

MF Global Ltd.  
Form S-4/A  
December 01, 2009  
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As filed with the Securities and Exchange Commission on November 30, 2009

Registration No. 333-162892

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**Amendment No. 1 to**

**FORM S-4**

**REGISTRATION STATEMENT**

*UNDER*

*THE SECURITIES ACT OF 1933*

**MF GLOBAL LTD.**

(exact name of registrant as specified in its charter)

**Bermuda\***  
(state or other jurisdiction of  
incorporation or organization)

**6200**  
(Primary Standard Industrial  
Classification Code)  
Clarendon House, 2 Church Street

**98-0551260**  
(I.R.S employer  
identification no.)

**Hamilton HM 11, Bermuda**

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Telephone: (441) 295-5950

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

Laurie R. Ferber, Esq.

717 Fifth Avenue

New York, NY 10022

(212) 589-6200

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

*With copies to:*

David B. Harms, Esq.

Catherine M. Clarkin, Esq.

Sullivan & Cromwell LLP

125 Broad Street

New York, New York 10004

(212) 558-4000

**Approximate date of commencement of proposed sale to the public:** The domestication described herein will be effective on, or as soon as practicable after, the date that this registration statement is declared effective.

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.

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.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer", "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

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

If applicable, place an X in the box to designate the appropriate rule provision relied upon in conducting this transaction:

Exchange Act Rule 13e-4(i) (Cross-Border Issuer Tender Offer)

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Exchange Act Rule 14d-1(d) (Cross Border Third-Party Tender Offer) "

### CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered	Proposed Maximum Aggregate Price per Unit	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee (1)
Common Stock	147,888,308 (5)	\$7.050 (2)	\$856,816,166 (2)	\$47,810.34
Common Stock Rights (3)	215,411	\$6.460 (2)	\$1,391,555 (2)	\$77.65
Preferred Stock, Series A	1,500,000	\$64.111 (4)	\$96,166,500 (4)	\$5,366.09
Preferred Stock, Series B	1,500,000	\$85.357 (4)	\$128,035,500 (4)	\$7,144.38

(1) A filing fee of \$60,320.81 was paid with the filing of MF Global Ltd.'s Registration Statement on November 5, 2009. An additional filing fee in the amount of \$77.65 is being paid in connection with the filing of this Amendment to reflect the registration of 215,411 additional shares of common stock.

(2) Estimated solely for the purpose of calculating the registration fee, based on the average of the high and low prices of the common shares of MF Global Ltd. on the New York Stock Exchange on November 3, 2009 (\$7.050 per share) and on November 27, 2009 (\$6.460 per share), in accordance with Rule 457(f)(1).

(3) Each share of common stock includes one common stock purchase right as described under Description of Capital Stock Shareholder Rights Plan .

(4) Estimated solely for the purpose of calculating the registration fee, based on the book value of such securities computed as of the latest practicable date prior to the date of filing the Registration Statement, in accordance with Rule 457(f)(2).

(5) Includes the shares of common stock of MFG Delaware (as hereinafter defined) as of October 30, 2009 into which all common shares of MFG Bermuda (as hereinafter defined) that are issued and outstanding immediately prior to the Domestication (as hereinafter defined) will be converted in the Domestication. Also includes up to 26,354,100 shares of common stock of MFG Delaware (plus an indeterminate number of shares of such common stock as may be issued pursuant to anti-dilution and similar adjustments) that may be issued upon conversion of the preferred stock of MFG Delaware registered hereby, which shares of common stock are not subject to an additional fee in accordance with Rule 457(i).

\* The Registrant intends to effect a domestication under Section 388 of the General Corporation Law of the State of Delaware and a discontinuance under Sections 132G and 132H of the Companies Act 1981 of Bermuda, pursuant to which the Registrant's jurisdiction of incorporation will be changed from Bermuda to the State of Delaware.

**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment that specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.**

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**The information in this prospectus is not complete and may be changed. This prospectus is not an offer to sell securities and we are not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.**

**SUBJECT TO COMPLETION, DATED NOVEMBER 30, 2009**

**PROSPECTUS**

**Shares of Common Stock**

**Shares of Preferred Stock**

**DOMESTICATION IN DELAWARE**

MF Global Ltd. is an exempted company incorporated under the laws of Bermuda. We are proposing to change our jurisdiction of incorporation by discontinuing from Bermuda and continuing as a corporation incorporated under the laws of the State of Delaware (the Domestication). To effect the Domestication, we will, upon the final approval of our board of directors, file a certificate of incorporation and a certificate of domestication in Delaware, and a notice of discontinuance with the Bermuda Registrar of Companies, under which we will be domesticated and continue as a Delaware corporation with the name MF Global Holdings Ltd. (we refer to the domesticated Delaware entity as MFG Delaware). On the effective date of the Domestication, each of our currently issued and outstanding common and preference shares will automatically convert by operation of law, on a one-for-one basis, into shares of MFG Delaware common or preferred stock, as applicable. Under Bermuda law and our current bye-laws, we do not need shareholder approval of the Domestication, and our shareholders do not have statutory dissenters rights of appraisal as a result of the Domestication.

**We are not asking you for a proxy and you are requested not to send us a proxy. No shareholder action is required to effect the Domestication. See The Domestication No Vote or Dissenters Rights of Appraisal in the Domestication.**

Our common shares are currently listed on the New York Stock Exchange under the symbol MF. We will seek, and expect to receive, approval from the New York Stock Exchange to trade the common stock of MFG Delaware under the same symbol after the Domestication. Our preference shares are not listed, and we do not intend to list the preferred stock, on any securities exchange.

This prospectus incorporates important business and financial information about us from reports we file with the Securities and Exchange Commission. This incorporated information is not printed in or attached to this prospectus. We explain how you can find this information in Where You Can Find More Information. We urge you to review this prospectus, together with the incorporated information, carefully.

**Investing in the common stock and preferred stock of MFG Delaware involves risks. See Risk Factors beginning on page 5 of this prospectus.**

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**Neither the Securities and Exchange Commission nor any other regulatory body has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.**

Prospectus dated \_\_\_\_\_, 2009.

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No person has been authorized to give any information or any representation concerning us or the Domestication (other than as contained in this prospectus) and, if any such other information or representation is given or made, you should not rely on it as having been authorized by us. You should not assume that the information contained or incorporated by reference in this prospectus is accurate as of any date other than the date on the front cover of this prospectus or the date of the incorporated document, as applicable.

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### **FORWARD-LOOKING STATEMENTS**

We have included or incorporated by reference in this prospectus statements that may constitute forward-looking statements within the meaning of the safe harbor provisions of The Private Securities Litigation Reform Act of 1995. These forward-looking statements are not historical facts but instead represent only our belief regarding future events, many of which, by their nature, are inherently uncertain and outside of our control. It is possible that our actual results may differ, possibly materially, from the anticipated results indicated in or implied by these forward-looking statements. See Risk Factors below for information regarding important factors that could cause actual results to differ, perhaps materially, from those in our forward-looking statements.

### **WHERE YOU CAN FIND MORE INFORMATION**

We are required to file annual, quarterly and current reports, proxy statements and other information with the Securities and Exchange Commission (the SEC). You may read and copy any documents filed by us at the SEC's public reference room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. Our filings with the SEC are also available to the public through the SEC's Internet site at <http://www.sec.gov>.

We have filed with the SEC a registration statement on Form S-4 relating to the securities covered by this prospectus. This prospectus is a part of the registration statement and does not contain all of the information in the registration statement. Whenever a reference is made in this prospectus to a contract or other document of ours, please be aware that the reference is only a summary and that you should refer to the exhibits that are a part of the registration statement for a copy of the contract or other document. You may review a copy of the registration statement at the SEC's public reference room in Washington, D.C., as well as through the SEC's Internet site.

### **INCORPORATION OF CERTAIN INFORMATION BY REFERENCE**

The SEC allows us to incorporate by reference the information we file with them, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this prospectus, and information that we file later with the SEC and incorporate herein will automatically update and supersede this information. We incorporate by reference the documents listed below and any future filings we will make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 (the Exchange Act) after the date of this prospectus and on or before the date on which the Effective Time of the Domestication (as defined herein) occurs (other than, in each case, documents or information deemed to have been furnished and not filed in accordance with the SEC rules):

1. Annual Report on Form 10-K for the fiscal year ended March 31, 2009 and filed on June 10, 2009. See Special Note Regarding Incorporated Financial Statements and Financial Disclosures for a discussion of material in our Annual Report on Form 10-K for the fiscal year ended March 31, 2009 that has been amended and superseded in subsequent filings that are incorporated herein by reference;
2. Quarterly Reports on Form 10-Q for the fiscal quarters ended June 30, 2009 and September 30, 2009, and filed on August 7, 2009 and November 6, 2009, respectively;
3. Current Report on Form 8-K, dated September 29, 2009 and filed on October 5, 2009;
4. Current Report on Form 8-K, dated August 7, 2009 and filed on August 7, 2009;
5. Current Report on Form 8-K, dated April 2, 2009 and filed on April 3, 2009;
6. Current Report on Form 8-K, dated June 20, 2008 and filed on June 26, 2008; and

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7. Definitive Proxy Statement on Schedule 14A for the Annual General Meeting of Shareholders on August 13, 2009 and filed on July 1, 2009.



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Because this prospectus incorporates important business and financial information that is not printed in or attached to this prospectus, that information is available without charge to any holder of our common shares or preferred shares, upon written or oral request to: Investor Relations, 717 Fifth Avenue, New York, NY 10022, telephone 1-800-596-0523, email investorrelations@mfglobal.com.

**SPECIAL NOTE REGARDING INCORPORATED FINANCIAL STATEMENTS AND FINANCIAL DISCLOSURES**

On August 7, 2009 we filed a Current Report on Form 8-K (the August Current Report), which, among other things, amends and supersedes Item 6. Selected Financial Data and Item 8. Financial Statements and Supplementary Data as set forth in our Annual Report on Form 10-K for the fiscal year ended March 31, 2009, filed on June 10, 2009, in order to reflect our adoption, effective April 1, 2009, of Accounting Standards Codification (ASC) 810, which discusses accounting for noncontrolling interests in consolidated financial statements (ASC 810), formerly SFAS No. 160, and ASC 470-20, which discusses accounting for convertible debt instruments that may be settled in cash upon conversion including partial cash settlement (ASC 470-20), formerly FSP APB 14-1. You should read the August Current Report with respect to the superseded items in conjunction with our Annual Report, our Quarterly Reports on Form 10-Q for the fiscal quarters ended June 30, 2009 and September 30, 2009 and our other filings that are incorporated herein by reference.

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**SUMMARY**

*This summary provides an overview of selected information. Because this is only a summary, it may not contain all of the information that may be important to you in understanding the Domestication. You should carefully read this entire prospectus, including the section entitled "Risk Factors", as well as the information incorporated by reference in this prospectus. See the sections of this prospectus entitled "Where You Can Find More Information" and "Incorporation of Certain Information by Reference". Unless the context otherwise requires, in this prospectus, the terms "the Company", "MF Global", "we", "us" and "our" refer to MF Global Ltd. as it currently exists under Bermuda law and will continue under Delaware law after the Domestication, and the terms "MFG Bermuda" and "MFG Delaware" refer to the Company prior to and after the Domestication, respectively.*

**MF Global Ltd.**

We are currently a Bermuda exempted company and a leading intermediary offering customized solutions in the global cash and derivatives markets. Through our subsidiaries, we provide execution and clearing services for products in the exchange-traded and over-the-counter derivative markets, as well as for products in the cash market.

Our principal executive offices are located at 717 Fifth Avenue, New York, New York 10022, and we maintain a registered office located at Clarendon House, 2 Church Street, Hamilton HM 11, Bermuda. Our telephone number at our principal executive offices is (212) 589-6200.

