect to any such ERISA Benefit Plan other than claims for benefits in the normal course of business; and (iii) no such ERISA Benefit Plan is a multi-employer plan as such term is defined in Section 3(37) of ERISA. With respect to each ERISA Benefit Plan of Parent which is subject to Title IV of ERISA or Section 412 of the Code, no accumulated funding deficiencies under Title IV of ERISA or the Code have been incurred or are reasonably likely to be incurred by Parent or by any trade or business that together with the Parent would be deemed a single employer under Section 414 of the Code (an ERISA Affiliate ), except for any potential liability which would not have a Material Adverse Effect on Parent or any ERISA Affiliate.

Section 5.14 Liabilities. Since December 31, 2002, neither Parent nor any of its Subsidiaries has incurred any liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise), other than liabilities or obligations incurred in the ordinary course of business since December 31, 2002 and liabilities or obligations which would not have a Material Adverse Effect on Parent.

Section 5.15 Interim Operations of Sub. Sub was formed solely for the purpose of engaging in the transactions contemplated hereby, has engaged in no business or other activities, has incurred no liabilities or obligations, other than as contemplated hereby, and will conduct its activities only as contemplated hereby.

Section 5.16 State Takeover Statutes. To the Knowledge of Parent, other than the provisions of Section 203 of the DGCL, no fair price, moratorium, control share acquisition or other similar anti-takeover statute or regulation or any anti-takeover provision in Parent's Second Amended and Restated Certificate of Incorporation or Bylaws is, or at the Effective Time will be, applicable to the Parent Shares, Parent, Sub or the Merger.

Section 5.17 Required Vote of Parent Stockholders. The affirmative vote of the holders of a majority of the Parent Shares represented at the Parent Stockholder Meeting (provided that at least a majority of the Parent Shares are represented in person or by proxy at such meeting) approving the issuance of Parent Shares in the Merger is the only vote of the holders of any class or series of Parent's capital stock necessary to approve this Agreement and the transactions contemplated by this Agreement.

Section 5.18 Brokers. No broker, investment banker, financial advisor or other Person, other than Merrill Lynch & Co. (Merrill Lynch) and J.P. Morgan Securities, Inc. (J.P. Morgan), the fees and expenses of which will be paid by Parent, is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Parent or Sub.

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Section 5.19 Opinions of Financial Advisor. Parent has received the opinions of each of Merrill Lynch and J.P. Morgan to the effect that, as of the date of such opinions, the Exchange Ratio is fair to Parent from a financial point of view.

### ARTICLE VI

#### COVENANTS RELATING TO CONDUCT OF BUSINESS

Section 6.1 Conduct of Business Pending the Merger.

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(a) Conduct of Business by the Company Pending the Merger. During the period from the date of this Agreement until the Effective Time, the Company shall, and shall cause each of its Subsidiaries to, except as expressly contemplated by this Agreement and the Company Letter or as required by any Applicable Law, in all material respects carry on its business in the ordinary course and, to the extent consistent therewith, use reasonable best efforts to preserve its business organization substantially intact and maintain its existing relations and goodwill with customers, suppliers, distributors, creditors, lessors, employees and business associates. Without limiting the generality of the foregoing, and except as otherwise expressly contemplated by this Agreement and the Company Letter or as required by any Applicable Law, during such period, the Company shall not, and shall not permit any of its Subsidiaries or other controlled entities to, without the prior written consent of Parent or its designated advisors (not to be unreasonably withheld or delayed):

(i) (A) amend the Company's Restated Certificate of Incorporation or the Company's Bylaws; (B) other than in the case of any direct or indirect wholly owned Subsidiary, split, combine or reclassify its outstanding shares of capital stock; (C) declare, set aside or pay any dividend or distribution payable in cash, stock or property in respect of any capital stock other than dividends or distributions from its direct or indirect wholly owned Subsidiaries; and (D) except in connection with the Company Stock Plans, repurchase, redeem or otherwise acquire, or permit any of its Subsidiaries to purchase or otherwise acquire, any shares of its capital stock or any securities convertible into or exchangeable or exercisable for any shares of its capital stock;

(ii) (A) issue, sell, pledge, dispose of or encumber any shares of, or securities convertible into or exchangeable or exercisable for, or options, warrants, calls, commitments or rights of any kind to acquire, any shares of its capital stock of any class (other than (x) the issuance of shares of Company Common Stock and Company Stock Options to employees of the Company or any of its Subsidiaries pursuant to Company Stock Plans as set forth in Item 6.1(a)(ii)(A) of the Company Letter, (y) Shares issuable under Company Stock Options outstanding as of the date of this Agreement or (z) the issuance by any direct or indirect wholly owned Subsidiary of the Company of its capital stock to the Company or another wholly owned Subsidiary of the Company); (B) other than products or services sold in the ordinary course of business, transfer, lease, license, guarantee, sell, mortgage, pledge, dispose of or encumber any other property or assets; (C) incur or modify any indebtedness (other than (i) indebtedness existing solely between the Company and its wholly owned Subsidiaries or between such wholly owned Subsidiaries or (ii) incremental indebtedness to the extent such incremental indebtedness, together with all other indebtedness of the Company and its Subsidiaries, is materially consistent with the historical debt-to-equity ratio of the Company and its Subsidiaries, taken as a whole (adjusting for the sale of the demand deposits of EFS National Bank to Union Planters Bank, N.A. pursuant to that certain Agreement to Purchase Assets and Assume Liabilities dated November 14, 2002)); (D) make or authorize or commit to any capital expenditures (other than as set forth in Item 6.1(a)(ii)(D) of the Company Letter or which, individually, is not in excess of \$250,000 and, in the aggregate, are not in excess of \$10,000,000); (E) by any means, make any purchase or acquisition (including by way of merger or other business combination) of, or investment in (i) the capital stock of or other interest in, any other Person other than a wholly owned Subsidiary of the Company or (ii) except in the ordinary course of business consistent with past practice, assets of any other Person (other than, in the case of clauses (i) and (ii), (x) consummation of an acquisition publicly announced prior to the date of this Agreement or (y) acquisitions (including acquisitions of additional non-publicly traded equity interests in any Person in which the Company or any of its Subsidiaries owns any equity interest) that individually involve aggregate consideration not exceeding \$10,000,000); and (F) make any loans, advances or capital contributions to any other Person (other than to the Company or any of its wholly owned Subsidiaries) outside of the ordinary course of business;

(iii) except as required by the terms of this Agreement, (A) terminate, establish, adopt, enter into, make any new grants or awards under, amend or otherwise modify, any Benefit Plans or Compensation Commitments, (B) increase the compensation of any officer or any other employee earning annual compensation of more than \$200,000 (other than pursuant to Contracts currently in force and previously disclosed to Parent) and (C) hire any employee at a compensation level expected to be more than \$200,000 a year;



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(iv) other than as required in Section 6.1(a)(v), pay, discharge, settle, compromise or satisfy any material claims, liabilities or other obligations (absolute, accrued, asserted or unasserted, contingent or otherwise), other than in the ordinary course of business consistent with past practice or in accordance with their terms existing on the date hereof, or waive, release or assign any material rights or claims other than in the ordinary course of business consistent with past practice;

(v) pay, discharge, settle, compromise or satisfy (i) any litigation or claims not related to the matters set forth in Item 6.1(a)(v) of the Company Letter (other than in the ordinary course of business) or (ii) any of the matters set forth in Item 6.1(a)(v) of the Company Letter;

(vi) modify, amend or terminate any material Contracts (including any Company Material Contract), if such modification, amendment or termination would be materially adverse to the Company, other than (i) customer Contracts or (ii) Contracts entered in the ordinary course of business consistent with past practice;

(vii) implement or adopt any change in its accounting principles or accounting practices, in all cases other than as may be required by a change in generally accepted accounting principles or as recommended by the Company's outside auditors;

(viii) prepare or file any Tax Return inconsistent in any material respect with past practice or, on any such Tax Return, take any position, make any election, or adopt any method that is materially inconsistent with positions taken, elections made or methods used in preparing or filing similar Tax Returns in prior periods;

(ix) enter into any Contract that would restrict, after the Effective Time, Parent and its Subsidiaries (other than the Company and its Subsidiaries) with respect to engaging or competing in any line of business or in any geographic area;

(x) enter into any Contract that would restrict, after the Effective Time, the Company and its Subsidiaries with respect to (A) engaging or competing in any of Parent's core businesses or in any geographic area or (B) pricing, to the extent such Contract contains a provision which restricts pricing in any of Parent's core businesses;

(xi) enter into any material Contract that contains a change of control provision which would be applicable to the Merger or the transactions contemplated by this Agreement;

(xii) take any action or omit to take any action that would reasonably be expected to cause any of its representations and warranties herein to become untrue, such that the condition set forth in Section 8.3(a) would fail to be satisfied; or

(xiii) authorize or enter into any Contract to do any of the foregoing.

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(b) Conduct of Business by Parent Pending the Merger. During the period from the date of this Agreement until the Effective Time, except as expressly contemplated by this Agreement or as required by any Applicable Law, during such period, Parent shall not, and shall not permit any of its Subsidiaries or other controlled entities to, without the prior written consent of the Company (not to be unreasonably withheld or delayed):

(i) make any change in or amendment to Parent's Second Amended and Restated Certificate of Incorporation that changes any material term or provision of the Parent Shares;

(ii) make any material change in or amendment to Subsidiary's Certificate of Incorporation;

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(iii) engage in any recapitalization, restructuring or reorganization with respect to Parent's capital stock, including by way of any extraordinary dividend on, or other extraordinary distributions with respect to, Parent's capital stock;

(iv) take any action or omit to take any action that would reasonably be expected to cause any of its representations and warranties herein to become untrue, such that the condition set forth in Section 8.2(a) would fail to be satisfied;

(v) enter into any agreement to acquire or purchase (whether by merger, acquisition of equity or assets, joint venture or otherwise) any Person or any interest in any Person if such acquisition or purchase would cause a material delay in or prevent the receipt of any antitrust or competition law approval necessary for the consummation of the Merger, unless prior to taking such action Parent reasonably determines that such action would not be reasonably expected to cause such effect; or

(vi) authorize or enter into any Contract to do any of the foregoing;

provided, however, that to the extent the restrictions provided in clauses (iv), (v) and (vi) apply to any Alliance, the obligations of Parent or any of its Subsidiaries or other controlled entities with respect to such restrictions shall be subject to applicable fiduciary duties and contractual restrictions with respect to such Alliance; and provided further that, unless it has received the prior written consent of the Company (not to be unreasonably withheld or delayed), Parent shall, and shall cause its Subsidiaries and other controlled entities to (to the extent it may do so under applicable fiduciary duties, contractual restrictions and Applicable Law), vote any voting equity interest it holds in any Alliance against any proposal by any Alliance to take any of the actions referred to in clauses (iv), (v) and (vi).

Section 6.2 No Solicitation. (a) As of the date hereof, the Company shall not, nor shall it permit any of its Subsidiaries to, nor shall it or its Subsidiaries authorize or permit any of their respective officers, directors, employees, representatives or agents to, directly or indirectly, (i) solicit, initiate or knowingly encourage (including by way of furnishing non-public information) any inquiries regarding, or the making of any proposal which constitutes, any Takeover Proposal, (ii) enter into any letter of intent or agreement related to any Takeover Proposal other than a confidentiality agreement (each, an Acquisition Agreement) or (iii) participate in any discussions or negotiations regarding, or take any other action knowingly to facilitate any inquiries or the making of any proposal that constitutes, or that would reasonably be expected to lead to, any Takeover Proposal; provided, however, that if, at any time prior to the Company Stockholders Meeting, and without any breach of the terms of this Section 6.2(a), the Company receives a Takeover Proposal from any Person that in the good faith judgment of the Company's Board of Directors is, or is reasonably likely to lead to the delivery of, a Superior Proposal, the Company may (x) furnish information (including non-public information) with respect to the Company to any such Person pursuant to a confidentiality agreement containing confidentiality provisions no more favorable to such Person than those in the Confidentiality Agreement and (y) participate in negotiations with such Person regarding such Takeover Proposal. For purposes of this Agreement, Takeover Proposal means any inquiry, proposal or offer from any Person (other than Parent and its Affiliates) relating to any direct or indirect acquisition or purchase of 25% or more of the assets of the Company and its Subsidiaries or 25% or more of the voting power of the capital stock of the Company or the capital stock of such Subsidiaries then outstanding, any tender offer or exchange offer that if consummated would result in any Person beneficially owning 25% or more of the voting power of the capital stock of the Company or the capital stock of such Subsidiaries then outstanding, or any merger, consolidation, business combination, recapitalization, liquidation, dissolution or similar transaction involving the Company, other than the transactions with Parent and Sub contemplated by this Agreement. For purposes of this Agreement, a Superior Proposal means any bona fide Takeover Proposal made by any Person (other than Parent and its Affiliates) to acquire, directly or indirectly, for consideration consisting of cash and/or securities, more than 50% of the voting power of the Shares then outstanding or all or substantially all the assets of the Company and otherwise on terms which the Board of Directors of the Company determines in good faith would, if consummated, result in a transaction that would, or would be reasonably likely to, be more favorable to the stockholders of the Company (taking into account such factors as the Company's Board of Directors in good faith deems relevant, including the identity of the offeror and all legal, financial, regulatory and other aspects of the proposal, including the terms of any financing and the likelihood that the transaction will be consummated) than the transactions contemplated hereby.



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(b) Except as set forth in Section 9.1(e), neither the Board of Directors of the Company nor any committee thereof shall (i) withdraw or modify, or propose to withdraw or modify, in a manner adverse to Parent, the approval or recommendation by such Board of Directors or such committee of the Merger or this Agreement; (ii) approve or recommend, or propose to approve or recommend, any Takeover Proposal; or (iii) authorize or permit the Company or any of its Subsidiaries to enter into any Acquisition Agreement.

(c) Nothing contained in this Section 6.2 shall prohibit the Company from complying with Rules 14d-9 or 14e-2 promulgated under the Exchange Act with respect to a Takeover Proposal.

(d) The Company agrees that it and its Subsidiaries shall, and the Company shall direct its and its Subsidiaries' respective officers, directors, employees, representatives and agents to, immediately cease and cause to be terminated any activities, discussions or negotiations with any Persons with respect to any Takeover Proposal. The Company agrees that it will notify Parent promptly (but no later than 24 hours) if, to the Company's Knowledge, any Takeover Proposal is received by, any information is requested from, or any discussions or negotiations relating to a Takeover Proposal are sought to be initiated or continued with, the Company, its Subsidiaries, or their officers, directors, employees, representatives or agents. The notice shall indicate the name of the Person making such Takeover Proposal or taking such action and the material terms and conditions of any proposals or offers, and thereafter the Company shall keep Parent informed, on a current basis, of the status and terms of any such proposals or offers and the status of any such discussions or negotiations. The Company also agrees that it will promptly request each Person that has heretofore executed a confidentiality agreement in connection with any Takeover Proposal to return or destroy all confidential information heretofore furnished to such Person by or on behalf of it or any of its Subsidiaries.

Section 6.3 Disclosure of Certain Matters; Delivery of Certain Filings. The Company shall promptly advise Parent orally and in writing if there exists a material breach of a representation or warranty contained herein or if there occurs, to the Knowledge of the Company, any change or event which results in the executive officers of the Company having a good faith belief that such change or event has resulted in, or is reasonably likely to result in, a material breach of a representation or warranty contained herein. Parent shall promptly advise the Company orally and in writing if there exists a material breach of a representation or warranty contained herein or if there occurs, to the Knowledge of Parent, any change or event which results in the executive officers of Parent having a good faith belief that such change or event has resulted in, or is reasonably likely to result in, a material breach of a representation or warranty contained herein. The Company shall provide to Parent, and Parent shall provide to the Company, copies of all filings made by the Company or Parent, as the case may be, with any Governmental Entity in connection with this Agreement and the transactions contemplated hereby.

Section 6.4 Conduct of Business of Sub Pending the Merger. During the period from the date of this Agreement through the Effective Time, Sub shall not engage in any activity or incur any liabilities or obligations of any nature except as expressly provided in or contemplated by this Agreement.

Section 6.5 NYSE Listing. Promptly after the date of this Agreement, Parent shall use its reasonable best efforts to cause the Parent Shares issuable in the Merger to be approved for listing on the NYSE, subject to official notice of issuance.

## **ARTICLE VII**

### **ADDITIONAL AGREEMENTS**

Section 7.1 Employee Benefits. (a) Parent agrees that, following the Effective Time, the employees of the Company and its Subsidiaries will be eligible to participate in the employee benefit plans of Parent on substantially the same terms and conditions of similarly situated employees of

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Parent or its Subsidiaries, as applicable. Parent will cause such employee benefit plans to take into account for purposes of benefit accrual, eligibility and vesting thereunder service by employees of the Company and its Subsidiaries as if such service were with Parent to the same extent that such service was credited under a comparable plan of the Company; provided, however, that, notwithstanding anything herein to the contrary, such employees shall not receive such credit for purposes of determining Service Related Contributions under the First Data Incentive Savings Plan or any defined benefit plan maintained by Parent or any of its Affiliates and provided, further, that with respect to those employees of the Company who are, prior to the Effective Time, eligible for and receiving a fifty percent (50%) employer matching

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contribution between 3% and 6% of such employee's compensation under the Company's 401(k) Plan (the Employer Match), following the Effective Time Parent shall increase the compensation of such employees in an amount to compensate such employees given that their participation in the First Data Incentive Savings Plan following the Effective Time will not allow for the Employer Match. Any restriction on coverage for pre-existing conditions or requirement for evidence of insurability under the employee benefit plans of Parent shall be waived, and employees of the Company and its Subsidiaries shall receive credit under the employee benefit plans of Parent for co-payments and payments under a deductible limit made by them and for out-of-pocket maximums applicable to them during the plan year of the applicable Benefit Plan of the Company or any such Subsidiary in accordance with the corresponding employee benefit plans of Parent, provided that the amounts of such co-payments and payments and out-of-pocket maximums as of the Closing Date with respect to such employees shall be provided by the Company to Parent on the Closing Date. Parent shall, and shall cause the Surviving Corporation to, honor all binding compensation and employee benefit obligations to current and former employees under the Benefit Plans of the Company and its Subsidiaries and, to the extent set forth in the Company Letter, all employee severance plans (or policies) in existence on the date hereof and set forth in the Company Letter and all employment or severance agreements entered into by the Company or adopted by the Board of Directors of the Company prior to the date hereof and, in each case, previously disclosed to Parent. The severance benefits to be provided by Parent to employees of the Company and its Subsidiaries after the Effective Time shall be substantially as set forth in the Severance Plan attached in Item 7.1 of the Parent Letter.

(b) Nothing in this Agreement shall be interpreted as limiting the power of the Surviving Corporation or Parent to amend or terminate any particular Benefit Plan or Compensation Commitment or any other particular employee benefit plan, program, agreement or policy or as requiring the Surviving Corporation or Parent to offer to continue the employment of any employee of the Company or its Subsidiaries for any period of time or to offer to continue (other than as required by its written terms) any Compensation Commitment.

(c) Prior to the Effective Time, the Company's Board of Directors shall adopt resolutions terminating the Company's 401(k) Plan effective immediately prior to the Effective Time. After the Effective Time, employees of the Company and its Subsidiaries shall be entitled to elect to roll over any distributions they are eligible to receive from the Company's 401(k) Plan (including outstanding loans) to the First Data Corporation Incentive Savings Plan.

(d) The Company may implement a retention plan (the Retention Plan) for the benefit of those employees of the Company and its Subsidiaries selected by the Compensation Committee of the Board of Directors of the Company, which Retention Plan shall involve aggregate benefits to such employees equal to \$10,000,000 (the Retention Plan Amount); provided, however, that not less than seventy-five percent (75%) of such retention benefits shall be in the form of cash and the remaining portion of such retention benefits shall be in the form of Parent Stock Options (the value of which shall be determined by the Black-Scholes valuation model on the date of grant) which shall be granted within 90 days after the Closing Date; and provided, further, that the allocation of such benefits among such employees shall be proposed by the Compensation Committee of the Board of Directors of the Company and shall be subject to the approval of Parent (which shall not be unreasonably withheld); and provided, further, that up to fifty percent (50%) of the Retention Plan Amount (consisting of cash) shall be payable to such employees on the Closing Date and the remaining portion of the Retention Plan Amount shall be payable no earlier than the six month anniversary of the Closing Date.

Section 7.2 Options. (a) As of the Effective Time, each outstanding Company Stock Option, whether or not exercisable and whether or not vested, under the Company Stock Plans, shall be converted into an option to purchase Parent Shares. Each Company Stock Option so converted shall be exercisable upon the same terms and conditions as under the applicable Company Stock Plan and the applicable option agreement issued thereunder, except that (i) each Company Stock Option shall vest and become immediately exercisable at the Effective Time, (ii) each such Company Stock Option shall be exercisable for that whole number of Parent Shares (rounded to the nearest whole share) equal to the number of Shares subject to such Company Stock Option immediately prior to the Effective Time multiplied by the Exchange Ratio, and (iii) the option price per Parent Share shall be an amount equal to the option price per Share subject to such Company Stock Option in effect immediately prior to the Effective Time divided by the Exchange Ratio (the option price per share, as so determined, being rounded to the nearest whole cent).

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(b) Parent shall (i) on or prior to the Effective Time, reserve for issuance the number of Parent Shares that will become subject to options to purchase Parent Shares ( Parent Options ) pursuant to Section 7.2(a), (ii) from and after the Effective Time, upon exercise of the Parent Options in accordance with the terms thereof, make available for issuance all Parent Shares covered thereby, (iii) at the Effective Time, assume the Company Stock Plans, with the result that all obligations of the Company under the Company Stock Plans, including with respect to Company Stock Options outstanding, at the Effective Time, shall be obligations of Parent following the Effective Time, and (iv) as promptly as practicable after the Effective Time, issue to each holder of an outstanding Company Stock Option a document evidencing the foregoing assumption by Parent.

(c) Promptly after the Effective Time, Parent shall file a registration statement on Form S-8 under the Securities Act covering the Parent Shares issuable upon the exercise of Parent Options created upon the assumption by Parent of Company Stock Options under Section 7.2(a), and will maintain the effectiveness of such registration, and the current status of the prospectus contained therein, until the exercise or expiration of such Parent Options. Parent shall use reasonable best efforts to cause the Parent Shares issuable upon the exercise of Parent options created upon the assumption by Parent of Company Stock Options under Section 7.2(a) to be approved for listing on the NYSE promptly after the Effective Time.

Section 7.3 Stockholder Approval: Preparation of Proxy Statement: Other Actions. (a) As soon as practicable following the date of this Agreement, each of the Company and Parent will duly call, give notice of, convene and hold meetings of their respective stockholders (including any adjournments or postponements thereof, the Company Stockholders Meeting and the Parent Stockholders Meeting , respectively, and collectively, the Stockholders Meetings ) for the purpose, in the case of the Company, of obtaining approval of the Agreement ( Company Stockholder Approval ) and, in the case of Parent, of obtaining approval of the issuance of Parent Shares in the Merger ( Parent Stockholder Approval ). Parent and the Company will use their reasonable best efforts to hold the Parent Stockholders Meeting and the Company Stockholders Meeting on the same date. The Company shall, through its Board of Directors (but subject to the right of the Company to terminate this Agreement as set forth in Section 9.1(e)), recommend to its stockholders that the Company Stockholder Approval be given. Parent shall, through its Board of Directors, recommend to its stockholders that the Parent Stockholder Approval be given. This Agreement shall be submitted to the Company's stockholders at the Company Stockholders Meeting whether or not the Board of Directors of the Company determines at any time that this Agreement is no longer advisable and recommends that stockholders reject it.

(b) The Company and Parent shall promptly prepare and file with the SEC the Proxy Statement and Parent shall prepare (in consultation with the Company) and file with the SEC the Registration Statement which will include the Proxy Statement as a prospectus. Each of the Company and Parent shall use its reasonable best efforts to have the Registration Statement declared effective under the Securities Act as promptly as practicable after such filing and use reasonable best efforts to keep the Registration Statement effective as long as is necessary to consummate the Merger. As promptly as practicable after the Registration Statement shall have become effective and the Proxy Statement shall have been cleared by the SEC, each of Parent and the Company shall use reasonable best efforts to distribute the Proxy Statement to its respective stockholders.

(c) No filing of, or amendment or supplement to, the Registration Statement or the Proxy Statement, and no correspondence with the SEC with respect thereto, will be made by Parent or the Company without providing the other party the opportunity to review and comment thereon. Parent will advise the Company, promptly after it receives notice thereof, of the time when the Registration Statement has become effective or any supplement or amendment has been filed, the issuance of any stop order, the suspension of the qualification of the Parent Shares issuable in connection with the Merger for offering or sale in any jurisdiction, or any request by the SEC for amendment of the Registration Statement or comments thereon and responses thereto or requests by the SEC for additional information. If at any time prior to the Effective Time any information relating to Parent or the Company, or any of their respective Affiliates, officers or directors, should be discovered by Parent or the Company which should be set forth in an amendment or supplement to any of the Registration Statement or the Proxy Statement, so that any of such documents would not include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the party which discovers such information shall promptly notify the other parties hereto and an appropriate amendment or supplement describing such information shall be promptly filed with the SEC and, to the extent required by law, disseminated to the stockholders of Parent and the Company.





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(d) Each of the Company and Parent each shall use commercially reasonable efforts to cause to be delivered a letter of its independent auditors, dated (i) the date two business days prior to the date on which the Registration Statement shall become effective and (ii) the Closing Date, and addressed to the other party and its directors, in form and substance customary for comfort letters delivered by independent public accountants in connection with registration statements similar to the Registration Statement.

Section 7.4 Access to Information. Upon reasonable notice and subject to the terms of the Confidentiality Agreement, dated as of February 18, 2003, between the Company and Parent, as the same may be amended, supplemented or modified (the Confidentiality Agreement), each of Company and Parent shall, and shall cause each of its respective Subsidiaries to, afford to the other party, and its respective officers, employees, accountants, counsel and other representatives all reasonable access, during normal business hours during the period prior to the Effective Time, to all their respective properties, books, contracts, commitments and records and, during such period, each of Company and Parent shall (and shall cause each of its respective Subsidiaries to) make available to the other party or its designated advisors (a) a copy of each report, schedule, registration statement and other document filed or received by it during such period pursuant to the requirements of the federal or state securities laws or the federal Tax laws and (b) all other information concerning its business, properties and personnel as the other party may reasonably request. Subject to Applicable Law, the Company further agrees to, and shall direct its Subsidiaries to, reasonably assist and cooperate with Parent in any integration planning to take effect after consummation of the Merger. In the event of a termination of this Agreement for any reason, each party shall promptly return or destroy, or cause to be returned or destroyed, all nonpublic information so obtained from the other party or any of its Subsidiaries.