**The Domestication**

We intend to change our jurisdiction of incorporation from Bermuda to Delaware, and we refer to this change as the "Domestication". We will effect the Domestication by filing in Delaware a certificate of domestication and a certificate of incorporation of MFG Delaware, and by filing in Bermuda a notice of discontinuance and certified copies of the certificates filed in Delaware. Although the Domestication does not require shareholder approval, it is subject to the final approval of our board of directors. We anticipate that the Domestication will become effective on or about January 4, 2010, upon receipt of the certificate of discontinuance from the Bermuda Registrar of Companies, which we expect will provide that the effective time of the discontinuance of MFG Bermuda under Bermuda law is the effective time of MFG Delaware's domestication in Delaware under Delaware law (we refer to the latest of these effective times as the "Effective Time"). See "Description of Capital Stock" "Effective Time" below.

The Domestication will change our jurisdiction of incorporation from Bermuda to Delaware and, as a result, our organizational documents will change and will be governed by Delaware law rather than Bermuda law. We describe these changes under "Description of Capital Stock" "Differences between the Governing Corporate Law and Organizational Documents for MFG Bermuda and MFG Delaware" below. However, our business, assets and liabilities on a consolidated basis, as well as our board of directors, executive officers, principal business locations and fiscal year, will be the same upon completion of the Domestication as they are prior to the change.

**Share Exchange**

We are authorized to issue up to 1,000,000,000 common shares, \$1.00 par value per share, as well as up to 200,000,000 preference shares, \$1.00 par value per share. As of October 30, 2009, we had (i) 121,534,208 common shares outstanding, (ii) 1,500,000 Series A preference shares outstanding and (iii) 1,500,000 Series B preference shares outstanding.

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In the Domestication, each common share and preference share (Series A and B) of MFG Bermuda that is outstanding immediately prior to the effective time of the Domestication under Delaware law will automatically convert by operation of law into one share of common stock or one share of preferred stock (Series A or B), as applicable, of MFG Delaware. Similarly, outstanding options and other rights to acquire MFG Bermuda shares will become options or rights to acquire the corresponding shares of MFG Delaware. It is not necessary for shareholders of MFG Bermuda who currently hold share certificates to exchange their existing share certificates for certificates of MFG Delaware. See [The Domestication Domestication Share Conversion](#) below.

### ***Reasons for the Domestication***

Our board of directors believes that the Domestication will, among other things:

Best support our growth strategies and, more specifically, our focus on diversifying our business within financial services; and

Allow us to improve our position in light of, and increase our flexibility to respond to, our current and anticipated competitive and regulatory landscape by, among other initiatives, making us eligible to apply to serve as a primary dealer for the Federal Reserve Bank of New York.

### **Risk Factors**

An investment in the common and preference shares of MFG Bermuda as well as in the common and preferred stock of MFG Delaware will involve risks. Please review the section entitled [Risk Factors](#) beginning on page 5 of this prospectus. In addition, we encourage you to review the section entitled [Risk Factors](#) in our most recent Annual Report on Form 10-K for the fiscal year ended March 31, 2009 and our most recent Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2009. See [Where You Can Find More Information](#) and [Incorporation of Certain Information by Reference](#) for information about where you can find these documents.

### **Material U.S. Federal Income Tax Consequences of the Domestication**

See [Material U.S. Federal Income Tax Consequences of the Domestication](#) for more information.

### **No Vote or Dissenters Rights of Appraisal in the Domestication**

Under Bermuda and Delaware law and our current bye-laws, we do not need shareholder approval of the Domestication, and our shareholders do not have statutory dissenters rights of appraisal or any other appraisal rights as a result of the Domestication. See [The Domestication No Vote or Dissenters Rights of Appraisal in the Domestication](#) .

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**RISK FACTORS**

*Any investment in our securities involves a high degree of risk, including the risks described below. In addition, you should carefully consider, among other things, the matters discussed under Risk Factors in our Annual Report on Form 10-K for our fiscal year ended March 31, 2009 and our most recent Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2009, as well as the other information incorporated by reference in this prospectus. The risks and uncertainties described below and in our Annual Report are not the only risks and uncertainties we face. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our business operations. If any of the following risks actually occur, our business, financial condition and results of operations could suffer. As a result, the trading price of our shares could decline, perhaps significantly, and you could lose all or part of your investment. The risks discussed below also include forward-looking statements and our actual results may differ substantially from those discussed in these forward-looking statements. See Forward-Looking Statements .*

**RISKS RELATING TO THE CHANGE IN OUR PLACE OF INCORPORATION**

*The Domestication may result in adverse tax consequences for you.*

If you are a U.S. holder of our common and/or preference shares, you may be subject to U.S. federal income tax as a result of the Domestication unless you make a timely filing with the Internal Revenue Service. If you are a non-U.S. holder of our common and/or preference shares, you may become subject to withholding tax on any dividends paid on the common and/or preferred stock of MFG Delaware subsequent to the Effective Time. Please read the following information which provides more details on the potential tax consequences of the Domestication.

If you are a U.S. holder who owns \$50,000 or more of MFG Bermuda common and/or preference shares, but less than 10% of the total combined voting power of all classes of our shares entitled to vote on the day of the Domestication, you must generally recognize gain (but not loss) with respect to such common and/or preferred stock of MFG Delaware received in the Domestication, even if you continue to hold your stock and have not received any cash or liquidity as a result of the Domestication. As an alternative to recognizing gain, however, such U.S. holder may elect to include in income the all earnings and profits amount , as the term is defined in Treasury Regulation Section 1.367(b)-2(d), attributable to its common and/or preference shares in MFG Bermuda. The income so included pursuant to this election generally is treated as dividend income. We do not expect that MFG Bermuda s cumulative earnings and profits will be greater than zero through the day of Domestication. Therefore, the making of an election to include the person s share of the all earnings and profits amount into income as a dividend generally would be advantageous to U.S. holders who would otherwise recognize gain with respect to the conversion of the MFG Bermuda common and/or preference shares in the Domestication. WE STRONGLY URGE EACH SUCH U.S. HOLDER TO READ CAREFULLY OUR DESCRIPTIONS OF THE ELECTION IN MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE DOMESTICATION BELOW, STARTING ON PAGE 34 OF THIS PROSPECTUS, AS WELL AS TO CONSULT ITS OWN TAX ADVISOR.

Furthermore, if any U.S. holder owns MFG Bermuda common and/or preference shares with 10% or more of the total combined voting power of all classes of our shares on the day of the Domestication, such U.S. holder will be required to pay taxes on a deemed dividend equal to the all earnings and profits amount attributable to its common and/or preference shares in MFG Bermuda, whose cumulative earnings and profits, as noted above, are not expected to be greater than zero through the day of the Domestication. A U.S. holder s ownership of the Company s preference shares or its 9.00% Convertible Senior Notes due 2038 (the Convertible Notes ) will be taken into account in determining whether such U.S. holder owns 10% or more of the total combined voting power of all classes of our shares. Complex attribution rules apply in determining whether a U.S. holder owns 10% or more of the total combined voting power of all classes of our shares for U.S. federal tax purposes. EACH U.S. HOLDER IS STRONGLY URGED TO CONSULT ITS OWN TAX ADVISORS.

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Although we do not expect that our cumulative earnings and profits will be greater than zero through the day of the Domestication, the determination of earnings and profits is factual and the actual amount depends on factors that are not within our control. There can be no assurance that the actual amount of our cumulative earnings and profits through the day of the Domestication will be as expected or that the Internal Revenue Service or a court will agree with our determination. If we were to have positive earnings and profits through the day of the Domestication, an election to recognize the all earnings and profits amount might be disadvantageous to certain U.S. holders. The all earnings and profits amount included in income generally is treated as dividend income. WE STRONGLY URGE EACH SUCH U.S. HOLDER TO READ CAREFULLY OUR DESCRIPTIONS OF TAX CONSEQUENCES APPLICABLE TO SUCH DIVIDEND INCOME IN MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE DOMESTICATION BELOW, STARTING ON PAGE 34 OF THIS PROSPECTUS.

Additionally, the Domestication will cause non-U.S. holders of our common and/or preference shares to become subject to U.S. withholding taxes on any dividends or other payments in respect of the common stock or preferred stock of MFG Delaware after the conversion and the Domestication. Under the terms of our preference shares, no additional amounts will be paid to holders to offset any such taxes. Non-U.S. holders of our Convertible Notes may also become subject to U.S. withholding tax on any interest or other payments we make on the Convertible Notes after the Domestication.

For a more detailed description of the material U.S. federal income tax consequences associated with the Domestication, please read Material U.S. Federal Income Tax Consequences of the Domestication starting on page 34 of this prospectus. WE STRONGLY URGE YOU TO CONSULT WITH YOUR OWN TAX ADVISOR.

***Currently, your rights as a shareholder of MF Global arise under Bermuda law as well as our existing Bermuda memorandum of association and bye-laws. Upon effectiveness of the Domestication, your rights as a shareholder of MF Global will arise under Delaware law as well as our new Delaware certificate of incorporation and by-laws.***

Upon effectiveness of the Domestication, the rights of stockholders of MFG Delaware will arise under the new certificate of incorporation and by-laws of MFG Delaware as well as Delaware law. Those new organizational documents and Delaware law contain provisions that differ in some respects from those in our current organizational documents and Bermuda law and, therefore, some of your rights as a stockholder of MFG Delaware could differ from the rights you currently possess as a shareholder of MFG Bermuda. For a description of your rights as a stockholder of MFG Delaware and how they may differ from your rights as a shareholder of MFG Bermuda, please see Description of Capital Stock Differences between the Governing Corporate Law and Organizational Documents for MFG Bermuda and MFG Delaware in this prospectus. Forms of the new certificate of incorporation and by-laws of MFG Delaware are attached as Appendix A and Appendix B to this prospectus, and we urge you to read them as well.

***Our Corporate Effective Tax Rate may increase as a result of the Domestication.***

In connection with the Domestication, we will become subject to U.S. tax on our income and capital gains and our corporate effective tax rate may change significantly, which could materially impact our financial results, including our earnings and cash flow, for periods after the Domestication. Our corporate effective tax rate, which fluctuates significantly from period to period, is based upon the application of currently applicable income tax laws, regulations and treaties, as well as current judicial and administrative interpretations of these income tax laws, regulations and treaties, in various jurisdictions, including many other than the jurisdiction where we are organized and domiciled. If our jurisdiction of incorporation were to remain Bermuda, then under current Bermuda law, we would not be subject to tax on our income or capital gains under Bermuda law until after March 28, 2016 pursuant to an undertaking from the Minister of Finance of Bermuda pursuant to the Exempt Undertakings Tax Protection Act 1966, as amended, even if Bermuda enacted any legislation imposing tax computed on income or capital gains.

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The highest statutory corporate tax rate for U.S. federal income tax purposes is currently 35%. Our effective tax rate for purposes of financial reporting may, however, vary significantly from the statutory rates under which we operate (including the U.S. statutory rate that would apply after the Domestication) because of, among other things, timing differences in the recognition of income and expense for U.S. GAAP and tax purposes, and differences in how each jurisdiction in which we operate treats the same item of income or expense. We are unable to predict the impact of the Domestication on our effective tax rate going forward. We describe this potential impact under **Material U.S. Federal Income Tax Consequences of the Domestication Corporate Effective Tax Rate** in this prospectus. In addition, the tax laws of the United States and other jurisdictions could change in the future, and those changes could cause a material increase in our effective tax rate at a later date as well.

***One of the reasons that we are changing our jurisdiction of incorporation is to become a primary dealer for the Federal Reserve Bank of New York, but there is no guarantee that the Federal Reserve Bank of New York will approve our application.***

One of our reasons that we are changing our jurisdiction of incorporation at this time is our desire to become a primary dealer for the Federal Reserve Bank of New York (the **Federal Reserve**). In order to become a primary dealer under the existing rules of the Federal Reserve, a company must be incorporated in an approved jurisdiction, a category that includes Delaware but does not currently include Bermuda. However, we have received no assurance from the Federal Reserve that we will be approved as a primary dealer if we change our jurisdiction of incorporation, and we cannot guarantee that we will become a primary dealer or assure you as to the timing of any such event. If our application is denied, our business plans and future earnings potential could be adversely affected. Moreover, even if we become a primary dealer, there is no assurance that we will be able to realize potential new benefits to our business or that any such benefits would not be offset by new costs or risks associated with acting as a primary dealer.