Section 7.5 Fees and Expenses. Except as provided in this Section 7.5, all fees and expenses incurred in connection with the Merger, this Agreement and the transactions contemplated hereby shall be paid by the party incurring such fees or expenses, whether or not the Merger is consummated; provided, however, that Parent and the Company shall share equally all fees and expenses (other than attorneys' and accounting fees and expenses) incurred in relation to the printing and filing of the Proxy Statement (including any related preliminary materials) and the Registration Statement (including financial statements and exhibits) and any amendments or supplements thereto.

Section 7.6 Public Announcements; Employee Communications. Parent and the Company will consult with each other before issuing any press release or otherwise making any public statements with respect to the transactions contemplated by this Agreement and shall not issue any such press release or make any such public statement prior to such consultation, except as may be required by Applicable Law, fiduciary duties or by obligations pursuant to any listing agreement with any national securities exchange.

Section 7.7 Transfer Taxes. The Company and Parent shall cooperate in the preparation, execution and filing of all returns, questionnaires, applications or other documents regarding any real property transfer or gains, sales, use, transfer, value added, stock transfer and stamp Taxes, any transfer, recording, registration and other fees and any similar Taxes which become payable by the Company, Parent or Sub in connection with the transactions contemplated by this Agreement (together with any related interest, penalties or additions to Tax, Transfer Taxes). All Transfer Taxes shall be paid by the Company and expressly shall not be a liability of any holder of Company Common Stock.

Section 7.8 State Takeover Laws. If any fair price or control share acquisition statute or other similar statute or regulation shall become applicable to the transactions contemplated hereby, Parent, Sub and the Company shall use reasonable best efforts to grant such approvals and take such actions as are necessary so that the transactions contemplated hereby may be consummated as promptly as practicable on the terms contemplated hereby and otherwise act to minimize the effects of any such statute or regulation on the transactions contemplated hereby.

Section 7.9 Indemnification; Directors and Officers Insurance. (a) To the fullest extent permitted by Applicable Law, for a period of not less than six years from the Effective Time (or, in the case of matters occurring at or prior to the Effective Time that have not been resolved prior to the sixth anniversary of the Effective Time, until such matters are finally resolved), Parent shall cause the Surviving Corporation to honor and indemnify under, and shall itself honor and indemnify under as if it were the Surviving Corporation, all rights to indemnification or exculpation

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(including rights relating to advancement of expenses and indemnification rights to which such persons

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are entitled because they are serving as a director, officer, agent or employee of another entity at the request of the Company or any of its Subsidiaries), existing in favor of a director, officer, employee or agent (an Indemnified Person) of the Company or any of its Subsidiaries as provided in the Restated Certificate of Incorporation of the Company, the Bylaws of the Company or any indemnification agreement (copies of which agreements, if any, have been furnished to Parent prior to the date of this Agreement), in each case, as in effect on the date of this Agreement, and relating to actions or events through the Effective Time; provided, however, that the Surviving Corporation shall not be required to indemnify any Indemnified Person in connection with any proceeding (or portion thereof) to the extent involving any claim initiated by such Indemnified Person unless the initiation of such proceeding (or portion thereof) was authorized by the Board of Directors of the Company or unless such proceeding is brought by an Indemnified Person to enforce rights under this Section 7.9; provided further that any determination required to be made with respect to whether an Indemnified Person's conduct complies with the standards set forth under the DGCL, the Restated Certificate of Incorporation of the Company, the Bylaws of the Company or any such agreement, as the case may be, shall be made by independent legal counsel selected by such Indemnified Person and reasonably acceptable to Parent; and provided further that nothing in this Section 7.9 shall impair any rights of any Indemnified Person. Without limiting the generality of the preceding sentence, in the event that any Indemnified Person becomes involved in any actual or threatened action, suit, claim, proceeding or investigation covered by this Section 7.9 after the Effective Time, Parent shall, or shall cause the Surviving Corporation to, promptly advance to such Indemnified Person his or her legal and other expenses (including the cost of any investigation and preparation incurred in connection therewith), subject to the providing by such Indemnified Person of an undertaking, which shall not be required to be secured, to reimburse all amounts so advanced in the event of a nonappealable determination of a court of competent jurisdiction that such Indemnified Person is not entitled thereto.

(b) Parent shall, or shall cause the Surviving Corporation to, maintain the Company's existing officers' and directors' liability insurance (D&O Insurance) for a period of six years after the Effective Time so long as the annual premium therefor is not in excess of 300% of the last annual premium paid prior to the date hereof (the Current Premium); provided, however, that if the existing D&O Insurance expires, is terminated or cancelled during such six-year period or is at an annual premium in excess of 300% of the Current Premium, the Surviving Corporation will use its reasonable best efforts to obtain as much D&O Insurance as can be obtained for the remainder of such period for a premium not in excess of 300% (on an annualized basis) of the Current Premium. Item 7.9 of the Company Letter sets forth the last annual premium paid prior to the date hereof.

(c) The provisions of this Section 7.9 are intended to be for the benefit of, and shall be enforceable by, each Indemnified Person, his or her heirs and his or her personal representatives and shall be binding on all successors and assigns of Parent, the Company and the Surviving Corporation.

Section 7.10 Appropriate Actions; Consents; Filings. (a) The Company and Parent shall cooperate with each other and use (and shall cause their respective Subsidiaries to use) reasonable best efforts to take or cause to be taken all actions, and do or cause to be done all things, necessary, proper or advisable on its part under this Agreement and Applicable Laws to consummate and make effective the Merger and the other transactions contemplated by this Agreement as soon as practicable, including preparing and filing as promptly as practicable all documentation to effect all necessary notices, reports and other filings and to obtain as promptly as practicable all consents, registrations, approvals, permits and authorizations necessary or advisable to be obtained from any third party and/or any Governmental Entity in order to consummate the Merger or any of the other transactions contemplated by this Agreement. If any administrative or judicial action or proceeding is instituted (or threatened to be instituted), including by a private party, to prohibit the Merger, the Company and Parent shall use their reasonable best efforts to avoid the institution of any such action or proceeding and to contest and resist any such action or proceeding and to have vacated, lifted, reversed or overturned any temporary, preliminary or permanent decree, judgment, injunction or other order that is in effect and that prohibits, prevents, delays or restricts consummation of the Merger (it being understood that the foregoing obligation of the parties hereto will cease in the event a permanent decree, judgment, injunction or other order is issued or is in effect that is non-appealable and prohibits, prevents, delays or restricts consummation of the Merger).

(b) Subject to Applicable Laws relating to the exchange of information, Parent and the Company shall have the right to review in advance, and to the extent practicable each will consult the other on, all the information relating to Parent or the Company, as the case may be, and any of their respective Subsidiaries, that appear in any filing made with, or written materials submitted to, any third party and/or any Governmental Entity in



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connection with the Merger and the other transactions contemplated by this Agreement. In exercising the foregoing right, each of the Company and Parent shall act reasonably and as promptly as practicable.

(c) Subject to Applicable Laws relating to the exchange of information, the Company and Parent each shall, upon request by the other, furnish the other with all information concerning itself, its Subsidiaries, directors, officers and stockholders and such other matters as may be reasonably necessary or advisable in connection with the Proxy Statement, the Registration Statement or any other statement, filing, notice or application made by or on behalf of Parent, the Company or any of their respective Subsidiaries to any third party and/or any Governmental Entity in connection with the Merger and the transactions contemplated by this Agreement.

(d) The Company and Parent each shall keep the other apprised of the status of matters relating to completion of the transactions contemplated hereby, including promptly furnishing the other with copies of notice or other communications received by Parent or the Company, as the case may be, or any of its Subsidiaries, from any third party and/or any Governmental Entity with respect to the Merger and the other transactions contemplated by this Agreement. The Company and Parent each shall give prompt notice to the other of any change that is reasonably likely to result in a Material Adverse Effect on the Company or Parent, respectively. Neither the Company nor Parent shall permit any of its officers, employees or any other representatives or agents to participate in any meeting with any Governmental Entity in respect of any filings, investigation or other inquiry relating to the Merger and the transactions contemplated by this Agreement unless it consults with the other party in advance and, to the extent permitted by such Governmental Entity, gives the other party the opportunity to attend and participate thereat.

(e) Parent does not intend to become, and shall use its reasonable best efforts to avoid becoming, a bank holding company or financial holding company under the Bank Act on an ongoing basis as a result of the Merger. The Company shall assist and cooperate with Parent (i) in the preparation and submission of any regulatory applications and filings with applicable Bank Regulatory Authorities that are reasonably necessary to give effect to such intent and (ii) in the pursuit of any other actions that are reasonably necessary to give effect to such intent, including without limitation assisting in obtaining consents and approvals for transfers and assignments of assets and liabilities of Concord EFS National Bank. The parties agree that such efforts may include, if necessary to effectuate the foregoing intent, the transfer of assets and liabilities of Concord EFS National Bank or other reorganization or restructuring of Concord EFS National Bank (collectively, a Bank Restructuring ) either after or immediately prior to the Effective Time, provided that the parties shall use their reasonable best efforts to cause the Bank Restructuring to be consummated after the Effective Time. In no event shall the Company be obligated to transfer any asset or liability of Concord EFS National Bank or otherwise consummate any Bank Restructuring prior to the Effective Time unless and until all other conditions set forth in Article VIII have been satisfied or waived and the closing of the Merger will be completed immediately thereafter.

Section 7.11 Section 16 Matters. The Board of Directors of the Company and Parent shall, prior to the Effective Time, take all such actions as may be necessary or appropriate pursuant to Rule 16b-3(d) and Rule 16b-3(e) to exempt (i) the conversion of Shares into Parent Shares and the conversion of Company Stock Options into Parent Options and (ii) the acquisition of Parent Shares and the right to receive Parent Shares (including pursuant to Parent Options) pursuant to the terms of this Agreement by officers and directors of the Company subject to the reporting requirements of Section 16(a) of the Exchange Act or by employees or directors of the Company who may become an officer or director of Parent subject to the reporting requirements of Section 16(a) of the Exchange Act. Parent and the Company shall provide to counsel to the other party copies of the resolutions to be adopted by the respective Boards of Directors to implement the foregoing.

Section 7.12 Affiliate Letters. As promptly as practicable, the Company shall deliver to Parent a letter identifying all Persons who are, at the time this Agreement is submitted for adoption by the stockholders of the Company, affiliates of the Company for purposes of Rule 145 under the Securities Act. The Company shall use reasonable best efforts to deliver or cause to be delivered to Parent, prior to the Effective Time, an Affiliate Letter in the form attached hereto as Exhibit A from each such Person.

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Section 7.13 Board of Directors Representative. At or prior to the Effective Time, Parent shall expand its Board of Directors by one member and, immediately after the Effective Time, appoint to fill such vacancy an existing director of the Company to be mutually agreed upon by Parent and the Company.

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**ARTICLE VIII**

**CONDITIONS PRECEDENT**

Section 8.1 Conditions to Each Party's Obligation to Effect the Merger. The respective obligations of each party to effect the Merger shall be subject to the fulfillment at or prior to the Effective Time of the following conditions:

(a) Stockholder Approval. Each of the Parent Stockholder Approval and the Company Stockholder Approval shall have been obtained.

(b) No Prohibition. No Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, law, ordinance, rule, regulation, judgment, decree, injunction or other order (whether temporary, preliminary or permanent) that is in effect and prohibits consummation of the Merger (collectively, an Order), and no federal or state Governmental Entity shall have instituted any proceeding that is pending seeking any such Order.

(c) Stock Exchange Listing. The Parent Shares issuable in the Merger shall have been authorized for listing on the NYSE, subject to official notice of issuance.

(d) Securities Approval. The Registration Statement shall have become effective in accordance with the provisions of the Securities Act and all applicable material state blue sky securities filings, permits or approvals shall have been made or received in accordance with Applicable Law. No stop order suspending the effectiveness of the Registration Statement shall have been issued by the SEC or any state securities administrator and no proceedings for that purpose shall be pending, or to the Knowledge of Parent or the Company, threatened by the SEC or any state securities administrator.

(e) Regulatory Consents. The waiting period applicable to the consummation of the Merger under the HSR Act shall have expired or been terminated and, other than the filing provided for in Section 2.3, all notices, reports and other filings required to be made prior to the Effective Time by the Company or Parent or any of their respective Subsidiaries with, and all consents, registrations, approvals, permits and authorizations required to be obtained prior to the Effective Time by the Company or Parent or any of their respective Subsidiaries from, any Governmental Entity in connection with the execution and delivery of this Agreement and the consummation of the Merger and the other transactions contemplated hereby by the Company, Parent and Sub shall have been made or obtained (as the case may be), except for those the failure to be made or obtained would not have a Material Adverse Effect on the Company or, after giving effect to the Merger, Parent.