## **ADDITIONAL RISKS**

***We face risks in operating our business, including risks that may prevent us from achieving our business objectives or that may adversely affect our results of operations or financial condition. These risks include, but are not limited to, the following:***

Risks related to our industry and business;

Risks related to our capital needs and financial position;

Risks related to regulation and litigation; and

Risks related to our operations and technology.

These risks are described in detail under **Risk Factors** in our Annual Report on Form 10-K for our fiscal year ended March 31, 2009, which we encourage you to read and carefully consider. See **Incorporation of Certain Information by Reference** and **Where You Can Find More Information**.

**Table of Contents****RATIO OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED DIVIDENDS**

The following table sets forth information regarding our ratio of earnings to combined fixed charges and preferred dividends for the periods shown. For purposes of determining this ratio, earnings consist of pre-tax income or loss from continuing operations before adjustment for non-controlling interests in consolidated subsidiaries or income or loss from equity investees and fixed charges. Fixed charges consist of interest expenses, amortization of debt issuance costs, accretion of debt discount and an appropriate portion of rentals representative of the interest factor.

	Six Months		Fiscal Year			
	Ended September 30, 2009	2009	2008	2007	2006	2005
<b>Ratio of Earnings to Combined Fixed Charges and Preferred Dividends<sup>(1)</sup></b>			1.00	1.08	1.07	1.22

<sup>(1)</sup> Due to our pre-tax loss in the six months ended September 30, 2009 and significant non-cash charges in the year ended March 31, 2009, the ratio coverage was less than 1:1 in each of these periods. We would have needed to generate additional earnings of \$68.133 million in the six months ended September 30, 2009 and \$23.755 million in the year ended March 31, 2009 to achieve a coverage of 1:1 in each of these periods.

**MARKET VALUE OF COMMON SHARES AND PREFERENCE SHARES**

Our common shares are currently listed on the New York Stock Exchange under the symbol MF (and we expect that the common stock of MFG Delaware will be listed on that exchange under that symbol after the Domestication). The following table sets forth, for the periods indicated, the range of high and low sales prices per share of our common shares as reported on the New York Stock Exchange for the periods indicated.

	High	Low
Year Ended March 31, 2008		
First Quarter	\$ N/A	\$ N/A
Second Quarter	29.49	22.00
Third Quarter	32.20	25.02
Fourth Quarter	31.72	3.64
Year Ended March 31, 2009		
First Quarter	\$ 15.19	\$ 5.86
Second Quarter	8.75	3.38
Third Quarter	4.99	1.72
Fourth Quarter	4.89	2.02
Year Ending March 31, 2010		
First Quarter	\$ 6.68	\$ 4.13
Second Quarter	7.84	4.88
Third Quarter (through November 27, 2009)	6.56	6.36

On November 27, 2009, the closing price of our common shares on the New York Stock Exchange was \$6.39 per share.

Our preference shares (Series A and B) are not currently listed on any stock exchange or other marketplace (and we have no plans to list them after the Domestication). The book value of the Series A preference shares on November 27, 2009 was \$64.111 per share. The book value of the Series B preference shares on November 27, 2009 was \$85.357 per share.

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**THE DOMESTICATION**

**General**

MFG Bermuda will effect the Domestication by filing a certificate of domestication along with the new certificate of incorporation of MFG Delaware in Delaware and a corresponding document, known as a notice of discontinuance, with the Bermuda Registrar of Companies. Although the Domestication does not require the approval of any of the shareholders of MFG Bermuda, the board of directors of MFG Bermuda must provide final authorization in order for the Domestication to be effected. Under Bermuda and Delaware law, the domestication of MFG Bermuda in Delaware is deemed effective upon the filing of the certificate of domestication and the certificate of incorporation with the Secretary of State of the State of Delaware. In addition, MFG Delaware must file with the Bermuda Registrar of Companies certified copies of the certificates filed in Delaware within 30 days of the date of their issuance by the Secretary of State of the State of Delaware. Upon making this filing in Bermuda, the Bermuda Registrar of Companies will issue a certificate of discontinuance and, at that time, we shall cease to be registered as a company in Bermuda. We intend to file the certified copies of the certificates filed in Delaware with the Bermuda Registrar of Companies on the same day such certified copies are issued by the Secretary of State of the State of Delaware.

In connection with the Domestication, MFG Delaware will adopt new by-laws, which, together with the new certificate of incorporation filed in Delaware, will be the organizational documents of MFG Delaware after the Domestication.

**Background and Reasons for the Domestication**

We are a leading intermediary offering customized solutions in the global cash and derivatives markets. We provide execution and clearing services for products in the exchange-traded and over-the-counter, or OTC, derivative markets, as well as for products in the cash market. We provide our clients with access to many of the largest and fastest growing markets and products throughout the world.

Our business model is global and product-driven, which allows us to centrally manage our resources while offering clients an expansive array of products across a broad range of markets and geographies. Our history dates back over 200 years ago to a brokerage business that was a founding member of some of the world's first futures exchanges. After an initial public offering in July 2007, we separated from Man Group plc, our former parent, and became an independent public company with shares listed on the New York Stock Exchange. We seek to discover and capitalize on market opportunities for clients through our international network of offices and relationships, expansive product offerings, value-added product expertise and consistent, high-quality service.

Our board of directors believes that the Domestication will, among other things:

Best support our growth strategies, and more specifically, focus on diversifying our business within financial services; and

Allow us to improve our position in light of, and increase our flexibility to respond to, our current and anticipated competitive and regulatory landscape by, among other initiatives, making us eligible to apply to serve as a primary dealer for the Federal Reserve. For many years, Delaware has been a leader in adopting, implementing and interpreting comprehensive and flexible corporate laws that are responsive to the legal and business needs of corporations.

In July 2009, our management presented an initial proposal to our board of directors to change our jurisdiction of incorporation from Bermuda. At that time, management proposed several alternative approaches to a change in jurisdiction, and sought and obtained an amendment to our five-year revolving credit facility that permitted (but did not require) us to change our corporate domicile from Bermuda to Delaware by means of a continuance, the creation of a new holding company, a merger or other similar corporate transaction. In October 2009, management again met



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with our board of directors to update them on our progress and sought and obtained authorization to continue to pursue a change in our jurisdiction of incorporation from Bermuda to Delaware. We expect to seek final approval and authorization for the Domestication from our board of directors in December 2009.

### **Effects of the Domestication**

The Companies Act 1981 of Bermuda (the "Companies Act") permits a Bermuda exempted company to discontinue from Bermuda and continue in an appointed jurisdiction (which includes Delaware) as if it had been incorporated under the laws of that other jurisdiction. The Companies Act and our current bye-laws authorize our board of directors to discontinue MFG Bermuda to a jurisdiction outside of Bermuda (in this case, Delaware) without a shareholder vote. Consequently, we are not asking for your vote or soliciting proxies with respect to the Domestication.

Section 388 of the General Corporation Law of the State of Delaware (the "DGCL") provides that an entity organized in a country outside the United States may become domesticated as a corporation in Delaware by filing in Delaware a certificate of incorporation and a certificate of domestication stating, among other things, that the domestication and the certificate of incorporation have been approved as provided in the organizational documents of the non-U.S. entity. Section 388 does not provide any separate approval requirements for a domestication. The DGCL also does not provide shareholders with statutory dissenters' rights of appraisal in connection with a domestication under Section 388.

Under Bermuda law, our discontinuance from Bermuda and continuance in Delaware will not be deemed to operate to create a new legal entity or prejudice or affect our continuity as an existing corporation. Similarly, Section 388 of the DGCL provides that, upon domesticating in Delaware:

MFG Delaware shall be deemed to be the same entity as MFG Bermuda, and the domestication shall constitute a continuation of the existence of MFG Bermuda in the form of MFG Delaware;

all rights, privileges and powers, as well as all property, of MFG Bermuda shall remain vested in MFG Delaware;

all debts, liabilities and duties of MFG Bermuda shall remain attached to MFG Delaware and shall be enforceable against MFG Delaware to the same extent as if originally incurred by it; and

the domestication shall not be deemed a dissolution of MFG Bermuda.

### **No Change in Business, Locations, Fiscal Year or Employee Plans**

The Domestication will effect a change in our jurisdiction of incorporation, and other changes of a legal nature, including changes in our organizational documents, which are described in this prospectus. The business, assets and liabilities of MF Global and its subsidiaries on a consolidated basis, as well as our principal locations and fiscal year, will be the same upon effectiveness of the Domestication as they are prior to the change.

Upon effectiveness of the Domestication, all of our obligations, including our Convertible Notes, will continue as outstanding and enforceable obligations of MFG Delaware.

All MFG Bermuda employee benefit plans and agreements will be continued by MFG Delaware. We expect to amend any and all of our share-based benefit plans in accordance with their terms as may be necessary to provide that MFG Delaware common stock will be issued upon the exercise of any options or the payment of any other share-based awards granted under the plans, and otherwise to reflect appropriately the substitution of MFG Delaware common stock for MFG Bermuda common shares in connection with the plans, following the Domestication.

### **No Change in Management or our Board of Directors**

Our executive officers will be the executive officers of MFG Delaware upon effectiveness of the Domestication. Our current executive officers include Bernard W. Dan (Chief Executive Officer), J. Randy



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MacDonald (Chief Financial Officer), Laurie R. Ferber (General Counsel), Karel F. Harbour (Chief Operating Officer), Michael K. Roseman (Chief Risk Officer), Thomas Connolly (Head of Human Resources), Thomas M. Harte (Managing Director, North America), Laurence R. O'Connell (Managing Director, Asia/Pacific) and James Rowsell (Managing Director, Europe).

Our board of directors will continue as the board of directors of MFG Delaware following the Domestication. Our current board of directors is comprised of Bernard W. Dan, Alison J. Carnwath, Eileen S. Fusco, Martin Glynn, Edward L. Goldberg, David I. Schamis, Lawrence M. Schloss and Robert S. Sloan.

In addition, neither the members nor the chairpersons of our Audit Committee, Compensation Committee, Nominating and Corporate Governance Committee or our Executive Committee will change upon effectiveness of the Domestication.

### **Domestication Share Conversion**

In the Domestication, each of our currently outstanding common and preference shares (Series A and B) will automatically convert by operation of law, on a one-for-one basis, into shares of MFG Delaware common or preferred stock (Series A or B), as applicable. Consequently, upon effectiveness of the Domestication, each holder of an MFG Bermuda common or preference share will instead hold a share of MFG Delaware common or preferred stock, as applicable, in each case representing the same proportional equity interest in MFG Delaware as that shareholder held in MFG Bermuda and representing the same class and series of shares. The number of shares of MFG Delaware common and preferred stock outstanding immediately after the Domestication will be the same as the number of common and preference shares of MFG Bermuda outstanding immediately prior to the Domestication.

MFG Delaware will not issue new stock certificates to MFG Delaware stockholders who currently hold any of our share certificates. A shareholder who currently holds any of our share certificates will receive a new stock certificate only upon any future transaction in MFG Delaware common stock that requires the transfer agent to issue stock certificates in exchange for existing share certificates. It is not necessary for shareholders of MFG Bermuda to exchange their existing share certificates for certificates of MFG Delaware. Until surrendered and exchanged, each certificate evidencing MFG Bermuda common or preference shares will be deemed for all purposes of the Company to evidence the identical number of shares of MFG Delaware common or preferred stock, as applicable. Holders of uncertificated shares of MFG Bermuda immediately prior to the Domestication will continue as holders of uncertificated stock of MFG Delaware upon effectiveness of the Domestication.

### **Comparison of Shareholder Rights**

Upon effectiveness of the Domestication, the rights of stockholders of MFG Delaware will arise under the new certificate of incorporation and by-laws of MFG Delaware as well as Delaware law. Those organizational documents and Delaware law contain provisions that differ in some respects from those in our current organizational documents and Bermuda law and, therefore, some of your rights as a stockholder of MFG Delaware could differ from the rights you currently possess as a shareholder of MFG Bermuda. For a description of your rights as a stockholder of MFG Delaware and how they may differ from your rights as a shareholder of MFG Bermuda, please see "Description of Capital Stock" Differences between the Governing Corporate Law and Organizational Documents for MFG Bermuda and MFG Delaware in this prospectus.

### **No Vote or Dissenters' Rights of Appraisal in the Domestication**

Under Bermuda law and our current bye-laws, we do not need shareholder approval of the Domestication, and our shareholders do not have statutory dissenters' rights of appraisal or any other appraisal rights as a result of the Domestication. Nor does Delaware law provide for any such rights. We are not asking you for a proxy and you are requested not to send us a proxy. No shareholder action is required to effect the Domestication.

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**DESCRIPTION OF CAPITAL STOCK**

*The following description of the MFG Delaware capital stock (common and preferred) reflects our capital stock as it will exist upon completion of the Domestication, as governed by our new certificate of incorporation and by-laws and by Delaware law. This description is a summary. We urge you to read the forms of the new certificate of incorporation and by-laws of MFG Delaware in their entirety, which are attached as Appendix A and Appendix B to this prospectus.*

**General**

We currently are an exempted company incorporated under the laws of Bermuda and are registered with the Registrar of Companies in Bermuda under registration number 39998. We were incorporated on May 3, 2007 under the name MF Global Ltd.

**Authorized Share Capital**

Until the Effective Time, MF Global will not have any Delaware share capital and will not exist as a Delaware entity. Upon effectiveness of the Domestication, MFG Delaware's authorized share capital will consist of 1,000,000,000 shares of common stock, par value \$1.00 per share, and 200,000,000 shares of preferred stock, par value \$1.00 per share. The amount of authorized share capital of MFG Delaware will be the same as that of MFG Bermuda prior to the Domestication.

**Common Stock**

As of November 27, 2009, we had 121,534,619 common shares outstanding. Upon effectiveness of the Domestication, each common share of MFG Bermuda will automatically convert by operation of law into a share of common stock of MFG Delaware.

Of its 1,000,000,000 authorized shares of common stock, MFG Delaware will reserve 24,000,000 shares of common stock for issuance under the Amended and Restated 2007 Long Term Incentive Plan, subject to increase in accordance with the terms of the plan, and 1,200,000 shares of common stock for issuance under the Employee Stock Purchase Plan, which includes U.K. Sharesave Plan. Pursuant to an investment agreement with an affiliate of J.C. Flowers & Co. LLC ( J.C. Flowers ), until the date on which all of the MFG Delaware Series A Preferred Stock (as hereinafter defined) are converted into shares of common stock of MFG Delaware, MFG Delaware will at all times, have reserved for issuance a sufficient number of shares of authorized and unissued common stock to effectuate the conversion of the Series A Preferred Stock without regard to any limit on such conversion. In addition, upon effectiveness of the Domestication, MFG Delaware will, at all times, have reserved for issuance a sufficient number of authorized and unissued shares of common stock to effectuate the conversion of its Series B Preferred Stock (as hereinafter defined) and its Convertible Notes, both of which will be convertible into MFG Delaware common stock. As of November 27, 2009, our Series A Preference Shares, Series B Preference Shares and Convertible Notes may be converted, at any time, into a total of approximately 45.97 million common shares. Accordingly, common shares issued upon conversion of our Series A Preference Shares, Series B Preference Shares or Convertible Notes may cause immediate and potentially substantial dilution to our shareholders or, upon effectiveness of the Domestication, the stockholders of MFG Delaware.

For a description of the terms of MFG Delaware's Series A Preferred Stock and Series B Preferred Stock, including the manner in which the conversion rates for each of these securities may be adjusted, see below under Preferred Stock Series A Preferred Stock and Preferred Stock Series B Preferred Stock . The terms of the Series A Preferred Stock and the Series B Preferred Stock set forth in the new certificates of designations for those series will be identical in all material respects with the terms of our currently outstanding Series A Preference Shares and Series B Preference Shares set forth in the current certificates of designations for those series.

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In addition, upon completion of the Domestication, our Convertible Notes will become obligations of MFG Delaware, but the terms of the Convertible Notes and the indenture under which they are issued will otherwise remain unchanged. We describe our Convertible Notes in our Current Report on Form 8-K, dated June 20, 2008 and filed on June 26, 2008, which is incorporated herein by reference.

MFG Delaware's common stock will carry the following rights:

*Voting.* Each holder of MFG Delaware common stock will be entitled to one vote for each share of common stock owned of record on all matters submitted to a vote of stockholders of MFG Delaware. Except as otherwise required by law, holders of common stock (as well as holders of any preferred stock entitled to vote with the common stockholders) will vote together as a single class on all matters presented to the stockholders for their vote or approval, including the election of directors. There will be no cumulative voting rights with respect to the election of directors or any other matters. Upon the effectiveness of the Domestication, the board of directors of MFG Delaware will remain subject to corporate governance guidelines (the Corporate Governance Guidelines), which will be identical in all material respects to our current Corporate Governance Guidelines, requiring that directors be elected by a majority of votes cast in uncontested elections. Please see Board of Directors for additional information concerning the election of directors.

*Dividends and distributions.* The holders of MFG Delaware common stock will have the right to receive dividends and distributions, whether payable in cash or otherwise, as may be declared from time to time by its board of directors, from legally available funds.

*Liquidation, dissolution or winding up.* In the event of the liquidation, dissolution or winding-up of MFG Delaware, holders of its common stock will be entitled to share equally in the assets available for distribution after payment of all creditors and the liquidation preferences of its preferred stock (if any).

*Restrictions on transfer.* Neither the new MFG Delaware certificate of incorporation nor MFG Delaware's new by-laws contain any restrictions on the transfer of its common stock (other than any unpaid shares subject to calls as described below). However, in the case of any transfer of shares, there may be restrictions imposed by applicable securities laws or by the terms of restricted share award grants.

*Redemption, conversion or preemptive rights.* Holders of MFG Delaware common stock have no redemption rights, conversion rights or preemptive rights to purchase or subscribe for MFG Delaware securities.

*Other provisions.* There will be no redemption provisions or sinking fund provisions applicable to the common stock of MFG Delaware. Such common stock will, however, be subject to calls only to the extent that they are not fully paid for upon their issuance. That is, if MFG Delaware common stock is issued for consideration that is less than the purchase price, its board of directors may, from time to time, make calls upon the holders of such shares to pay to MFG Delaware any unpaid amounts on such shares. We have not issued any common shares subject to calls and, none of the common stock of MFG Delaware outstanding upon completion of the Domestication will be subject to calls.

The rights, preferences, and privileges of the holders of the MFG Delaware common stock will be subject to, and may be adversely affected by, the rights of the holders of any series of preferred stock of MFG Delaware, such as the Series A and Series B preferred stock and any other preferred stock it may designate and issue in the future.

### **Preferred Stock**

We currently have 1,500,000 Series A Preference Shares and 1,500,000 Series B Preference Shares outstanding. Upon effectiveness of the Domestication, our Series A and Series B preference shares will automatically convert by operation of law into an equal number and class of preferred stock of MFG Delaware (the Series A Preferred Stock and the Series B Preferred Stock, respectively). Under the new MFG Delaware certificate of incorporation, its board of directors will be authorized to divide the preferred stock into series and,



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with respect to each series, to determine the designations and the powers, preferences and rights, and the qualifications, limitations and restrictions thereof, including the dividend rights, conversion or exchange rights, voting rights, redemption rights and terms, liquidation preferences, sinking fund provisions and the number of shares constituting the series. Upon effectiveness of the Domestication, the board of directors of MFG Delaware could, without stockholder approval, issue preferred stock with voting and other rights that could adversely affect the voting power of the holders of its common stock and which could have certain anti-takeover effects. Before MFG Delaware may issue any series of preferred stock, its board of directors will be required to adopt resolutions creating and designating such series of preferred stock. Holders of the common stock of MFG Delaware do not have the right to consent to, or veto, these resolutions.

### ***Series A Preferred Stock***

The special rights, preferences and privileges of the Series A Preferred Stock are set forth in the proposed form of Certificate of Designations of Cumulative Convertible Preferred Stock, Series A of MFG Delaware, which is attached as Annex A to the form of the new certificate of incorporation attached to this prospectus and is identical in all material respects to the existing Certificate of Designations of Cumulative Convertible Preference Shares, Series A of MFG Bermuda that we filed as an exhibit to our Quarterly Report on Form 10-Q on August 13, 2008.

The Series A Preferred Stock may be converted, at a Series A stockholder's option, at any time into common stock of MFG Delaware, at the rate of eight shares of common stock per share of Series A Preferred Stock. MFG Delaware will have the right to cause some or all of the Series A Preferred Stock to be converted into its common stock at any time after May 15, 2013, if, for any 20 trading days within a period of 30 trading days, the closing price of its common stock exceeds 125% of the conversion price, provided that the MFG Delaware common stock issued upon conversion are freely tradeable and may be immediately resold by the Series A stockholder. The Series A Preferred Stock will be initially convertible into common stock of MFG Delaware at a conversion rate of eight shares per \$100 of Series A Preferred Stock (a initial conversion price of \$12.50 per share of common stock). The conversion rate is subject to adjustment upon certain dilution events. In connection with any conversion, the Series A stockholders will be entitled to receive any accumulated, unpaid dividends.

Dividends on the Series A Preferred Stock will be payable quarterly, in cash, on a cumulative basis, if, as and when declared by the board of directors of MFG Delaware out of legally available funds, at an annual rate of 6% (or 10.725% while such stock is beneficially owned by J.C. Flowers) of the liquidation preference of the Series A Preferred Stock, which is \$100 per share. Holders of the Series A Preferred Stock will also be entitled to participate in any dividends (other than dividends in common stock) paid on the MFG Delaware common stock, on an as-converted basis. Dividends that are not declared and paid will accumulate and accrue dividends at the annual rate of. MFG Delaware may pay unpaid and accumulated dividends in the form of cash or its common stock (valued at 95% of volume-weighted average price of its common stock over 10 trading days or, if its common stock has not been trading for at least 10 days, the aforesaid value of MFG Bermuda common shares), at MFG Delaware's option. MFG Delaware will be prohibited from paying any dividend with respect to, and from repurchasing or redeeming, its common stock or other junior securities, subject to certain exceptions, unless full accumulated dividends are paid on the Series A Preferred Stock.

The Series A Preferred Stock may be redeemed by MFG Delaware at its option (a) in whole or in part, on any quarterly dividend payment date on or after May 15, 2013 at a redemption price equal to the liquidation preference per share plus any accumulated and unpaid dividends in respect of such shares, or (b) MFG Delaware may also redeem the Series A Preferred Stock in full if only 10% or less of all originally issued shares remain outstanding. The Series A Preferred Stock will not be redeemable by the Company at the option of the holders thereof. The terms of the Series A Preferred Stock do not restrict the ability of MFG Delaware to purchase the Series A Preferred Stock in the open market or otherwise.