Section 8.2 Conditions to the Obligations of the Company to Effect the Merger. The obligations of the Company to effect the Merger shall be subject to the fulfillment at or prior to the Effective Time of the following additional conditions:

(a) Accuracy of Representations and Warranties. The representations and warranties of Parent and Sub set forth in Sections 5.3 (Capital Structure) and 5.4 (Authority) shall be true and correct with respect to those matters that are qualified by Material Adverse Effect or materiality and shall be true and correct in all material respects with respect to those matters that are not so qualified, in each case as of the Effective Time as though made on and as of the Effective Time (except to the extent any such representation and warranty expressly speaks as of a specified date). The representations and warranties of Parent and Sub set forth in this Agreement, other than those listed in the preceding sentence, shall be true and correct at the Effective Time unless the inaccuracies (without giving effect to any materiality or Material Adverse Effect qualifications



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or exceptions contained therein) in respect of such representations and warranties, taking all the inaccuracies in respect of all such representations and warranties together in their entirety, do not result in a Material Adverse Effect on Parent; provided, however, that representations and warranties that expressly speak as of a specified date shall only be true and correct to such extent as of such date. The Company shall have received a certificate signed on behalf of Parent and Sub by a duly authorized officer of Parent to such effect.

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(b) Performance of Obligations. Parent and Sub shall have performed in all material respects all material obligations and complied in all material respects with all material agreements and covenants of Parent and Sub to be performed and complied with by them under this Agreement.

(c) Tax Opinion. The Company shall have received an opinion dated the Closing Date, in form and substance reasonably satisfactory to the Company, of Kirkland & Ellis, special counsel to the Company, or other law firm of national standing, to the effect that the Merger will be treated for federal income Tax purposes as a reorganization within the meaning of Section 368(a) of the Code, and that each of Parent, Sub and the Company will be a party to that reorganization within the meaning of Section 368(b) of the Code. In rendering such opinion, Kirkland & Ellis (or other law firm of national standing) may rely upon representations contained herein and representations from the Company substantially to the effect of the representations in the Parent Tax Certificate attached to the Parent Letter and representations from the Company substantially to the effect of the representations in the Company Tax Certificate attached to the Company Letter.

Section 8.3 Conditions to the Obligations of Parent and Sub to Effect the Merger. The obligations of Parent and Sub to effect the Merger shall be subject to the fulfillment at or prior to the Effective Time of the following additional conditions:

(a) Accuracy of Representations and Warranties. The representations and warranties of the Company set forth in Sections 4.3 (Capital Structure) and 4.4 (Authority) shall be true and correct with respect to those matters that are qualified by Material Adverse Effect or materiality and shall be true and correct in all material respects with respect to those matters that are not so qualified, in each case as of the Effective Time as though made on and as of the Effective Time (except to the extent any such representation and warranty expressly speaks as of a specified date). The representations and warranties of the Company set forth in this Agreement, other than those listed in the preceding sentence, shall be true and correct at the Effective Time unless the inaccuracies (without giving effect to any materiality or Material Adverse Effect qualifications or exceptions contained therein) in respect of such representations and warranties, taking all the inaccuracies in respect of all such representations and warranties together in their entirety, do not result in a Material Adverse Effect on the Company; provided, however, that representations and warranties that expressly speak as of a specified date shall only be true and correct to such extent as of such date. Parent shall have received a certificate signed on behalf of the Company by a duly authorized officer of the Company to such effect.

(b) Performance of Obligations. The Company shall have performed in all material respects all material obligations and complied in all material respects with all material agreements and covenants of the Company to be performed and complied with by it under this Agreement.

(c) Avoidance of Bank Holding Company Treatment. Parent shall be reasonably satisfied that neither Parent nor any of its Subsidiaries shall become a bank holding company or financial holding company under the Bank Act on an ongoing basis as a result of the Merger.

(d) Certain Consents. In obtaining any approval or consent required to consummate the transactions contemplated by this Agreement, no Governmental Entity shall have imposed or shall have sought to impose any condition, penalty or requirement which would have a Material Adverse Effect on the Company or, after giving effect to the Merger, Parent.

(e) Consents Under Agreements. The Company shall have obtained the consent or approval of each Person whose consent or approval shall be required under any Contract to which the Company or any of its Subsidiaries is a party, except those for which the failure to obtain such consent or approval would not have a Material Adverse Effect on the Company or, after giving effect to the Merger, Parent.

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(f) Tax Opinion. Parent shall have received an opinion dated the Closing Date, in form and substance reasonably satisfactory to Parent, of Sidley Austin Brown & Wood, special counsel to Parent, or other law firm of national standing, to the effect that the Merger will be treated for federal income Tax purposes as a reorganization within the meaning of Section 368(a) of the Code, and that each of Parent, Sub and the Company will be a party to that reorganization within the meaning of Section 368(b) of the Code. In rendering such opinion, Sidley Austin Brown & Wood (or other law firm of national standing) may rely upon representations contained

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herein and representations from Parent substantially to the effect of the representations in the Parent Tax Certificate attached to the Parent Letter and representations from the Company substantially to the effect of the representations in the Company Tax Certificate attached to the Company Letter.

**ARTICLE IX**

**TERMINATION AND AMENDMENT**

Section 9.1 Termination. This Agreement may be terminated at any time prior to the Effective Time, whether before or after the Company Stockholder Approval or the Parent Stockholder Approval:

(a) by mutual written consent of Parent, Sub and the Company;

(b) by either Parent or the Company if any Governmental Entity of competent jurisdiction shall have issued an order, decree or ruling or taken any other action permanently enjoining, restraining or otherwise prohibiting the Merger and such order, decree or ruling or other action shall have become final and nonappealable;

(c) by Parent if there has been a breach of any representation, warranty, covenant or other agreement made by the Company in this Agreement, or any such representation and warranty shall have become untrue after the date of this Agreement, in each case such that Section 8.3(a) or Section 8.3(b) would not be satisfied and such breach or condition is not curable or, if curable, is not cured within 30 days after written notice thereof is given by Parent to the Company;

(d) by Parent if (i) the Board of Directors of the Company shall not have recommended, or the Board of Directors of the Company or any committee thereof shall have modified in any manner adverse to Parent or Sub its recommendation of, this Agreement and the Merger or (ii) the Board of Directors of the Company (or any committee thereof) shall have approved or recommended any Takeover Proposal;

(e) by the Company if (A) the Board of Directors of the Company authorizes the Company, subject to complying with the terms of this Agreement, to enter into a definitive agreement concerning a transaction that constitutes a Superior Proposal and the Company notifies Parent in writing that it intends to enter into such an agreement, (B) Parent does not make, within three business days of receipt of the Company's written notification of its intention to enter into a definitive agreement for a Superior Proposal, an offer that the Board of Directors of the Company determines, in good faith after consultation with its financial advisors, is at least as favorable, in the aggregate, to the stockholders of the Company as the Superior Proposal and (C) the Company prior to or concurrently with such termination pays to Parent in immediately available funds the Termination Fee. The Company agrees (x) that it will not enter into a definitive agreement referred to in clause (A) above until at least the fourth business day after it has provided the notice to Parent required thereby and (y) to notify Parent promptly in writing if its intention to enter into a definitive agreement referred to in its notification shall change at any time after giving such notification;

(f) by the Company if there has been a breach of any representation, warranty, covenant or other agreement made by Parent or Sub in this Agreement, or any such representation and warranty shall have become untrue after the date of this Agreement, in each case such that Section 8.2(a) or Section 8.2(b) would not be satisfied and such breach or condition is not curable or, if curable, is not cured within 30 days after written notice thereof is given by the Company to Parent;

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(g) by the Company if the Board of Directors of Parent shall not have recommended or shall have modified in any manner adverse to the Company its recommendation of the issuance of Parent Shares in connection with the Merger;

(h) by either the Company or Parent if (i) at the Company Stockholders Meeting the Company Stockholder Approval shall not have been obtained, or (ii) at the Parent Stockholders Meeting the Parent Stockholder Approval shall not have been obtained; or

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(i) by either Parent or the Company, if the Merger shall not have been consummated by October 31, 2003 (the End Date ) or, if all of the conditions of Article VIII other than Section 8.1(e) shall have been satisfied, or are capable of being satisfied, by such date, January 31, 2004 (the Extended End Date ); provided, however, that the right to terminate this Agreement under this Section 9.1(i) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the cause of or resulted in the failure of the Merger to occur on or before the End Date or Extended End Date, as applicable.

**Section 9.2 Effect of Termination.** (a) In the event of a termination of this Agreement by either the Company or Parent as provided in Section 9.1, this Agreement shall forthwith become void and there shall be no liability or obligation on the part of Parent, Sub or the Company or their respective officers or directors, except with respect to Section 4.21, Section 5.18, Section 7.5, this Section 9.2 and Article X and the last sentence of Section 7.4; provided, however, that nothing herein shall relieve any party for liability for any willful or knowing breach hereof.

(b) In the event that this Agreement is terminated (i) by Parent pursuant to Section 9.1(d)(ii) or (ii) by the Company pursuant to Section 9.1(e), then the Company shall, in the case of clause (i), one business day after the date of such termination or, in the case of clause (ii), on the date of such termination, pay to Parent, by wire transfer of immediately available funds, the amount of \$210,000,000 (the Termination Fee ).

(c) In the event that (i) after the date hereof a Takeover Proposal shall have been publicly disclosed or any Person shall have publicly disclosed that, subject to the Merger being disapproved by the Company's stockholders or otherwise rejected, it will make a Takeover Proposal with respect to the Company and thereafter, in each case, this Agreement is terminated by Parent or the Company pursuant to Section 9.1(h)(i) or (ii) this Agreement is terminated by Parent pursuant to Section 9.1(d)(i), and, in the case of both clause (i) and clause (ii), concurrently with such termination or within nine months of such termination the Company enters into a definitive agreement with respect to a Takeover Proposal or consummates a Takeover Proposal, then the Company shall, upon the earlier of entering into a definitive agreement with respect to a Takeover Proposal or consummating a Takeover Proposal, pay to Parent, by wire transfer of immediately available funds, the Termination Fee.

(d) In the event that this Agreement is terminated by the Parent or Company: (i) pursuant to Section 9.1(b) due to the entry of a permanent order, decree or ruling enjoining, restraining or otherwise prohibiting the Merger on antitrust grounds; or (ii) pursuant to Section 9.1(i) in the event that the Merger shall not have been consummated by the Extended End Date solely as a result of the failure to obtain necessary antitrust approvals, then, in either case, Parent shall, one business day after the date of such termination by the Company or on the date of such termination by Parent, pay the Company, by wire transfer of immediately available funds, a fee equal to \$25,000,000.

(e) The Company and Parent acknowledge that the agreements contained in Sections 9.2(b), 9.2(c) and 9.2(d) are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, Parent or the Company, as applicable, would not enter into this Agreement; accordingly, if Parent or the Company, as applicable, fails to promptly pay the amount due pursuant to Section 9.2(d) or Sections 9.2(b) and 9.2(c), as the case may be, and, in order to obtain such payment, the Company or Parent, as applicable, commences a suit which results in a judgment against Parent or the Company, as applicable, for any of the fee set forth in Section 9.2(d) or the Termination Fee set forth in Sections 9.2(b) and 9.2(c), as the case may be, Parent or the Company, as applicable, shall pay to the Company or Parent, as applicable, its costs and expenses (including attorneys' fees) in connection with such suit, together with interest on the amount of such fee or Termination Fee, as the case may be, at the prime rate of Citibank, N.A. in effect on the date such payment was required to be made.

**Section 9.3 Amendment.** This Agreement may be amended by the parties hereto at any time prior to the Effective Time (either before or after obtaining the Company Stockholder Approval or the Parent Stockholder Approval), but if (i) the Company Stockholder Approval shall have been obtained, thereafter no amendment shall be made which by law requires further approval by the Company's stockholders without obtaining such further approval or (ii) the Parent Stockholder Approval shall have been obtained, thereafter no amendment shall be made which by law requires further approval by Parent's stockholders without obtaining such further approval. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.



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Section 9.4 Extension: Waiver. At any time prior to the Effective Time, the parties hereto, by action taken or authorized by their respective Board of Directors, may, to the extent legally allowed, (i) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (ii) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto or (iii) waive compliance with any of the agreements or conditions contained herein; provided, however, that such extension or waiver shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of such party. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of those rights.

**ARTICLE X**

**GENERAL PROVISIONS**

Section 10.1 Non-Survival of Representations and Warranties and Agreements. None of the representations and warranties in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Effective Time. This Section 10.1 shall not limit any covenant or agreement of the parties which by its terms contemplates performance after the Effective Time of the Merger.

Section 10.2 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given when delivered personally, one day after being delivered to a nationally recognized overnight courier or when sent by facsimile (with a confirmatory copy sent by such overnight courier) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) if to Parent or Sub, to:

First Data Corporation  
6200 South Quebec Street  
Greenwood Village, CO 80111  
Attn: Charles T. Fote  
Fax No.: (303) 488-8292

with a copy to:

First Data Corporation  
10825 Old Mill Road, M-10  
Omaha, NE 68154  
Attn: Michael T. Whealy  
Fax No.: (402) 222-5256

and:

Sidley Austin Brown & Wood  
Bank One Plaza  
10 South Dearborn Street  
Chicago, Illinois 60603  
Attn: Frederick C. Lowinger  
Paul L. Choi  
Michael A. Gordon  
Fax No.: (312) 853-7036

(b) if to the Company, to:

Concord EFS, Inc.