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Holders of the Series A Preferred Stock will be entitled to vote with the common stockholders of MFG Delaware on all matters submitted to a vote of the common stockholders, which includes the right to vote for the election of directors at any annual meeting, voting together with the MFG Delaware common stockholders as a single class, on an as-converted basis. See J.C. Flowers Investment Agreement and Right to Elect Directors . Holders of the Series A Preferred Stock will also be entitled to vote, to the exclusion of the common and all other preferred stockholders of MFG Delaware, on certain matters generally involving changes in the certificate of incorporation or by-laws that would adversely affect their voting powers, preferences or special rights, the authorization or creation of certain senior-ranking stock and mergers, binding share exchanges, reclassifications and similar transactions (unless the rights of the Series A Preferred Stock or any successor stock, as a whole, remain no less favorable to the holders, the surviving/successor entity is organized in the United States, Bermuda or the European Economic Area and certain tax-related requirements are met). These matters must be approved by the holders of at least two-thirds of the outstanding Series A Preferred Stock voting at a meeting or (if the board of directors permits) acting by written consent.

In addition, upon a merger, consolidation, binding share exchange, reclassification, or similar transaction in which all or substantially all the common stock of MFG Delaware is changed into cash, securities or other property of MFG Delaware or another person, or upon the sale of all or substantially all the assets of MFG Delaware, the Series A Preferred Stock will thereafter, without the consent of any holders of the Series A Preferred Stock, be convertible into the kind and amount of property received by the holders of the common stock in the transaction on a per-share basis (with such per-share amount being substituted for each common share that otherwise would have been issuable on conversion).

Holders of the Series A Preferred Stock will also have the right, together with other parity securities having similar voting rights including the Series B Preferred Stock, to elect two directors to the board of directors of MFG Delaware if dividends have not been paid in full for six quarterly dividend periods, whether consecutive or not. For this purpose, the frequency of the payment of dividends by MFG Bermuda may be taken into account. See Contingent Right of the Holders of Series A Preferred Stock and Series B Preferred Stock to Elect Directors upon a Failure to Pay Dividends .

In the event of the liquidation, dissolution or winding up of MFG Delaware, the holders of the Series A Preferred Stock will have the right to receive a liquidation distribution out of any assets available for distribution after payments to creditors, and before any distribution in respect of MFG Delaware s common stock, in an amount equal to the greater of (1) the liquidation preference amount (\$100 per share plus accumulated and unpaid dividends) and (2) the amount they would receive if they had converted their Series A Preferred Stock into MFG Delaware common stock prior to liquidation.

***Series B Preferred Stock***

The special rights, preferences and privileges of the Series B Preferred Stock are set forth in the proposed form of Certificate of Designations of Cumulative Convertible Preferred Stock, Series B of MFG Delaware, which is attached as Annex B to the form of the new certificate of incorporation attached to this prospectus and is identical in all material respects to the existing Certificate of Designations of Cumulative Convertible Preference Shares, Series B of MFG Bermuda that we filed as an exhibit to our Current Report on Form 8-K, dated June 20, 2008 and filed on June 26, 2008.

MFG Delaware will pay dividends on the Series B Preferred Stock, if, as and when declared by its board of directors, quarterly in arrears at a rate of 9.75% per year. The dividend rate may be increased to 10.75% upon the public disclosure by a person or group within the meaning of Section 13(d) of the Exchange Act that such person or group beneficially owns or more than 50% of the voting power of the outstanding common stock of MFG Delaware. Dividends on the Series B Preferred Stock will not be cumulative and may be paid in cash, common stock of MFG Delaware or both. The Series B Preferred Stock will be convertible, at the holder s

option, at any time, at an initial conversion rate of 9.5694 shares of common stock of MFG Delaware for each \$100 of Series B Preferred Stock (an initial conversion price of \$10.45 per common share), subject in each case to specified adjustments.



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The conversion rate will be subject to anti-dilution adjustments. It will also be subject to adjustment in the event of a make-whole acquisition or fundamental change. A make-whole acquisition is any consolidation, merger, binding share exchange, reclassification or similar transaction between MFG Delaware and another person (other than any of its subsidiaries), or any sale or other disposition in one transaction or a series of transactions of all or substantially all of the assets of MFG Delaware and its consolidated subsidiaries to another person (other than any of its subsidiaries), in each case pursuant to which all the outstanding common stock of MFG Delaware is converted into cash, securities or other property, other than in a transaction in which persons beneficially owning voting shares of MFG Delaware immediately prior to such transaction beneficially own voting shares representing a majority of the total voting power of all outstanding classes of voting shares of the continuing or surviving person immediately after the transaction (other than a transaction in which at least 90% of the consideration received by holders of MFG Delaware common stock consists of common stock traded on a securities exchange in the United States or European Economic Area). In the event of a make-whole acquisition, MFG Delaware will, under certain circumstances, increase the conversion rate in respect of any conversions of the Series B Preferred Stock that occur during a 30-day period beginning on the effective date of the make-whole acquisition. The amount of the increase will be based on the price paid per common share in, and the effective date of, the make-whole acquisition, with the amount of the increase generally declining for higher prices and later dates. Initially, there will be no increase if the price paid is below \$7.53 or above \$150 per share (subject to anti-dilution adjustment). If the price paid per common share in the transaction is less than the applicable conversion price, the transaction will be a fundamental change. In that event, in lieu of receiving the make-whole shares, a holder may instead elect to convert such holder's Series B Preferred Stock during a 30-day period after the effective date at a reduced conversion price equal to the greater of the price paid in the transaction or \$3.77 per share (subject to anti-dilution adjustment). In addition, on or after July 1, 2018, if the closing price of the common stock of MFG Delaware exceeds 250% of the then-prevailing conversion price of the Series B Preferred Stock for 20 trading days during any consecutive 30 trading day period, MFG Delaware may, at its option, cause some or all of the Series B Preferred Stock to be automatically converted into its common stock at the then-prevailing conversion price.

The Series B Preferred Stock will rank with respect to dividend rights and rights upon the liquidation, winding-up or dissolution of MFG Delaware: (i) senior to all common stock of MFG Delaware and any other share capital of MFG Delaware issued in the future the terms of which expressly provide that it ranks junior to the Series B Preferred Stock; (ii) on parity with the Series A Preferred Stock, and with any preferred share capital of MFG Delaware issued in the future, the terms of which do not expressly provide that it will rank junior or senior to the Series B Preferred Stock; and (iii) junior to all share capital of MFG Delaware issued in the future, the terms of which expressly provide that such shares will rank senior to the Series B Preferred Stock (subject to certain approval rights of the holders of shares of the Series B Preferred Stock).

The Series B Preferred Stock is not subject to redemption, either at the option of MFG Delaware or at the option of any holders. The terms of the Series B Preferred Stock do not restrict the ability of MFG Delaware to purchase the Series B Preferred Stock in the open market or otherwise.

Holders of the Series B Preferred Stock will be entitled to vote, together with the holders of all other equally ranking preferred stock of MFG Delaware entitled to vote thereon (to the exclusion of the common stockholders of MFG Delaware), on changes to the certificate of incorporation or by-laws that would adversely affect the voting powers, preferences or special rights of the Series B Preferred Stock, and on any authorization or creation of stock having priority over the Series B Preferred Stock in respect of dividends or the distribution of assets on liquidation, dissolution or winding up of MFG Delaware. These matters must be approved by the holders of at least a majority of the outstanding Series B Preferred Stock (together with any such other shares entitled to vote thereon), either voting at a meeting or (if the board of directors permits) acting by written consent.

In addition, upon a merger, consolidation, binding share exchange, reclassification, or similar transaction in which all or substantially all the common stock of MFG Delaware is changed into cash, securities or other property of MFG Delaware or another person, or upon the sale of all or substantially all the assets of MFG

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Delaware, the Series B Preferred Stock will thereafter, without the consent of any holders of the Series B Preferred Stock, be convertible into the kind and amount of property received by the holders of the common stock in the transaction on a per-share basis (with such per-share amount being substituted for each common share that otherwise would have been issuable on conversion).

Holders of the Series B Preferred Stock will also have the right, together with other parity securities having similar voting rights including the Series A Preferred Stock, to elect two directors to the board of directors of MFG Delaware if dividends have not been paid in full for six quarterly dividend periods, whether consecutive or not. For this purpose, the frequency of the payment of dividends by MFG Bermuda may be taken into account. See Contingent Right of the Holders of Series A Preferred Stock and Series B Preferred Stock to Elect Directors upon a Failure to Pay Dividends .

The Series B Preferred Stock shall have special veto rights that will, in certain circumstances, prohibit MFG Delaware from issuing or repurchasing its common stock without first obtaining the prior written consent of the holders of two-thirds of the outstanding Series B Preferred Stock. See Special Veto Rights of Series B Preferred Stock .

**Delaware Anti-Takeover Laws and the New MFG Delaware Certificate of Incorporation and By-laws**

The new MFG Delaware certificate of incorporation and by-laws will contain provisions that may prevent or discourage a third party from acquiring MFG Delaware, even if the acquisition would be beneficial to its stockholders. Upon effectiveness of the Domestication, the board of directors of MFG Delaware also will have the authority to fix the rights and preferences of shares of the preferred stock of MFG Delaware and to issue such shares without a stockholder vote.

Upon effectiveness of the Domestication, MFG Delaware will also be subject to Section 203 of the DGCL. Section 203 prohibits MFG Delaware from engaging in any business combination (as defined in Section 203) with an interested stockholder for a period of three years subsequent to the date on which the stockholder became an interested stockholder unless:

prior to such date, the corporation's board of directors approve either the business combination or the transaction in which the stockholder became an interested stockholder;

upon completion of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owns at least 85% of the outstanding voting stock (with certain exclusions); or

the business combination is approved by the corporation's board of directors and authorized by a vote (and not by written consent) of at least 66 2/3% of the outstanding voting stock of the corporation not owned by the interested stockholder.

For purposes of Section 203, an interested stockholder is defined as an entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation, based on voting power, and any entity or person affiliated with or controlling or controlled by such an entity or person.

A business combination includes mergers, asset sales and other transactions resulting in financial benefit to a stockholder. Section 203 could prohibit or delay mergers or other takeover or change of control attempts with respect to us and, accordingly, may discourage attempts that might result in a premium over the market price for the shares held by stockholders.

Such provisions may have the effect of deterring hostile takeovers or delaying changes in control of management or MFG Delaware.

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**Board of Directors**

The number of directors that will comprise the board of directors of MFG Delaware will be determined only by its board of directors. The board of directors of MFG Delaware may change the number of directors from time to time, subject to a minimum of three and a maximum of 15 directors. At the Effective Time of the Domestication, MFG Delaware's board of directors will have eight members. The by-laws of MFG Delaware do not specify a mandatory retirement age for its directors, but our Corporate Governance Guidelines provide that it is expected that any director reaching the age of 72 shall retire after completing the term to which he or she was elected. The board of directors of MFG Delaware may, on a case-by-case basis, determine that a director may serve beyond the age of 72. Furthermore, the board of directors of MFG Delaware may consider candidates who are older than the age of 72 in the event of unique circumstances or needs of our board of directors.

Currently, our board of directors alone possesses the right to nominate individuals to stand for election to the office of director, although shareholders are entitled to propose candidates for consideration by the board. However, in addition to the board of directors, the stockholders of MFG Delaware who are entitled to elect directors will also be permitted, subject to the notice requirements in the new MFG Delaware by-laws, to nominate directors to stand for election. Under the new MFG Delaware by-laws, any person nominated to serve as a director of MFG Delaware may then be elected as a director by a plurality of stockholder votes cast at a meeting. Vacancies on its board of directors, including those due to newly created seats, may only be filled by its board of directors. A director may be removed from the board of directors of MFG Delaware with or without cause by the holders of not less than two-thirds of the shares then entitled to vote at an election of directors. Each member of the board of directors of MFG Delaware will serve until his or her successor is duly elected and qualified or until his or her earlier death, resignation, disqualification or removal. Delaware law permits a Delaware corporation in its certificate of incorporation to divide its board of directors into multiple classes having staggered terms of up to three years each, although, at the Effective Time of the Domestication, the MFG Delaware board of directors will not be divided into classes.

Notwithstanding the foregoing, under our existing Corporate Governance Guidelines (which will continue to apply to MFG Delaware after the Domestication), in an election of directors, other than in a contested election, director candidates must receive the affirmative vote of a majority of the votes cast in favor of such director's election at a meeting of stockholders to be elected as a director. In connection with the foregoing, a majority of the votes cast means that the number of votes cast for a director's election exceeds the number of votes cast against that director's election, with abstentions not counted as votes cast either for or against that director's election. Accordingly, unless the election is contested by other director candidates nominated by third parties and not otherwise supported by the MFG Delaware board of directors, the directorships to be filled at an annual meeting will be filled by the nominees receiving a majority of the votes cast by stockholders of MFG Delaware entitled to vote and voting on the election of directors. Under Delaware law, if a nominee who is currently serving as a director is not re-elected, that nominee would continue to serve as a holdover director. Accordingly, to ensure that MFG Delaware will be able to replace holdover directors, under our Corporate Governance Guidelines, each of MFG Delaware's directors will be asked to submit a contingent, irrevocable resignation in writing that the board of directors may accept if stockholders do not elect the director by a majority of votes cast. In that situation, the Nominating and Corporate Governance Committee of MFG Delaware would make a recommendation to its board about whether to accept or reject the resignation, or whether to take other action. The Nominating and Corporate Governance Committee may also make a recommendation to the board of MFG Delaware regarding the names of potential directors who may fill the vacancy left by any resigning director. The board of MFG Delaware may then act on these recommendations, including by appointing a new director to fill any resulting vacancy.

Our board of directors has adopted share ownership guidelines. Upon effectiveness of the Domestication, these share ownership guidelines will remain and continue as guidelines to which each director of MFG Delaware will be subject. The adopted guidelines, which shall become effective following the 2010 Annual Meeting of the stockholders of MFG Delaware, will require directors to own common stock or certain securities convertible into common stock equal to at least three times the maximum cash portion of a director's annual fee

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(the maximum annual cash portion of the current annual fee being \$100,000). The share ownership guidelines provide that the directors will have three years following the implementation of the program, or, if later, their election to the board of directors, to attain their target minimum share ownership levels.

### **J.C. Flowers Investment Agreement and Right to Elect Directors**

Pursuant to our existing investment agreement with J.C. Flowers dated May 20, 2008, as amended, so long as J.C. Flowers is the beneficial owner of our Series A Preference Shares, or any common shares issued upon the conversion of the Series A Preference Shares, that in the aggregate represent at least 5% of our issued and outstanding common shares, it has the right to elect one individual to serve as a director on our board in accordance with our existing memorandum of association and bye-laws, subject to certain conditions. In addition, we are required to use our reasonable best efforts to cause such nominee to be elected at such meeting, for a term that expires upon the next annual meeting of members or at such earlier time (if any) as the nominee may resign, retire, die or be removed as a director. The board of directors may withhold the approval of any such designee in certain circumstances. J.C. Flowers has already exercised this right with respect to that individual, who was elected to serve on our board on July 29, 2008 and then re-elected on August 13, 2009. Furthermore, the Series A Preference Shares sold to J.C. Flowers are subject to limited restrictions on transfer and, until July 2011, J.C. Flowers may not beneficially own 20% or more of the shares of the Company's outstanding common stock or take certain other actions to gain control of the Company or encourage others to do so. J.C. Flowers has registration rights entitling it to make permitted sales of its shares in a registered public offering.

Upon effectiveness of the Domestication, our investment agreement with J.C. Flowers will continue to apply with respect to MFG Delaware and the shares of MFG Delaware that J.C. Flowers owns. Accordingly, the board member of MFG Bermuda who was elected by J.C. Flowers will remain and continue as a board member of MFG Delaware, and such board member will be entitled to serve on committees of its board of directors in accordance with the governance practices and procedures of its board of directors (including the discretionary nomination and selection process) on a basis comparable to that on which other directors serve as committee members.

### **Contingent Right of the Holders of the Series A Preferred Stock and the Series B Preferred Stock to Elect Directors upon a Failure to Pay Dividends**

Upon effectiveness of the Domestication, if MFG Delaware does not pay the dividends required by the Series A Preferred Stock or the Series B Preferred Stock for six quarterly periods (whether or not consecutive), the holders of the Series A Preferred Stock and the Series B Preferred Stock will have the right, together with holders of other parity shares of MFG Delaware having similar voting rights and to the exclusion of the common stockholders of MFG Delaware, to elect two directors to the board of directors of MFG Delaware. This right will continue until the Company has paid full dividends on the Series A and Series B Preferred Stock and any parity shares for four quarterly periods (but can be reinstated if the conditions described above are met again). These directors are in addition to the director described above in J.C. Flowers Investment Agreement and Right to Elect Directors above.

### **Special Veto Rights of Series B Preferred Stock**

Upon effectiveness of the Domestication, without the prior written consent of the holders of two-thirds of the outstanding Series B Preferred Stock, MFG Delaware will be prohibited from (i) issuing new shares of common stock to any person or group within the meaning of Section 13(d) of the Exchange Act that has become, or as a result of such issuance would become, the direct or indirect ultimate beneficial owner, as defined in Rule 13d-3 of the Exchange Act, of its common stock representing more than 50% of the voting power of its common stock or (ii) repurchasing any of its outstanding common stock at a time when a person or group (as defined above) has become the direct or indirect ultimate beneficial owner (as defined above) of more than 50% of the voting power of its common stock, in each case (i) and (ii) until the earlier of such time

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when (x) such person or group ceases to beneficially own 50% of the voting power of its common stock or (y) a make-whole acquisition has occurred. Notwithstanding the foregoing, the prior written consent of two-thirds of the holders of the outstanding Series B Preferred Stock will be required only to the extent the current market price of the common stock of MFG Delaware over the 10 consecutive trading days preceding such acquisition does not exceed \$150 (subject to adjustment).

### **Shareholder Rights Plan**

Our board of directors adopted a shareholder rights plan prior to our initial public offering. Upon effectiveness of the Domestication, our current shareholder rights plan will be amended so as to continue as a stockholder rights plan of MFG Delaware. We do not anticipate any material changes in the provisions of the rights plan as a result of the Domestication, and the following description of our rights plan as currently in effect will apply to the plan as in effect upon completion of the Domestication in all material respects.

Pursuant to our shareholder rights plan, one common share purchase right was issued for each of our issued and outstanding common shares. The issued rights are subject to the terms of our shareholder rights plan. Our rights plan will expire on the third anniversary of the completion of our initial public offering, which is July 24, 2010, unless renewed by our board of directors.

The shareholder rights plan is intended to give our board of directors increased power to negotiate in our best interests and to discourage the appropriation of control of our company at a price that is unfair to our shareholders. It is not intended to prevent fair offers for acquisition of control determined by our board of directors to be in our best interests, nor is it intended to prevent a person or group from obtaining representation on or control of our board of directors through a proxy contest, or to relieve our board of directors of its fiduciary duty to consider any proposal for our acquisition made in good faith.

In general terms, our shareholder rights plan works by threatening to impose a significant penalty upon any person or group that acquires 15% or more of our issued and outstanding common shares without the approval of our board of directors. We amended the shareholder rights plan to provide that J.C. Flowers (including any affiliate of J.C. Flowers) be excluded from this provision after the first time it becomes the beneficial owner of 15% or more of our common shares, and until such time as either it falls below the threshold or becomes the owner of 20% or more of our common shares.

We provide below a description of the material provisions of our shareholder rights plan. However, this description is only a summary of the material provisions and should be read together with our entire shareholder rights plan, as amended, which is filed as an exhibit to our Registration Statement on Form F-1 filed with the SEC on July 6, 2007, and as amended by an exhibit filed in our Annual Report on Form 10-K for the fiscal year ended March 31, 2008.

Under our shareholder rights plan, we have issued rights that trade with, and are inseparable from, our common shares and are evidenced only by certificates that represent our common shares. Until the date on which the rights are distributed or our rights plan expires as described below, any common shares we issue in the future will also be accompanied by rights.

Each of our rights will allow its holder to purchase from us one common share for \$150, which we refer to as the exercise price, once the rights become exercisable. Prior to exercise, a right does not give its holder any dividend, voting or liquidation rights.

Our rights will not be exercisable until the earlier of:

ten business days (or an earlier or later date determined by our board of directors before our rights become exercisable) after we publicly announce that a person or group has become an acquiring person by obtaining beneficial ownership of 15% or more of our issued and outstanding common shares; or

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ten business days (or an earlier or later date determined by our board of directors before our rights become exercisable) after an acquiring person obtains beneficial ownership of more than 25% of our issued and outstanding common shares; or

ten business days (or a later date determined by our board of directors before our rights become exercisable) after a person or group begins a tender or exchange offer that, if completed, would result in that person or group becoming an acquiring person.

In light of the substantial ownership position of J.C. Flowers, our shareholder rights plan, as amended, contains provisions excluding it, together with its existing and future affiliates, from the operation of the adverse terms of our shareholder rights plan upon the first time it becomes the beneficial owner of 15% or more of our common shares, and until such time as either it falls below the threshold or becomes the owner of 20% or more of our common shares.

Until the date our rights become exercisable, our common share certificates also evidence our rights, and any transfer of our common shares constitutes a transfer of our rights. After that date, our rights will separate from our common shares and be evidenced by book-entry credits or by rights certificates that we will mail to all eligible holders of our common shares. Any of our rights held by an acquiring person are void and may not be exercised.

On the earlier to occur of (i) ten business days after the first date on which we make a public announcement that a person has become an acquiring person (or such earlier or later date as our board of directors may determine prior to such occurrences), or (ii) ten business days after the date and time on which any acquiring person becomes the beneficial owner of more than 25% of our issued and outstanding common shares (or such earlier or later date as our board of directors may determine prior to such occurrences), then each right, excluding rights held by the acquiring person, will entitle the holder to purchase that number of common shares having a market value at that time equal to two times the exercise price. This provision, which we refer to as a flip-in, would not apply if, among other things:

a person acquires 15% or more of the common shares without any plan or intention to seek or affect control of us and if such person promptly thereafter disposes of enough common shares to bring his beneficial ownership to below 15%, or

we acquire our common shares and, as a result, a shareholder's holding reaches the 15% threshold. In this case, the flip-in provision would not apply unless the shareholder subsequently becomes the owner of more of the common shares than issued and outstanding. In addition, if any person becomes an acquiring person and controls our board of directors and either:

we are involved in an amalgamation, merger or similar transaction in which the acquiring person is a party, or shares held by the acquiring person are treated differently from shares held by others, or

we sell or otherwise transfer 50% or more of the assets or earning power.

then each right will entitle the holder to purchase, for the exercise price, a number of shares of the other party to the transactions described above, which we refer to as the flip-over entity, having a market value equal to two times the exercise price. Thereafter, the flip-over entity will be liable for, and will be obligated to assume, all of our obligations and duties with respect to the shareholder rights plan.

Our board of directors may redeem our rights for \$0.01 per right at any time before a flip-in occurs. If our board of directors redeems any of our rights, it must redeem all of our rights. Once our rights are redeemed, the only right of the holders of our rights will be to receive the redemption price of \$0.01 per right. The redemption price will be adjusted if we have a share split or share dividends of our common shares.

After a person or group becomes an acquiring person, but before an acquiring person owns 50% or more of our issued and outstanding common shares, our board of directors may extinguish our rights by exchanging one of our common shares for each right, other than rights held by the acquiring person.

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Our board of directors may adjust the exercise price, the number and type of securities or other property issuable on exercise and the number of our outstanding rights to prevent dilution that may occur from a share dividend, a share split, a reclassification of our common shares or a similar transaction. No adjustments to the purchase price of our common shares of less than 1% will be made.

The terms of our shareholder rights plan may be amended by our board of directors without the consent of the holders of our rights. After a flip-in occurs, our board of directors may not amend the agreement in a way that adversely affects holders of our rights.