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5775 Summer Trees Drive  
Memphis, Tennessee 38134

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Attn: J. Richard Buchignani, Esq.  
Fax No.: (901) 381-5575

with copies to:

Kirkland & Ellis  
200 East Randolph Drive  
Chicago, Illinois 60601  
Attn: Jack S. Levin, P.C.  
Carter W. Emerson, P.C.  
R. Scott Falk  
Fax No.: (312) 861-2200

Section 10.3 Counterparts. This Agreement may be executed in counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, it being understood that all parties need not sign the same counterpart.

Section 10.4 Entire Agreement; No Third-Party Beneficiaries. Except for the Confidentiality Agreement, this Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. This Agreement, except for the provisions of Section 7.9, is not intended to confer upon any Person other than the parties hereto any rights or remedies hereunder.

Section 10.5 Governing Law and Venue; Waiver of Jury Trial. (a) **THIS AGREEMENT SHALL BE DEEMED TO BE MADE IN AND IN ALL RESPECTS SHALL BE INTERPRETED, CONSTRUED AND GOVERNED BY AND IN ACCORDANCE WITH THE LAW OF THE STATE OF DELAWARE WITHOUT REGARD TO THE CONFLICT OF LAW PRINCIPLES THEREOF.** The parties hereby irrevocably submit to the jurisdiction of the courts of the State of Delaware and the federal courts of the United States of America located in the State of Delaware solely in respect of the interpretation and enforcement of the provisions of this Agreement and of the documents referred to in this Agreement, and in respect of the transactions contemplated hereby, and hereby waive, and agree not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof or of any such document, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement or any such document may not be enforced in or by such courts, and the parties hereto irrevocably agree that all claims with respect to such action or proceeding shall be heard and determined in such a Delaware State or federal court. The parties hereby consent to and grant any such court jurisdiction over the person of such parties and over the subject matter of such dispute and agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 10.2 or in such other manner as may be permitted by law shall be valid and sufficient service thereof.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) EACH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (iv) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.5.

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Section 10.6 Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other parties; provided, however, that Parent may assign Sub's rights and obligations, in whole or in part, under this Agreement to Parent or any other wholly owned direct Subsidiary of Parent. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.

Section 10.7 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic and legal substance of the transactions contemplated hereby are not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement may be consummated as originally contemplated to the fullest extent possible.

Section 10.8 Remedies. In addition to any remedy to which any party hereto is specifically entitled by the terms hereof, each party shall be entitled to pursue any other remedy available to it at law or in equity (including damages, specific performance or other injunctive relief) in the event that any of the provisions of this Agreement were not performed in accordance with their terms or were otherwise breached.

Section 10.9 Obligations of Subsidiaries. Whenever this Agreement requires any Subsidiary of Parent (including Sub) or of the Company to take any action, such requirement shall be deemed to include an undertaking on the part of Parent or the Company, as the case may be, to cause such Subsidiary to take such action.

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IN WITNESS WHEREOF, Parent, Sub and the Company have caused this Agreement to be signed by their respective officers thereunto duly authorized all as of the date first written above.

**FIRST DATA CORPORATION**

By:                                 /s/ Charles T. Fote

Name: Charles T. Fote  
Title: Chief Executive Officer  
and  
Chairman of the Board

**MONACO SUBSIDIARY CORPORATION**

By:                                 /s/ Charles T. Fote

Name: Charles T. Fote  
Title: Director

**CONCORD EFS, INC.**

By:                                 /s/ Dan M. Palmer

Name: Dan M. Palmer  
Title: Co-Chief Executive Officer

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**ANNEX B**

**AMENDMENT AND ABEYANCE AGREEMENT**

AMENDMENT AND ABEYANCE AGREEMENT, dated as of December 14, 2003 (this Amendment Agreement ), among First Data Corporation, a Delaware corporation ( Parent ), Monaco Subsidiary Corporation, a Delaware corporation and a wholly owned subsidiary of Parent ( Sub ), and Concord EFS, Inc., a Delaware corporation (the Company ).

**WITNESSETH:**

WHEREAS, the parties hereto are parties to an Agreement and Plan of Merger, dated as of April 1, 2003 (the Merger Agreement );

WHEREAS, due to the pendency of a proceeding (the Antitrust Proceeding ) by the United States and certain States (the Governmental Plaintiffs ) seeking to enjoin the merger contemplated by the Merger Agreement (the Merger ), the parties hereto have been unable to consummate the Merger;

WHEREAS, simultaneously with the execution of this Amendment Agreement, the Governmental Plaintiffs are entering into a consent decree with Parent and the Company in substantially the form attached hereto as Exhibit I (the Consent Decree );

WHEREAS, this Amendment Agreement is being entered into in order to facilitate the Closing; and

WHEREAS, the Boards of Directors of the Company and Parent have determined that this Amendment Agreement is advisable to their respective stockholders.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained taken as a whole, Parent, Sub and the Company hereby agree as follows (all capitalized terms not defined herein shall have the meanings specified in the Merger Agreement):

Section 1. Amendments to the Merger Agreement.

(a) Subject to the stockholder approvals referred to in Section 3(a) hereof, Section 3.2(c) of the Merger Agreement is hereby amended so that the first sentence thereof shall read in its entirety as follows:

Each Share issued and outstanding (other than Shares to be cancelled in accordance with Section 3.2(b)) shall be converted into 0.365 of a duly authorized, validly issued, fully paid and non-assessable Parent Share (the Exchange Ratio ).

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(b) Subject to the stockholder approvals referred to in Section 3(a) hereof, the Merger Agreement is hereby amended to add the following as a new Section 8.1(f) thereof:

(f) Further Stockholder Approvals. At a meeting of the stockholders of the Company held after the Company Stockholders Meeting, the holders of a majority of the outstanding shares of Company Common Stock shall have further approved this Agreement as amended by Section 1 of the Amendment and Abeyance Agreement, dated as of December 14, 2003, among the parties hereto (the Amendment Agreement ) and, if a meeting of the stockholders of Parent is required by the rules of the NYSE (after consultations by Parent and the Company with the NYSE), at a meeting of the stockholders of the Parent held after the Parent Stockholders Meeting, a majority of the Parent Shares represented at such meeting (provided that at least a majority of the Parent Shares are represented in person or by proxy at such meeting) shall have approved the issuance of Parent Shares in the Merger.

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(c) Section 8.1(b) of the Merger Agreement is hereby amended so that it shall read in its entirety as follows:

(b) No Prohibition. No Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, law, ordinance, rule, regulation, judgment, decree, injunction or other order (whether temporary, preliminary or permanent) that is in effect and prohibits consummation of the Merger (collectively, an Order ).

The amendment to the Merger Agreement set forth in this Section 1(c) shall be effective immediately on the date hereof and without the approval of the stockholders of the Company.

(d) Subject to the stockholder approvals referred to in Section 3(a) hereof, the Merger Agreement is hereby amended so that Section 8.2(a) reads in its entirety as follows:

(a) Accuracy of Representations and Warranties.

(i) The representations and warranties of Parent and Sub set forth in Sections 5.3 (Capital Structure) and 5.4 (Authority) shall be, to the Knowledge of Parent and Sub as of December 14, 2003, true and correct with respect to those matters that are qualified by Material Adverse Effect or materiality and shall be, to the Knowledge of Parent and Sub as of December 14, 2003, true and correct in all material respects with respect to those matters that are not so qualified, in each case as of December 14, 2003 as though made on and as of December 14, 2003 (except to the extent any such representation and warranty expressly speaks as of a specified date). The representations and warranties of Parent and Sub set forth in this Agreement, other than those listed in the preceding sentence, shall be, to the Knowledge of Parent and Sub as of December 14, 2003, true and correct as of December 14, 2003 unless the inaccuracies (without giving effect to any materiality or Material Adverse Effect qualifications or exceptions contained therein) in respect of such representations and warranties, taking all the inaccuracies in respect of all such representations and warranties together in their entirety, do not result in a Material Adverse Effect on Parent; provided, however, that representations and warranties that expressly speak as of a specified date shall only be true and correct to such extent as of such date.

(ii) The representations and warranties of Parent and Sub set forth in Section 5.3 (Capital Structure) shall be true and correct with respect to those matters that are qualified by Material Adverse Effect or materiality and shall be true and correct in all material respects with respect to those matters that are not so qualified, in each case as of the Effective Time as though made on and as of the Effective Time (except to the extent any such representation and warranty expressly speaks as of a specified date). The representations and warranties of Parent and Sub set forth in Sections 5.6 (SEC Documents and Other Reports) and 5.9 (Compliance with Laws; Permits) shall be true and correct at the Effective Time unless the inaccuracies (without giving effect to any materiality or Material Adverse Effect qualifications or exceptions contained therein) in respect of such representations and warranties, taking all the inaccuracies in respect of such representations and warranties together in their entirety, do not result in a Material Adverse Effect on Parent; provided, however, that representations and warranties that expressly speak as of a specified date shall only be true and correct to such extent as of such date.

(iii) The Company shall have received a certificate signed on behalf of Parent and Sub by a duly authorized officer of Parent and Sub to the effect of clauses (i) and (ii) above.

(e) Section 8.3(a) of the Merger Agreement is hereby amended so that it shall read in its entirety as follows:

(a) Accuracy of Representations and Warranties.

(i) The representations and warranties of the Company set forth in Sections 4.3 (Capital Structure) and 4.4 (Authority) shall be, to the Knowledge of the Company as of December 14, 2003, true and correct with respect to those matters that are qualified by Material Adverse Effect or materiality and shall be, to the Knowledge of the Company as of December 14, 2003, true and correct in all material respects with respect to those matters that are not so qualified, in each case as of December 14, 2003 as though made on and as of December 14, 2003 (except to the extent any such representation and warranty expressly speaks as of a

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specified date). The representations and warranties of the Company set forth in this Agreement, other than those listed in the preceding sentence, shall be, to the Knowledge of the Company as of December 14, 2003, true and correct as of December 14, 2003 unless the inaccuracies (without giving effect to any materiality or Material Adverse Effect qualifications or exceptions contained therein) in respect of such representations and warranties, taking all the inaccuracies in respect of all such representations and warranties together in their entirety, do not result in a Material Adverse Effect on the Company; provided, however, that representations and warranties that expressly speak as of a specified date shall only be true and correct to such extent as of such date.

(ii) The representations and warranties of the Company set forth in Section 4.3 (Capital Structure) shall be true and correct with respect to those matters that are qualified by Material Adverse Effect or materiality and shall be true and correct in all material respects with respect to those matters that are not so qualified, in each case as of the Effective Time as though made on and as of the Effective Time (except to the extent any such representation and warranty expressly speaks as of a specified date). The representations and warranties of the Company set forth in Sections 4.6 (SEC Documents and Other Reports) and 4.9 (Compliance with Laws; Permits) shall be true and correct at the Effective Time unless the inaccuracies (without giving effect to any materiality or Material Adverse Effect qualifications or exceptions contained therein) in respect of such representations and warranties, taking all the inaccuracies in respect of such representations and warranties together in their entirety, do not result in a Material Adverse Effect on the Company; provided, however, that representations and warranties that expressly speak as of a specified date shall only be true and correct to such extent as of such date.

(iii) Parent shall have received a certificate signed on behalf of the Company by a duly authorized officer of the Company to the effect of clauses (i) and (ii) above.

The amendment to the Merger Agreement set forth in this Section 1(e) shall be effective immediately on the date hereof and without the approval of the stockholders of the Company.

(f) Section 8.3(c) of the Merger Agreement is hereby amended so that it shall read in its entirety as follows:

(c) Avoidance of Bank Holding Company Treatment. Parent shall be reasonably satisfied that neither Parent nor any of its Subsidiaries shall become a bank holding company or financial holding company under the Bank Act on an ongoing basis as a result of the Merger; provided, however, that this condition shall be deemed to be satisfied upon the merger of the Company's national bank with and into the Company's interim Colorado industrial loan company.

The amendment to the Merger Agreement set forth in this Section 1(f) shall be effective immediately on the date hereof and without the approval of the stockholders of the Company.

(g) Section 9.1(i) of the Merger Agreement is hereby amended so that it shall read in its entirety as follows:

(i) by either Parent or the Company, if the Merger shall not have been consummated by the earlier of (i) April 30, 2004 or (ii) three (3) business days after the conclusion of the Second Company Stockholders Meeting (as defined in the Amendment Agreement) and, if held and later, the Second Parent Stockholders Meeting (as defined in the Amendment Agreement) (the earlier of clauses (i) and (ii) being the Extended End Date); provided, however, that the right to terminate this Agreement under this Section 9.1(i) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the cause of or resulted in the failure of the Merger to occur

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on or before the Extended End Date.

The amendment to the Merger Agreement set forth in this Section 1(g) shall be effective immediately on the date hereof and without the approval of the stockholders of the Company.

(h) Section 6.2(a) of the Merger Agreement is hereby amended by substituting the term "Second Company Stockholders Meeting" for the term "Company Stockholders Meeting" where it appears in the proviso to the first sentence thereof. The amendment to the Merger Agreement set forth in this Section 1(h) shall be effective immediately on the date hereof and without the approval of the stockholders of the Company.

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(i) The Merger Agreement is hereby amended by deleting the following Sections in their entirety: Sections 8.1(a), 8.1(e), 8.3(d), and 8.3(e). The foregoing deletions shall be effective immediately on the date hereof and without the approval of the stockholders of the Company.