## **Differences between the Governing Corporate Law and Organizational Documents for MFG Bermuda and MFG Delaware**

The rights of our current shareholders are governed by the laws of Bermuda and our existing memorandum of association and bye-laws. Upon effectiveness of the Domestication, we will be incorporated in Delaware and will no longer be incorporated in Bermuda or generally subject to the Companies Act. As a result, the rights of stockholders of MFG Delaware will be governed by Delaware law as well as the new MFG Delaware certificate of incorporation and by-laws.

Some of your rights as a stockholder of MFG Delaware could differ from the rights you currently possess as a shareholder of MFG Bermuda. The following description summarizes the main differences between the rights our shareholders currently possess under Bermuda law and the MFG Bermuda memorandum of association and bye-laws, as compared with the rights our shareholders will possess under Delaware law and the new MFG Delaware certificate of incorporation and by-laws as in effect upon completion of the Domestication.

### ***Interested Directors***

Under Bermuda law and our current bye-laws, a transaction we enter into in which a director has an interest will not be voidable by us, and such director will not be liable to us for any profit realized pursuant to such transaction, provided the nature of the interest is disclosed at the first opportunity at a meeting of directors, or in writing to the directors. In addition, our bye-laws allow a director to be taken into account in determining whether a quorum is present and to vote on a transaction in which the director has an interest following a declaration of the interest pursuant to the Companies Act.

Under Delaware law and the new MFG Delaware by-laws, a contract or transaction in which a director has an interest will not be voidable solely for this reason if (i) the material facts with respect to such interested director's relationship or interest are disclosed or are known to the board of directors, and the board of directors in good faith authorizes the transaction by the affirmative vote of a majority of the disinterested directors, (ii) the material facts with respect to such interested director's relationship or interest are disclosed or are known to the stockholders entitled to vote on such transaction, and the transaction is specifically approved in good faith by vote of the majority of shares entitled to vote thereon, or (iii) the transaction is fair to the corporation as of the time it is authorized, approved or ratified. The mere fact that an interested director is present and voting on a transaction in which he is interested will not itself make the transaction void. Under Delaware law, such interested director could be held liable for a transaction in which such director derived an improper personal benefit.

### ***Duties of Directors***

Under Bermuda law, members of a board of directors owe a fiduciary duty to the company to act in good faith in their dealings with or on behalf of the company and exercise their powers and fulfill the duties of their office honestly. This duty includes the following elements: (i) a duty to act in good faith in the best interests of the company; (ii) a duty not to make a personal profit from opportunities that arise from the office of director; (iii) a duty to avoid conflicts of interest; and (iv) a duty to exercise powers for the purpose for which such powers

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were intended. The Companies Act also imposes a duty on directors and officers of a Bermuda company to (i) act honestly and in good faith with a view to the best interests of the company; and (ii) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. In addition, the Companies Act imposes various duties on directors and officers of a company with respect to certain matters of management and administration of the company. Our current bye-laws provide that our business is to be managed and conducted by our board of directors.

Under Delaware law, a company's directors are charged with a fiduciary duty of care to protect the interests of the corporation and a fiduciary duty of loyalty to act in the best interests of its stockholders. The duty of care requires that directors act in an informed and deliberate manner and inform themselves, prior to making a business decision, of all relevant material information reasonably available to them. The duty of care also requires that directors exercise care in overseeing and investigating the conduct of corporate employees. The duty of loyalty may be summarized as the duty to act in good faith, not out of self-interest, and in a manner which the director reasonably believes to be in the best interests of the stockholders. A party challenging the propriety of a decision of a board of directors bears the burden of rebutting the applicability of the presumptions afforded to directors by the business judgment rule. If the presumption is not rebutted, the business judgment rule attaches to protect the directors and their decisions. Where, however, the presumption is rebutted, the directors bear the burden of demonstrating the fairness of the relevant transaction. Notwithstanding the foregoing, Delaware courts may subject directors' conduct to enhanced scrutiny in respect of defensive actions taken in response to a threat to corporate control and approval of a transaction resulting in a sale of control of the corporation.

### ***Dividends***

Under Bermuda law, a company may not declare or pay dividends if there are reasonable grounds for believing that (i) the company is, or would after the payment be, unable to pay its liabilities as they become due; or (ii) the realizable value of its assets would thereby be less than the aggregate of its liabilities, its issued share capital and its share premium accounts. Issued share capital is the aggregate par value of the company's issued shares, and the share premium account is the aggregate amount paid for issued shares over and above their par value. Share premium accounts may be reduced in certain limited circumstances. Under our bye-laws, each common share is entitled to dividends if, as and when dividends are declared by our board of directors, subject to any preference dividend right of the holders of any preference shares.

Under Delaware law, subject to any restrictions contained in the company's certificate of incorporation, a company may pay dividends out of surplus or, if there is no surplus, out of net profits for the fiscal year in which the dividend is declared and for the preceding fiscal year. Delaware law also provides that dividends may not be paid out of net profits at any time when capital is less than the capital represented by the outstanding stock of all classes having a preference upon the distribution of assets. Each share of MFG Delaware common stock is entitled to dividends if, as and when dividends are declared by the board of directors of MFG Delaware, subject to any preference dividend right of the holders of any preferred stock.

### ***Voting Rights***

Under Bermuda law, the voting rights of shareholders are regulated by the company's bye-laws and, in certain circumstances, the Companies Act. Our current bye-laws generally provide that all matters to be voted on by shareholders, including mergers and the sale of all or substantially all of the company's assets, must be approved by a majority of shareholder votes cast at a meeting, provided that directors may be elected by a plurality of shareholder votes cast at a meeting. Notwithstanding the foregoing, our board of directors has voluntarily amended our Corporate Governance Guidelines so that unless the election of directors is contested, each directorship will be filled by the nominees receiving a majority of the votes cast by shareholders entitled to vote and voting on the election of directors. In addition, our bye-laws state that a director may be removed from our board of directors only for cause and upon a vote of shareholders owning at least two-thirds of all issued and outstanding shares. The Companies Act permits a Bermuda company to divide its board of directors into multiple



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classes having staggered terms of up to three years each, although our board of directors has not been divided into classes. Holders of our Series A preference shares are entitled to vote with our common shareholders on all matters submitted to a vote of our common shareholders, which includes the right to vote for the election of directors at any annual meeting, voting together with our common shareholders as a single class, on an as converted basis. Holders of our Series A and Series B preference shares also have the right to vote as a separate class or classes on certain matters that may affect their rights adversely and to elect directors in the event that MFG Bermuda fails to pay dividends on preference shares for certain periods. These voting rights are substantially identical to the voting rights of the holders of the Series A and Series B Preferred Stock referenced below.

Under Delaware law, unless a company's certificate of incorporation or by-laws provide otherwise, the affirmative vote of a plurality of shares present in person or represented by proxy at the meeting and entitled to vote is required for the election of directors, the affirmative vote of holders of a majority of shares then issued and outstanding is required for specified extraordinary transactions, such as most mergers or a sale of all or substantially all of the assets of the corporation, and to amend the certificate of incorporation and the affirmative vote of holders of a majority of shares present in person or represented by proxy and entitled to vote at a meeting at which a quorum is present is required for all other stockholder action. Holders of the Series A Preferred Stock will be entitled to vote with the common stockholders of MFG Delaware on all matters submitted to a vote of the common stockholders, which includes the right to vote for the election of directors at any annual meeting, voting together with the common stockholders as a single class, on an as converted basis. Holders of the Series A and Series B Preferred Stock will also have the right to vote as a separate class or classes on certain matters that affect their rights adversely and to elect directors in the event that MFG Delaware fails to pay dividends on preferred stock for certain periods, all as described earlier. See Preferred Stock Series A Preferred Stock, Preferred Stock Series B Preferred Stock and Contingent Right of the Holders of the Series A Preferred Stock and the Series B Preferred Stock to Elect Directors upon a Failure to Pay Dividends above.

The new MFG Delaware by-laws provide that any director may be removed with or without cause by the holders of not less than two-thirds of the shares then entitled to vote at an election of directors, as described above in Board of Directors. Delaware law permits a Delaware corporation to divide its board of directors into multiple classes having staggered terms of up to three years each, although the board of directors of MFG Delaware will not be divided into classes at the Effective Time.

In addition, our current bye-laws include provisions for shareholder voting on certain business combinations, and our new MFG Delaware by-laws will contain similar provisions. See Board of Directors and Mergers and Similar Arrangements. For information about stockholder voting rights on by-law amendments, see Amendment of By-Laws.

### ***Advance Notice of Shareholder Proposals***

The Companies Act provides that shareholders who wish to propose resolutions for consideration at a meeting of shareholders must give at least six weeks of advance notice of their proposals. Our bye-laws provide that notice of shareholder proposals must be given in writing to our secretary during a specific period prior to the meeting at which the action is to be taken. Generally, to be timely, notice must be received by our Secretary (i) in the case of an annual general meeting, not less than 90 days nor more than 120 days prior to the first anniversary date of the annual general meeting for the preceding year and (ii) in the case of a special meeting, not more than five days following the day on which notice of the special meeting was mailed or the date that the special meeting is publicly announced (but in no event later than the close of business on the business day before the meeting), whichever occurs first.

Consistent with Delaware law, the new MFG Delaware by-laws provide that notice of stockholder nomination for director and other proposals must be given in writing to the secretary of MFG Delaware during a specific period prior to the meeting at which the action is to be taken. Generally, to be timely, notice must be

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received at the principal executive office of MFG Delaware (i) in the case of an annual meeting, not less than 90 days nor more than 120 days prior to the first anniversary date of the annual meeting for the preceding year and (ii) in the case of a special meeting, not earlier than 120 days before the special meeting and not later than the later of 90 days before the meeting or ten days following the day on which notice of the special meeting is publicly announced. Notices must include information about the stockholder, the nominee or other proposal, share ownership and related positions and transactions, agreements or understandings about the nominee or other proposal, proxy solicitation intentions and other matters. Stockholders may not nominate directors or propose other business at a special meeting unless the board of directors calls for an election of directors at the meeting or permits the business to be considered, as applicable. To submit a nomination or other proposal for consideration at a stockholder meeting, the stockholder must be entitled to vote on the matter at the meeting.

### ***Special Meetings of Shareholders***

The Companies Act provides that a special meeting of shareholders may be called by the board of directors and requires companies to permit shareholders who hold 10% or more of the paid-up capital of the company carrying the right to vote at general meetings as of the date they deliver notice to the company calling for a special meeting to cause the board of directors to convene a special meeting. Our current bye-laws provide that our shareholders whose holdings meet this 10% threshold may require our board of directors to convene a special meeting of shareholders.

Delaware law provides that only the board of directors or any person who is authorized under a corporation's certificate of incorporation or by-laws may call a special meeting of stockholders. Stockholders are not permitted to call special meetings unless authorized to do so under the corporation's certificate of incorporation or by-laws.

The new MFG Delaware by-laws permit stockholders who hold 10% or more of the aggregate voting power of MFG Delaware as of the date they deliver notice to the corporation calling for a special meeting to cause the board of directors to convene a special meeting. Stockholders may not call for a special meeting to elect directors.

### ***Notice of Shareholder Meetings***

Bermuda law requires that shareholders be given at least five days' advance notice of any general meeting. Our bye-laws provide that we must give our shareholders written notice of any annual meeting of shareholders at least 10 days, and of any special meeting of shareholders at least five days, prior to the meeting. Notices may be given by mail, by personal delivery, by telecopier or electronically, and will be deemed given at the time when such notice would be delivered in the ordinary course of transmission. Our failure to give notice to any particular shareholder will not invalidate notice given to any other shareholder.

Under Delaware law and the new MFG Delaware by-laws, unless otherwise provided under the DGCL, we will be required to give written notice of any meeting not less than 10 days nor more than 60 days before the date of the meeting to each stockholder entitled to vote at the meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation. An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

Under Delaware law, electronic notice is a permissible form of notice only if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Electronic notice shall be deemed given under Delaware law: (i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (ii) if by electronic mail, when directed to an electronic mail address at which the stockholder has

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consented to receive notice; (iii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and (iv) if by any other form of electronic transmission, when directed to the stockholder. An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of MFG Delaware that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

### ***Conduct of Meetings***

Bermuda law provides that a company's bye-laws may contain provisions relating to the conduct of annual and special meetings and our bye-laws provide that the chairman of our board of directors (or another director) is authorized to serve as chairman of shareholder meetings.