Section 2. Abeyance. (a) In addition to, and in furtherance of, the amendment to the Merger Agreement provided by Section 1(g) above, each of the parties agrees not to exercise any right to terminate the Merger Agreement pursuant to Section 9.1(i) thereof until the earlier of (i) April 30, 2004 or (ii) three (3) business days after the conclusion of the Second Company Stockholders Meeting (as defined below) and, if held and later, the Second Parent Stockholders Meeting (as defined below).

(b) In addition to, and in furtherance of, the amendment to the Merger Agreement provided by Section 1(d) above, the Company agrees not to exercise any rights with respect to, and to waive any conditions contained in, Section 8.2(a) of the original Merger Agreement if the exercise of any rights with respect to, or the failure to waive any conditions contained in, such Section 8.2(a) would be inconsistent with such Section as amended by the amendment contemplated by Section 1(d) above.

(c) In addition to, and in furtherance of, the amendment to the Merger Agreement provided by Section 1(e) above, Parent and Sub agree not to exercise any rights with respect to, and to waive any conditions contained in, Section 8.3(a) of the original Merger Agreement if the exercise of any rights with respect to, or the failure to waive any conditions contained in, such Section 8.3(a) would be inconsistent with such Section as amended by the amendment contemplated by Section 1(e) above.

Section 3. Further Stockholder Approvals. (a) As soon as practicable following the date hereof, the Company will duly call, give notice of, convene and hold a meeting of its stockholders (including any adjournments or postponements thereof, the Second Company Stockholders Meeting ). If a meeting of the stockholders of Parent is required by the rules of the NYSE (after consultations by Parent and Company with the NYSE) after the date hereof to approve the issuance of Parent Shares in the Merger, then as soon as practicable following the date hereof, Parent will duly call, give notice of, convene and hold a meeting of its stockholders (including any adjournments or postponements thereof, the Second Parent Stockholders Meeting and, together with the Second Company Stockholders Meeting, the Second Stockholders Meetings ). If the Second Parent Stockholders Meeting is held, then Parent and the Company will use their reasonable best efforts to hold the Second Company Stockholders Meeting and the Second Parent Stockholders Meeting on the same date. The Company shall, through its Board of Directors (but subject to the Board's fiduciary obligations under applicable law), recommend to its stockholders that they approve the Merger Agreement as amended by Section 1 hereof (the Amended Merger Agreement ) at the Second Company Stockholders Meeting. If applicable, Parent shall, through its Board of Directors, recommend to its stockholders that the issuance of Parent Shares in the Merger be given at the Second Parent Stockholders Meeting. This Amended Merger Agreement shall be submitted to the Company's stockholders at the Second Company Stockholders Meeting whether or not the Board of Directors of the Company determines at any time that the Amended Merger Agreement is no longer advisable and recommends that stockholders reject it.

(b) The Company and Parent shall promptly prepare and file with the SEC, as applicable, a proxy statement or joint proxy statement (together with any amendments or supplements thereto, the Second Proxy Statement ) relating to the Second Company Stockholders Meeting and, if applicable, the Second Parent Stockholders Meeting. As promptly as practicable after the Second Proxy Statement shall have been cleared by the SEC, the Company and, if applicable, Parent shall use reasonable best efforts to distribute the Second Proxy Statement as soon as practicable to their respective stockholders.

(c) No filing of, or amendment or supplement to, the Second Proxy Statement, and no correspondence with the SEC with respect thereto, will be made by the Company or Parent without providing the other party the opportunity to review and comment thereon. If, at any time prior to any of the Second Stockholders Meetings, any information relating to Parent or the Company, or any of their respective

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Affiliates, officers or directors, should be discovered by Parent or the Company which should be set forth in an amendment or supplement to the Second Proxy Statement, so that such document would not include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the party which discovers such information shall promptly notify the other parties hereto and an appropriate amendment or supplement describing such information shall be promptly filed with the SEC and, to the extent required by law, disseminated to the stockholders of the Company and Parent.

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Section 4. Additional Effect of Termination. In the event that after the date hereof a Takeover Proposal shall have been publicly disclosed or any Person shall have publicly disclosed that, subject to the Merger being disapproved by the Company's stockholders or otherwise rejected, it will make a Takeover Proposal with respect to the Company and thereafter at the Second Company Stockholders Meeting the stockholders of the Company do not approve the Amended Merger Agreement and the Merger Agreement is terminated pursuant to Section 9.1(i) thereof and concurrently with such termination or within nine months of such termination the Company enters into a definitive agreement with respect to a Takeover Proposal or consummates a Takeover Proposal, then the Company shall, upon the earlier of entering into a definitive agreement with respect to a Takeover Proposal or consummating a Takeover Proposal, pay to Parent, by wire transfer of immediately available funds, the Termination Fee.

Section 5. Additional Provisions. (a) Each of the Company and Parent confirms that as of the date hereof the other party has used (and caused its Subsidiaries to use) reasonable best efforts to take or cause to be taken all actions, and do or cause to be done all things, necessary, proper or advisable on its part under the Merger Agreement and Applicable Laws to consummate and make effective the Merger and the other transactions contemplated by the Merger Agreement. Furthermore, the parties waive any claim that any action or the failure to take any action prior to the date hereof by any party constitutes a failure by such party or its Subsidiaries to use reasonable best efforts to take or cause to be taken all actions, and do or cause to be done all things, necessary, proper or advisable on its part under the Merger Agreement and Applicable Laws to consummate and make effective the Merger and the other transactions contemplated by the Merger Agreement.

(b) (i) To the Knowledge of the Company as of the date hereof, the representations and warranties of the Company set forth in Sections 4.3 (Capital Structure) and 4.4 (Authority) of the Merger Agreement are, as of the date hereof, true and correct with respect to those matters that are qualified by Material Adverse Effect or materiality and are, as of the date hereof, true and correct in all material respects with respect to those matters that are not so qualified, in each case as of the date hereof as though made on and as of the date hereof (except to the extent any such representation and warranty expressly speaks as of a specified date). To the Knowledge of the Company as of the date hereof, the representations and warranties of the Company set forth in the Merger Agreement, other than those listed in the preceding sentence, are, as of the date hereof, true and correct as of the date hereof unless the inaccuracies (without giving effect to any materiality or Material Adverse Effect qualifications or exceptions contained therein) in respect of such representations and warranties, taking all the inaccuracies in respect of all such representations and warranties together in their entirety, do not result in a Material Adverse Effect on the Company; provided, however, that representations and warranties that expressly speak as of a specified date shall only be true and correct to such extent as of such date.

(ii) To the Knowledge of Parent and Sub, as of the date hereof, the representations and warranties of Parent and Sub set forth in Sections 5.3 (Capital Structure) and 5.4 (Authority) of the Merger Agreement are, as of the date hereof, true and correct with respect to those matters that are qualified by Material Adverse Effect or materiality and are, as of the date hereof, true and correct in all material respects with respect to those matters that are not so qualified, in each case as of the date hereof as though made on and as of the date hereof (except to the extent any such representation and warranty expressly speaks as of a specified date). To the Knowledge of Parent and Sub as of the date hereof, the representations and warranties of Parent and Sub set forth in the Merger Agreement, other than those listed in the preceding sentence, are, as of the date hereof, true and correct as of the date hereof unless the inaccuracies (without giving effect to any materiality or Material Adverse Effect qualifications or exceptions contained therein) in respect of such representations and warranties, taking all the inaccuracies in respect of all such representations and warranties together in their entirety, do not result in a Material Adverse Effect on Parent; provided, however, that representations and warranties that expressly speak as of a specified date shall only be true and correct to such extent as of such date.

(iii) Subject to the accuracy of the Company's representation contained in Section 5(b)(i) above, Parent and Sub confirm that, as of the date hereof, there has not been (and agree not to assert that there has been as of the date hereof) a Material Adverse Change or Material Adverse Effect with respect to the Company. Parent and Sub further confirm that as of the date hereof they do not have Knowledge of facts and circumstances constituting a breach in any material respect by the Company of any of its covenants contained in the Merger Agreement. Subject to the accuracy of Parent and Sub's representation contained in Section 5(b)(ii) above, the Company confirms that, as of the date hereof, there has not been (and agrees not to assert that there has been as of the date hereof) a Material Adverse Change or Material Adverse Effect with respect to Parent. The Company further confirms that as of the



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date hereof it does not have Knowledge of facts and circumstances constituting a breach in any material respect by Parent or Sub of any of their covenants contained in the Merger Agreement.

(c) For the avoidance of doubt, the parties also confirm that if the Board of Directors of the Company shall not have recommended, or the Board of Directors of the Company or any committee thereof shall have modified in any manner adverse to Parent or Sub its recommendation of, the Amended Merger Agreement, that such inaction or action shall give rise to a right of Parent to terminate the Merger Agreement pursuant to Section 9.1(d)(i) thereof.

(d) In connection with Parent and Sub's due diligence reviews of the Company pursuant to the Merger Agreement after the date hereof, the parties agree that the Company may limit such reviews to determining the accuracy of the representations contained in Sections 4.3, 4.6 and 4.9 and the compliance of the Company with its covenants in the Merger Agreement. In connection with the Company's due diligence reviews of Parent and Sub pursuant to the Merger Agreement after the date hereof, the parties agree that Parent and Sub may limit such reviews to determining the accuracy of the representations contained in Sections 5.3, 5.6 and 5.9 and the compliance of Parent and Sub with their covenants in the Merger Agreement.

Section 6. Representation and Warranties of the Company. The Company represents and warrants to Parent and Sub as of the date hereof and the Effective Time as follows:

(a) Authority. On or prior to the date of this Amendment Agreement, the Board of Directors of the Company approved this Amendment Agreement, declared the Amended Merger Agreement advisable to the Company and its stockholders, resolved to recommend the approval and adoption of the Amended Merger Agreement by the Company's stockholders and directed that the Amended Merger Agreement be submitted to the Company's stockholders for approval and adoption (all in accordance with the DGCL). The Company has all requisite corporate power and authority to execute and deliver this Amendment Agreement. The execution, delivery and performance of this Amendment Agreement by the Company have been duly authorized by all necessary corporate action on the part of the Company, provided that the effectiveness of Sections 1(a), 1(b) and 1(d) hereof is subject to adoption by the Company's stockholders of the Amended Merger Agreement. This Amendment Agreement has been duly executed and delivered by the Company and (assuming the valid authorization, execution and delivery of this Amendment Agreement by Parent and Sub) constitutes the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except that such enforceability (i) may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting or relating to the enforcement of creditors' rights generally and (ii) is subject to general principles of equity.

(b) Second Proxy Statement. None of the information supplied or to be supplied by the Company specifically for inclusion or incorporation by reference in the Second Proxy Statement will at the time it is first mailed to the stockholders of the Company or, if applicable, the stockholders of Parent, and at the time of any of the Second Stockholders Meetings, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading or necessary to correct any statement in any earlier communication by the Company with respect to the solicitation of proxies for any of the Second Stockholders Meetings which has become false or misleading. The Second Proxy Statement will comply as to form in all material respects with the requirements of the Exchange Act, except that no representation or warranty is made by the Company with respect to statements made or incorporated by reference in the Second Proxy Statement based on information supplied by Parent or Sub or any of their representatives specifically for inclusion or incorporation by reference therein or based on information which is not made in or incorporated by reference in the Second Proxy Statement but which should have been disclosed by Parent.

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(c) Required Vote of Company Stockholders. The affirmative vote of the holders of a majority of the outstanding shares of Company Common Stock represented at the Second Company Stockholders Meeting approving the Amended Merger Agreement is the only vote of the holders of any class or series of the Company's capital stock necessary to approve the Amended Merger Agreement and the transactions contemplated by the Amended Merger Agreement.

(d) Opinions of Financial Advisors. The Company has received the opinions of William Blair & Company, LLC and Goldman Sachs & Co. to the effect that, as of the date thereof, the Exchange Ratio as amended

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by Section 1(a) hereof is fair to the Company's holders of the Company Common Stock from a financial point of view.

Section 7. Representation and Warranties of Parent and Sub. Parent and Sub represent and warrant to the Company as of the date hereof and the Effective Time as follows:

(a) Authority. On or prior to the date of this Amendment Agreement, the Boards of Directors of Parent and Sub approved this Amendment Agreement and, subject to the Second Parent Stockholders Meeting being required by the rules of the NYSE (after consultations by Parent and the Company with the NYSE), resolved to recommend the issuance of Parent Shares in the Merger to its stockholders for approval and direct that a proposal to approve the issuance of Parent Shares in the Merger be submitted to its stockholders for approval. Each of Parent and Sub has all requisite corporate power and authority to execute and deliver this Amendment Agreement. The execution, delivery and performance of this Amendment Agreement by each of Parent and Sub have been duly authorized by all necessary corporate action on the part of each of Parent and Sub, subject to approval by Parent's stockholders of the issuance of Parent Shares in the Merger, if applicable. This Amendment Agreement has been approved by Parent as the sole stockholder of Sub. This Amendment Agreement has been duly executed and delivered by each of Parent and Sub and (assuming the valid authorization, execution and delivery of this Amendment Agreement by the Company) constitutes the valid and binding obligation of each of Parent and Sub enforceable against it in accordance with its terms, except that such enforceability (i) may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting or relating to the enforcement of creditors' rights generally and (ii) is subject to general principles of equity.

(b) Second Proxy Statement. None of the information supplied or to be supplied by Parent or Sub specifically for inclusion or incorporation by reference in the Second Proxy Statement will at the time it is first mailed to the stockholders of the Company or, if applicable, the stockholders of Parent, or at the time of any of the Second Stockholders Meetings, contain any untrue statement of a material fact, or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading or necessary to correct any statement in any earlier communication by Parent or Sub with respect to the solicitation of proxies for any of the Second Stockholders Meetings which has become false or misleading. The Second Proxy Statement will comply as to form in all material respects with the requirements of the Exchange Act, except that no representation or warranty is made by Parent or Sub with respect to statements made or incorporated by reference in the Second Proxy Statement based on information supplied by the Company or any of its representatives specifically for inclusion or incorporation by reference therein or based on information which is not made in or incorporated by reference in the Second Proxy Statement but which should have been disclosed by the Company.

(c) Required Vote of Parent Stockholders. Subject to the Second Parent Stockholders Meeting being required by the rules of the NYSE (after consultations by Parent and the Company with the NYSE), the affirmative vote of the holders of a majority of the Parent Shares represented at the Second Parent Stockholders Meeting (provided that at least a majority of the Parent Shares are represented in person or by proxy at such meeting) approving the issuance of Parent Shares in the Merger is the only vote of the holders of any class or series of Parent's capital stock necessary to approve the Amended Merger Agreement and the transactions contemplated by the Amended Merger Agreement.

(d) Opinions of Financial Advisor. Parent has received the opinions of each of Merrill Lynch & Co. and J.P. Morgan Securities, Inc. to the effect that, as of the date of such opinions, the Exchange Ratio as amended by Section 1(a) hereof is fair to Parent from a financial point of view.

Section 8. General Provisions.

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(a) Counterparts. This Amendment Agreement may be executed in counterparts, all of which shall be considered one and the same agreement, it being understood that all parties need not sign the same counterpart.

(b) Governing Law and Venue: Waiver of Jury Trial. (i) THIS AMENDMENT AGREEMENT SHALL BE DEEMED TO BE MADE IN AND IN ALL RESPECTS SHALL BE INTERPRETED, CONSTRUED AND GOVERNED BY AND IN ACCORDANCE WITH THE LAW OF THE STATE OF DELAWARE WITHOUT REGARD TO THE CONFLICT OF LAW PRINCIPLES THEREOF. The parties hereby irrevocably

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submit to the jurisdiction of the courts of the State of Delaware and the federal courts of the United States of America located in the State of Delaware solely in respect of the interpretation and enforcement of the provisions of this Amendment Agreement, and hereby waive, and agree not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Amendment Agreement may not be enforced in or by such courts, and the parties hereto irrevocably agree that all claims with respect to such action or proceeding shall be heard and determined in such a Delaware State or federal court. The parties hereby consent to and grant any such court jurisdiction over the person of such parties and over the subject matter of such dispute and agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 10.2 of the Merger Agreement or in such other manner as may be permitted by law shall be valid and sufficient service thereof.

(ii) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AMENDMENT AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AMENDMENT AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) EACH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (iv) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8(b).

(c) For the avoidance of doubt, from and after the date of this Amendment Agreement, references in the Merger Agreement to the Agreement or any provision thereof shall be deemed to refer to the Merger Agreement or such provision as amended hereby unless the context otherwise requires, and references in the Merger Agreement to the date hereof or the date of this Agreement shall be deemed to refer to April 1, 2003. References in this Amendment Agreement to the date hereof refer to December 14, 2003.

(d) Except as specifically provided for in this Amendment Agreement, all other provisions of the Merger Agreement shall be in full force and effect.

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IN WITNESS WHEREOF, Parent, Sub and the Company have caused this Amendment Agreement to be signed by their respective officers thereunto duly authorized all as of the date first written above.

FIRST DATA CORPORATION

By: /s/ Charles T. Fote

Name: Charles T. Fote

Title: Chief Executive Officer and

Chairman of the Board

MONACO SUBSIDIARY CORPORATION

By: /s/ Charles T. Fote

Name: Charles T. Fote

Title: Director

CONCORD EFS, INC.

By: /s/ Dan M. Palmer

Name: Dan M. Palmer

Title: Co-Chief Executive Officer

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ANNEX C

[Goldman, Sachs & Co. letterhead]

**PERSONAL AND CONFIDENTIAL**

December 14, 2003

Board of Directors

Concord EFS, Inc.

2525 Horizon Lake Drive

Memphis, TN 38133

Madame and Gentlemen:

You have requested our opinion as to the fairness from a financial point of view to the holders of the outstanding shares of common stock, par value \$0.33 <sup>1</sup>/<sub>3</sub> per share (the Shares), of Concord EFS, Inc. (the Company) of the exchange ratio of 0.365 shares of common stock, par value \$0.01 per share (the First Data Shares), of First Data Corporation (First Data) to be received for each Share (the Exchange Ratio) pursuant to the Agreement and Plan of Merger, dated as of April 1, 2003, among First Data, Monaco Subsidiary Corporation and the Company, as amended by an Amendment and Abeyance Agreement, dated as of December 14, 2003 (the Amendment), among such parties (such agreement, as so amended, the Agreement).

Goldman, Sachs & Co. and its affiliates, as part of their investment banking business, are continually engaged in performing financial analyses with respect to businesses and their securities in connection with mergers and acquisitions, negotiated underwritings, competitive biddings, secondary distributions of listed and unlisted securities, private placements and other transactions as well as for estate, corporate and other purposes. We have provided certain investment banking services to the Company from time to time, including having acted as joint lead manager on a \$1.2 billion follow-on offering of Shares in June 1999, having acted as joint book-runner on a \$1.3 billion follow-on offering of Shares in June 2001 and having acted as an agent on the Company's Share repurchase program. We have acted as financial advisor to the Company in connection with the transaction contemplated by the Agreement. We expect to receive fees for our services in connection with such transaction, the principal portion of which fees are contingent upon consummation of such transaction, and the Company has agreed to reimburse our expenses and indemnify us against certain liabilities arising out of our engagement. We also have provided certain investment banking services to First Data from time to time, including having acted as co-manager on a \$1.0 billion Global Notes offering in November 2001. We also may provide investment banking services to the Company and First Data in the future. In connection with the above-described investment banking services we have received, and may receive, compensation. In addition, Goldman, Sachs & Co. is a full service securities firm engaged, either directly or through its affiliates, in securities trading, investment management, financial planning and benefits counseling, financing and brokerage activities for both companies and individuals. In the ordinary course of their trading, investment management, financing and brokerage activities, Goldman, Sachs & Co. and its affiliates may actively trade the debt and equity securities (or related derivative securities) of the Company and First Data for their own account and for the accounts of their customers and may at any time hold long and short

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positions of such securities. As of the date hereof, entities affiliated with The Goldman Sachs Group, Inc., which is the parent of Goldman, Sachs & Co., have accumulated various trading positions in the Shares and the First Data Shares and have an indirect investment in a subsidiary of First Data and certain First Data warrants.

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In connection with this opinion, we have reviewed, among other things, the Registration Statement on Form S-4 of First Data, including the joint proxy statement/prospectus dated September 24, 2003 included therein relating to the special meetings of stockholders of the Company and First Data; the Agreement; annual reports to stockholders and Annual Reports on Form 10-K of the Company and First Data for the five years ended December 31, 2002; certain interim reports to stockholders and Quarterly Reports on Form 10-Q of the Company and First Data; certain other communications from the Company and First Data to their respective stockholders; certain internal financial analyses and forecasts for the Company and First Data prepared by their respective managements and dated April 2003 (the April Forecasts ); certain updated cost savings and operating synergies projected by the managements of the Company and First Data to result from the transaction contemplated by the Agreement (the Synergies ); and certain research analyst estimates for each of the Company and First Data. We also have held discussions with members of the senior managements of the Company and First Data regarding their assessment of the strategic rationale for, and the potential benefits of, the transaction contemplated by the Agreement and the past and current business operations, financial condition and future prospects of their respective companies. In addition, we have reviewed the reported price and trading activity for the Shares and First Data Shares, compared certain financial and stock market information for the Company and First Data with similar information for certain other companies the securities of which are publicly traded, reviewed the financial terms of certain recent business combinations in the payments processing industry specifically and in other industries generally and performed such other studies and analyses as we considered appropriate.

We have relied upon the accuracy and completeness of all of the financial, accounting and other information discussed with or reviewed by us and have assumed such accuracy and completeness for purposes of rendering this opinion. Management of the Company and First Data have each informed us that they have not updated the April Forecasts. In that regard, the management of the Company has instructed us for purposes of this opinion and the related analyses to use IBES research analyst estimates, but to take into account the views of the management of the Company that there are substantial risks and uncertainties with respect to the Company's ability to achieve these estimates. We have also assumed with your consent that the Synergies have been reasonably prepared on a basis reflecting the best currently available judgments and estimates of the Company and First Data. We are not experts in the evaluation of loan and lease portfolios for purposes of assessing the adequacy of the allowances for losses with respect thereto and, accordingly, we have assumed that such allowances for losses are in the aggregate adequate to cover such losses. In addition, we have not reviewed individual credit files nor have we made an independent evaluation or appraisal of the assets and liabilities (including any derivative or off-balance-sheet assets and liabilities) of the Company or First Data or any of their respective subsidiaries and we have not been furnished with any such evaluation or appraisal. Our advisory services and the opinion expressed herein are provided for the information and assistance of the Board of Directors of the Company in connection with its consideration of the transaction contemplated by the Agreement and such opinion does not constitute a recommendation as to how any holder of Shares should vote with respect to such transaction. Our opinion does not address the underlying business decision of the Company to enter into the Amendment.

Based upon and subject to the foregoing and based upon such other matters as we consider relevant, it is our opinion that, as of the date hereof, the Exchange Ratio pursuant to the Agreement is fair from a financial point of view to the holders of the Shares.

Very truly yours,

Goldman, Sachs & Co.

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**ANNEX D**

**[William Blair & Company, L.L.C. letterhead]**

December 14, 2003

Board of Directors

Concord EFS, Inc.

2525 Horizon Lake Drive

Memphis, Tennessee 38133

Madame and Gentlemen:

You have requested our opinion as to the fairness, from a financial point of view, to the holders of the outstanding shares of common stock (collectively the Stockholders) of Concord EFS, Inc. (the Company) of the Exchange Ratio (as defined below) specified in the Agreement and Plan of Merger dated as of April 1, 2003 (the Merger Agreement), as amended by the Amendment and Abeyance Agreement dated as of December 14, 2003 (the Amendment), in each case by and among First Data Corporation (FDC), a wholly-owned subsidiary of FDC (Merger Sub), and the Company. Subject to the terms and conditions in the Merger Agreement and the Amendment, the Merger Sub will be merged into the Company (the Merger) and each share of common stock, \$0.33 par value per share, of the Company will be converted into 0.365 shares (the Exchange Ratio) of FDC common stock, \$0.01 par value per share.

In connection with our review of the proposed Merger and the preparation of our opinion, we have examined or discussed:

- (a) the Merger Agreement dated April 1, 2003 and a draft of the Amendment dated December 13, 2003; we have assumed that the final form of the Amendment will not differ in any material respect from the draft provided to us;
- (b) certain audited historical financial statements of the Company and of FDC for the three years ended December 31, 2002;
- (c) certain unaudited historical financial statements of the Company and of FDC for the nine months ended September 30, 2003;
- (d) the Reports on Form 10-K for the year ended December 31, 2002 and the Reports on Form 10-Q for the period ended September 30, 2003 for the Company and FDC;
- (e)



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certain internal business, operating and financial information and the forecast of the Company for 2003 (the Short-Term Projections ), prepared by the senior management of the Company;

- (f) information regarding the amount and timing of cost savings and related expenses and synergies which senior management of the Company and FDC expect will result from the Merger (the Expected Synergies );
- (g) the pro forma impact of the Merger on the earnings per share of FDC (before and after taking into consideration any Expected Synergies created as a result of the Merger) based on the Short-Term Projections, the Forecasts (defined below), publicly available earnings guidance communicated by FDC and research analyst earnings estimates;
- (h) information regarding publicly available financial terms of certain other business combinations we deemed relevant;

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- (i) the financial position and operating results of the Company compared with those of certain other publicly traded companies we deemed relevant;
- (j) current and historical market prices and trading volumes of the common stock of the Company and FDC; and
- (k) certain other publicly available information on the Company and FDC.

We have also held discussions with members of the senior management of the Company and FDC to discuss the foregoing. Further, senior management of the Company has instructed us to use research analyst earnings estimates to derive certain financial forecasts relating to the Company (the Forecasts ), but to take into account the views of the senior management of the Company that there are substantial risks and uncertainties with respect to the Company's ability to achieve these estimates. We have also considered other matters which we have deemed relevant to our inquiry and have taken into account such accepted financial and investment banking procedures and considerations as we have deemed relevant.

In rendering our opinion, we have assumed and relied, without independent verification, upon the accuracy and completeness of all the information examined by or otherwise reviewed or discussed with us for purposes of this opinion including without limitation the Short-Term Projections and the Forecasts. We have not made or obtained an independent valuation or appraisal of the assets, liabilities or solvency of the Company or FDC. We have been advised by the senior management of the Company that the Short-Term Projections and the Expected Synergies have been reasonably prepared on bases reflecting currently available estimates and judgments of the senior management of the Company. In that regard, we have assumed for purposes of this opinion that (i) the Short-Term Projections and the Forecasts will be achieved and the Expected Synergies will be realized in the amounts and at the times contemplated and (ii) all material assets and liabilities (contingent or otherwise) of the Company are as set forth in the Company's financial statements or other information made available to us. We also have assumed that as of the date hereof FDC and its subsidiaries do not own any stock of the Company. We express no opinion with respect to the Short-Term Projections, Forecasts or Expected Synergies or the estimates and judgments on which they are based. FDC did not make available to us any updated projections of expected future performance other than referring us to certain publicly disclosed earnings and other financial guidance and, accordingly, we express no opinion with respect to any of these matters. Our opinion does not address the relative merits of the Merger as compared to any alternative business strategies that might exist for the Company or the effect of any other transaction in which the Company might engage. Our opinion herein is based upon economic, market, financial and other conditions existing on, and other information disclosed to us as of, the date of this letter. It should be understood that, although subsequent developments may affect this opinion, we do not have any obligation to update, revise or reaffirm this opinion. We have further assumed, with your consent, that the Merger will qualify as a tax-free reorganization for U.S. federal income tax purposes. We have assumed without verification the accuracy and adequacy of the legal advice given by counsel to the Company on all legal matters, and have assumed that the Merger will be consummated on the terms described in the Merger Agreement and the Amendment, without any waiver of any material terms or conditions by the Company. We have assumed that all material governmental, regulatory, or other consents and approvals necessary for the consummation of the transaction contemplated by the Agreement and the Amendment will be obtained without any adverse effect on the Company or FDC or their respective subsidiaries or on the expected benefits of the transaction contemplated by the Agreement and the Amendment.

William Blair & Company has been engaged in the investment banking business since 1935. We continually undertake the valuation of investment securities in connection with public offerings, private placements, business combinations and similar transactions. In the ordinary course of our business, we may from time to time trade the securities of the Company or FDC for our own account and for the accounts of customers, and accordingly may at any time hold a long or short position in such securities. We have acted as an investment banker to the Company in connection with the Merger and have received a fee of \$1.5 million from the Company for our services under this engagement to date. A significant portion of our total fee related to this engagement is contingent upon consummation of the Merger. In addition, the Company has agreed to indemnify us against certain liabilities arising out of our engagement.

We are familiar with the Company, having provided certain investment banking services to the Company including acting as managing underwriter on several public offerings of Company common stock and



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providing certain transaction advisory services to the Company and its Board of Directors. In addition, Mr. Richard P. Kiphart, the non-executive Chairman of the Company and a Stockholder, is a principal in our firm.

We are expressing no opinion herein as to the price at which the common stock of the Company and FDC will trade at any future time or as to the effect of the Merger on the trading price of the common stock of the Company or FDC. Such trading price may be affected by a number of factors, including but not limited to (i) dispositions of the common stock of FDC or of the Company by stockholders within a short period of time after the announcement date or the effective date of the Merger, (ii) changes in prevailing interest rates and other factors which generally influence the price of securities, (iii) adverse changes in the current capital markets, (iv) the occurrence of adverse changes in the financial condition, business, assets, results of operations or prospects of the Company or of FDC or in the payments processing market, (v) any necessary actions by or restrictions of federal, state or other governmental agencies or regulatory authorities, and (vi) timely completion of the Merger on terms and conditions that are acceptable to all parties at interest.

Our investment banking services and our opinion were provided for the use and benefit of the Board of Directors of the Company in connection with its consideration of the transaction contemplated by the Merger Agreement and the Amendment. Our opinion is limited to the fairness, from a financial point of view, to the Stockholders of the Company of the Exchange Ratio in connection with the Merger, and we do not address the merits of the underlying decision by the Company to engage in the Merger. This opinion does not constitute a recommendation to any Stockholder as to how such Stockholder should vote with respect to the proposed Merger. It is understood that this letter may not be disclosed or otherwise referred to without prior written consent, except that the opinion may be included in its entirety in a proxy statement mailed to the Stockholders by the Company with respect to the Merger.

Based upon and subject to the foregoing, it is our opinion as investment bankers that, as of the date hereof, the Exchange Ratio is fair, from a financial point of view, to the Stockholders.

Very truly yours,

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WILLIAM BLAIR & COMPANY, L.L.C.

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**PART II**

**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 20. *Indemnification of Directors and Officers***

Section 145 of the Delaware General Corporation Law ( DGCL ) empowers a Delaware corporation to indemnify any persons who are, or are threatened to be made, parties to any threatened, pending or completed legal action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person was an officer or director of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided that such officer or director acted in good faith and in a manner he reasonably believed to be in or not opposed to the corporation's best interests, and, for criminal proceedings, had no reasonable cause to believe his conduct was illegal. A Delaware corporation may indemnify officers and directors in an action by or in the right of the corporation under the same conditions, except that no indemnification is permitted without judicial approval if the officer or director is adjudged to be liable to the corporation in the performance of his duty. Where an officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him against the expenses which such officer or director actually and reasonably incurred.

In accordance with the DGCL, the registrant's second amended and restated certificate of incorporation contains a provision limiting the personal liability of its directors for violations of their fiduciary duty. This provision eliminates each director's liability to the registrant or its shareholders for monetary damages except to the extent (i) for any breach of the director's duty of loyalty to the registrant or its shareholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL, providing for liability of directors for unlawful payment of dividends or unlawful stock purchases or redemptions, or any amendment or successor provision to Section 174 of the DGCL or (iv) for any transaction from which a director derived an improper benefit. The effect of this provision is to eliminate the personal liability of directors for monetary damages for actions involving a breach of their fiduciary duty of care, including any such actions involving gross negligence.

The registrant's second amended and restated certificate of incorporation provides for indemnification of its officers and directors to the fullest extent permitted by applicable law. The registrant's by-laws provide that it will indemnify an officer or director for expenses, judgments, fines and amounts paid in settlement in connection with their defense of an action except that, in actions brought by the registrant or in its right, the registrant (i) will not indemnify for judgments, fines and amounts paid in settlement, nor (ii) indemnify for any expenses if the director or officer is found to be liable to the registrant unless the court determines that the registrant should pay the expenses. In addition, the registrant maintains insurance policies which provide coverage for its officers and directors in certain situations where the registrant cannot directly indemnify such officers or directors.

**Item 21. *Exhibits and Financial Statement Schedules***

(a) The following Exhibits are filed herewith unless otherwise indicated:

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<u>Exhibit Number</u>	<u>Document</u>
2.1	Agreement and Plan of Merger, dated as of April 1, 2003, among First Data Corporation, Monaco Subsidiary Corporation and Concord EFS, Inc. which is attached to the proxy statement/prospectus which forms a part of this registration statement as <i>Annex A</i> .
2.2	Amendment and Abeyance Agreement, dated as of December 14, 2003, among First Data Corporation, Monaco Subsidiary Corporation and Concord EFS, Inc. which is attached to the proxy statement/prospectus which forms a part of this registration statement as <i>Annex B</i> .

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3.1	Registrant's Second Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 4.1 of the registrant's Form S-8 for the First Data Corporation 2002 Long-Term Incentive Plan filed on June 10, 2002, Commission File No. 1-11073).
3.2	Registrant's By-laws (incorporated by reference to Exhibit 4.2 of the registrant's Form S-8 for the First Data Corporation 2002 Long-Term Incentive Plan filed on June 10, 2002, Commission File No. 1-11073).
4	The instruments defining the rights of holders of long-term debt securities of the registrant and its subsidiaries are omitted pursuant to Item 601(b)(4)(iii)(A) of Regulation S-K. The registrant hereby agrees to furnish copies of these instruments to the SEC upon request.
5**	Opinion of Thomas A. Rossi, Esq. regarding the validity of the securities being registered.
8.1**	Opinion of Sidley Austin Brown & Wood LLP regarding material federal income tax consequences relating to the merger.
8.2**	Opinion of Kirkland & Ellis LLP regarding material federal income tax consequences relating to the merger.
10.1	Revolving Credit Agreement, dated as of November 3, 2000, among the registrant, The Chase Manhattan Bank, as administrative agent, and the Syndication Agents, Banks, Swing-Line Banks and Other Financial Institutions Parties thereto (incorporated by reference to Exhibit 10.1 of the registrant's Current Report on Form 8-K filed on February 21, 2001).
10.2	First Data Corporation 1993 Director's Stock Option Plan (incorporated by reference to Exhibit B of the registrant's Proxy Statement for its May 9, 2001 Annual Meeting).
10.3	Registrant's Senior Executive Incentive Plan (incorporated by reference to Exhibit A of the registrant's Proxy Statement for its May 9, 2001 Annual Meeting).
10.4	Registrant's Supplemental Incentive Savings Plan (incorporated by reference to Exhibit 4 of the Form S-8 filed by the registrant on December 16, 2002).
10.5	Form of First Data Corporation 1992 Long-Term Incentive Plan, as amended (incorporated by reference to Exhibit A of the registrant's Proxy Statement for its May 12, 1999 Annual Meeting).
10.6	Form of First Data Corporation 2002 Long-Term Incentive Plan (incorporated by reference to Exhibit A of the registrant's Proxy Statement for its May 8, 2002 Annual Meeting).
10.7	Form of Performance Grant Agreement under the terms of the 1992 Long-Term Incentive Plan for the period beginning January 1, 2000 (incorporated by reference to Exhibit 10.13 of the registrant's Annual Report on Form 10-K for the year ended December 31, 1999).
10.8	Form of Performance Grant Agreement under the terms of the 1992 Long-Term Incentive Plan for the period beginning January 1, 2001 (incorporated by reference to Exhibit 10.7 of the registrant's Annual Report on Form 10-K for the year ended December 31, 2000).
10.9	Form of Performance Grant Agreement under the terms of the 1992 Long-Term Incentive Plan for the period beginning January 1, 2002 (incorporated by reference to Exhibit 10.10 of the registrant's Annual Report on Form 10-K for the year ended December 31, 2001).
10.10	Form of Performance Grant Agreement under the 1992 Long-Term Incentive Plan for the period beginning January 1, 2003 (incorporated by reference to Exhibit 10.10 of the registrant's Annual Report on Form 10-K for the year ended December 31, 2002).

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10.11	Agreement and Release between Robert Levenson and First Data Corporation and related Exhibits A, B, and C (incorporated by reference to Exhibit 10.2 of the registrant's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2000).
15**	Accountants Acknowledgment.
21	Subsidiaries of the registrant (incorporated by reference to Exhibit 21 of the registrant's Annual Report on Form 10-K for the year ended December 31, 2002).
23.1**	Consent of Thomas A. Rossi, Esq. (included in the opinion filed as Exhibit 5 to this registration statement).
23.2**	Consent of Ernst & Young LLP (for First Data Corporation).
23.3**	Consent of Ernst & Young LLP (for Concord EFS, Inc.).
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99.5	Employment Agreement, dated as of April 1, 2003, by and between Concord EFS, Inc. and Edward Labry (incorporated by reference to Exhibit 10.5 of Concord EFS, Inc.'s Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2003).
99.6	Amended and Restated Employment Agreement, dated May 29, 2003, by and between Concord EFS, Inc. and Edward T. Haslam (incorporated by reference to Exhibit 10.3 of Concord EFS, Inc.'s Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2003).
99.7	Hold Separate Stipulation and Order, signed on December 14, 2003 (including the form of Final Judgment attached as Exhibit A) (incorporated by reference to Exhibit 99.1 of the registrant's Current Report on Form 8-K filed on December 15, 2003).

\* Previously filed.

\*\* Previously filed, but amended or updated version filed herewith.

\*\*\* Filed herewith.



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**Item 22. Undertakings**

(a) The undersigned registrant hereby undertakes:

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

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

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

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

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

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

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

(c)(1) The undersigned registrant hereby undertakes as follows: that prior to any public reoffering of the securities registered hereunder through use of a prospectus which is a part of this registration statement, by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c), the issuer undertakes that such reoffering prospectus will contain the information called for by the applicable registration form with respect to reofferings by persons who may be deemed underwriters, in addition to the information called for by the other items of the applicable form.

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(c)(2) The registrant undertakes that every prospectus: (i) that is filed pursuant to paragraph (1) immediately preceding, or (ii) that purports to meet the requirements of Section 10(a)(3) of the Securities Act of 1933 and is used in connection with an offering of securities subject to Rule 415, will be filed as a part of an amendment to the registration statement and will not be used until such amendment is effective, and that, for purposes of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(d) The undersigned registrant hereby undertakes to respond to requests for information that is incorporated by reference into the proxy statement/prospectus pursuant to Item 4, 10(b), 11, or 13 of this form, within one business day of receipt of such request, and to send the incorporated documents by first class mail or other equally

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prompt means. This includes information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.

(e) The undersigned registrant hereby undertakes to supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.

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



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*	Director	December 30, 2003
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Jack M. Greenberg		
*	Director	December 30, 2003
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Courtney F. Jones		
*	Director	December 30, 2003
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James D. Robinson III		
*	Director	December 30, 2003
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Charles T. Russell		
*	Director	December 30, 2003
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Bernard L. Schwartz		
*	Director	December 30, 2003
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Joan E. Spero		
*	Director	December 30, 2003
<hr/>		
Arthur F. Weinbach		

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\*By: /s/ Charles T. Fote

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Charles T. Fote  
Attorney-in-Fact

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