Delaware law provides that a corporation's by-laws may contain provisions relating to the conduct of annual and special meetings. The new MFG Delaware by-laws provide that the chairman of its board of directors or, in his or her absence, certain other directors or officers (or others designated by the board) are authorized to serve as chairman of stockholder meetings.

### ***Action by Written Consent of Shareholders***

The Companies Act provides that, unless otherwise provided in a company's bye-laws, shareholders may take any action by resolution in writing provided that notice of such resolution is circulated, along with a copy of the resolution, to all shareholders who would be entitled to attend a meeting and vote on the resolution. Such resolution in writing must be signed by the shareholders of the company who, at the date of the notice, represent such majority of votes as would be required if the resolution had been voted on at a meeting of the shareholders. The Companies Act provides that the following actions may not be taken by resolution in writing: (i) the removal of the company's auditors and (ii) the removal of a director before the expiration of his or her term of office. Our bye-laws provide that any action that may have been taken by common shareholders at a meeting (other than the actions referred to in the preceding sentence) may instead be taken by the unanimous written consent of all common shareholders who would have been entitled to attend such meeting and vote on the relevant matter.

Except as otherwise provided in the certificate of incorporation, Delaware law permits stockholders to take action by consent in writing of the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting of stockholders at which all shares entitled to vote thereon were present and voted.

The new MFG Delaware certificate of incorporation provides that any action that may have been taken by the holders of any class or series of stock at a meeting of stockholders may instead be taken by the unanimous written consent of all holders of such class or series of stock who would have been entitled to attend such meeting and vote on the relevant matter. Solely with respect to any series of preferred stock, the holders of such series may also act by written consent in such manner (if any) as may be provided in the certificate of designations for such series. As described earlier, the holders of the Series A and Series B Preferred Stock (like the holders of the Series A and Series B preference shares) may act by written consent to approve certain actions, but only if the board of directors permits them to do so.

### ***Amendment of By-Laws***

The Companies Act provides that the directors may amend bye-laws provided that any amendments are also submitted to a general meeting of the company and approved at such meeting. Our bye-laws provide that no bye-law shall be rescinded, altered or amended, and no new bye-law shall be made, unless it shall have been approved by a resolution of a majority of our board of directors and, after approval by our board and its recommendation to the shareholders, by a resolution of a majority of votes cast by our shareholders entitled to

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vote and voting. Unlike many U.S. jurisdictions, the bye-laws cannot be amended without both board and shareholder approval. In addition, under Bermuda law, holders of an aggregate of not less than 20% in par value of a company's issued share capital have the right to apply to the Supreme Court of Bermuda for an annulment of any amendment of the memorandum of association adopted by shareholders at any general meeting, other than an amendment that alters or reduces a company's share capital as provided in the Companies Act.

Under Delaware law, shareholders of a corporation entitled to vote and, if so provided in the certificate of incorporation, the directors of the corporation, each have the power, separately, to adopt, amend and repeal the by-laws of a corporation.

The new MFG Delaware certificate of incorporation provides that stockholders of MFG Delaware are permitted to unilaterally amend or repeal the MFG Delaware by-laws, or create new by-laws, by the affirmative vote of not less than 80% of all outstanding shares of stock of MFG Delaware that would be entitled to vote on such action at a meeting (voting together as a single class). However, if such amendment or repeal of the by-laws is approved by a majority of the board of directors of MFG Delaware, then only the affirmative vote of the holders of a majority of the shares of stock of the corporation that are present or represented at a meeting, and are entitled to vote and are voting on such action at the meeting (with all such shares voting together as a single class), is required. The MFG Delaware certificate of incorporation and by-laws do not permit the board of directors to amend, repeal or adopt by-laws without stockholder approval, except in one limited respect. The board of directors may amend the by-law relating to advance notice of stockholder nominations or other proposals as they believe may be necessary or appropriate to comply with or otherwise reflect any regulation subsequently adopted by the SEC or any listing requirement subsequently adopted by a securities exchange on which the common stock of the MFG Delaware is listed, provided that any such modification is publicly announced or disclosed at least 30 days prior to the latest date on which stockholder notices relating to the next annual meeting to which the modification applies may properly be delivered to MFG Delaware pursuant to the applicable MFG Delaware by-law as so modified, and provided further that the amendment is approved at the next following annual meeting of stockholders by the holders of a majority of the shares that are present or represented at the meeting and are entitled to vote and are voting on the matter at the meeting (with all such shares voting together as a single class).

### ***Mergers and Similar Arrangements***

The amalgamation (or merger) of a Bermuda company with another company or corporation (other than certain affiliated companies) requires the amalgamation and amalgamation agreement to be approved by the company's board of directors and by its shareholders. Unless the company's bye-laws provide otherwise, the Companies Act requires the approval of 75% of the shareholders voting at such meeting to approve the amalgamation and amalgamation agreement, and the quorum for such meeting must be at least two persons holding or representing by proxy more than one-third of the issued and outstanding shares of the company. Our current bye-laws require that any amalgamation, scheme of arrangement or similar transaction, any sale or other transfer by us, in a single transaction or series of related transactions, to one person or a group of securities representing a majority of the voting power of all outstanding voting securities of us (after giving effect to such transfer) or any sale of all or substantially all of our assets in one or a series of transactions, must be approved and recommended by our board of directors and by a majority of shareholder votes cast at the meeting at which the transaction is considered (we refer to these requirements as the "business combination provisions"). Under Bermuda law, a short-form method of amalgamation is available where the amalgamating companies are a holding company and one or more wholly owned subsidiary companies, or two or more wholly owned subsidiaries of the same holding company. Under a short-form method of amalgamation, the amalgamating companies need not enter into an amalgamation agreement and the Bermuda exempted company may approve the amalgamation by a resolution of the board of directors.

Under Delaware law, with certain exceptions, a merger, consolidation or sale of all or substantially all of the assets of a corporation must be approved by the board of directors and a majority of the issued and outstanding

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shares entitled to vote thereon unless the certificate of incorporation provides a higher voting requirement. The new MFG Delaware certificate of incorporation will not provide for any higher voting requirement with regard to these matters. In addition to the requirements of Delaware law, the new MFG Delaware by-laws will contain provisions similar to the business combination provisions in our current bye-laws described above. Among other things, these will provide that mergers or similar transactions (except where existing stockholders retain majority voting control) and sales or other transfers by MFG Delaware, in a single transaction or series of related transactions, to one person or a group, of securities representing a majority of the voting power of all outstanding voting securities of MFG Delaware (after giving effect to such transfer but excluding a broadly distributed underwritten offering), as well as any sale of all or substantially all of the assets of MFG Delaware in one or a series of transactions, must be approved by MFG Delaware's board of directors and must be approved by a majority of stockholder votes cast at the meeting at which the transaction is considered.

The DGCL provides that no shareholder vote is required for certain mergers with subsidiaries, mergers involving a holding company reorganization or mergers where a limited amount of stock is issued pursuant to the transaction. Only the first two of these three exceptions, however, will be available to MFG Delaware. Under the new MFG Delaware certificate of incorporation, stockholder approval will be required to effect mergers where a limited amount of stock is issued pursuant to the transaction.

The provisions described above may have the effect of delaying, deferring or preventing a change of control through a merger or other transaction having a similar effect.

### ***Appraisal Rights***

Under Bermuda law, in the event of an amalgamation (or merger) of a Bermuda company with another company (other than a short-form amalgamation described above), a shareholder of the Bermuda company who did not vote in favor of the amalgamation and who is not satisfied that fair value has been offered for his or her shares in the Bermuda company may apply to the Bermuda Supreme Court within one month of notice of the shareholders' meeting, for appraisal of the fair value of his or her shares. Under Bermuda law and our bye-laws, our amalgamation with another company or corporation (other than certain affiliated companies) requires the amalgamation and amalgamation agreement to first be approved and recommended by a majority of our board of directors and then approved by a majority of shareholder votes cast at a meeting at which the transaction is considered.

Under Delaware law, a stockholder of a corporation participating in a merger or consolidation will, under certain circumstances, be entitled to appraisal rights pursuant to which such stockholder may demand payment in the amount of the fair market value (as determined by a court) of the shares held by such stockholder in lieu of the consideration such stockholder would otherwise receive in the transaction.

### ***Shareholder Suits***

Class actions and derivative actions are generally not available to shareholders under Bermuda law. The Bermuda courts, however, would ordinarily be expected to permit a shareholder to commence an action in the name of a company to remedy a wrong done to the company where the act complained of is alleged to be beyond the corporate power of the company or is illegal or would result in violation of the company's memorandum of association or bye-laws. Furthermore, consideration would be given by a Bermuda court to allegations of acts constituting fraud against the minority shareholders or, for instance, where an act requires the approval of a greater percentage of the company shareholders than the percentage of shareholders who actually approved it. When the affairs of a company are being conducted in a manner oppressive or prejudicial to the interests of some of the shareholders, one or more shareholders may apply to the Bermuda Supreme Court for an order regulating the company's conduct of affairs in the future or ordering the purchase of the shares of any shareholder, by other shareholders or by the company. Our bye-laws also limit the ability of our shareholders to make claims or bring lawsuits against our directors and officers. See

Limitation of Liability and Indemnification Matters below.

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Class actions and derivative actions generally are available to stockholders under Delaware law for, among other things, breach of fiduciary duty, corporate waste and actions not taken in accordance with applicable law. In such actions, the court generally has discretion to permit the winning party to recover attorney's fees incurred in connection with such actions.

The new MFG Delaware certificate of incorporation limits or eliminates the liability of directors of MFG Delaware to the stockholders of MFG Delaware under certain circumstances. See [Limitation of Liability and Indemnification Matters](#) below.

### ***Takeovers***

Bermuda law provides that where an offer is made for shares of a company and, within four months of the offer, the holders of not less than 90% of the shares that are the subject of the offer accept, the offeror may by notice require the non-tendering shareholders to transfer their shares on the terms of the offer. Dissenting shareholders may apply to the court within one month of the notice objecting to the transfer. The burden is on the dissenting shareholders to show that the court should exercise its discretion to enjoin the required transfer, which the court will be unlikely to do unless there is evidence of fraud or bad faith or collusion between the offeror and the holders of the shares who have accepted the offer as a means of unfairly forcing out minority shareholders.

Delaware law provides that a parent corporation, by resolution of its board of directors and without any stockholder vote, may merge with any subsidiary of which it owns at least 90% of each class of capital shares that would be entitled to vote on such merger. Upon any such merger, dissenting stockholders of the subsidiary would have appraisal rights.

### ***Share Repurchases***

The Companies Act permits a company to purchase its own shares if authorized to do so by its memorandum of association or bye-laws. Our bye-laws allow us to purchase our own shares for cancellation or to acquire them as treasury shares on such terms as our board of directors may authorize, without obtaining prior shareholder approval. Our ability to repurchase our common shares may be limited by the special veto rights of the holders of our Convertible Notes and of the holders of our Series B preference shares.

In connection with the issuance of our Series A preference shares, we entered into a replacement capital covenant (the [Replacement Capital Covenant](#)), whereby we agreed for the benefit of certain of our debtholders identified therein, including initially the holders of our Convertible Notes, that we would not redeem or repurchase the Series A preference shares on or before July 18, 2018 except out of the proceeds from the issuance of certain qualified equity and/or equity-related securities and pursuant to the other terms and conditions set forth in the replacement capital covenant.

Delaware law permits a corporation to redeem its own shares on such terms as its board of directors may authorize, without obtaining prior stockholder approval and so long as such redemption does not impair the capital of the corporation. MFG Delaware's ability to repurchase its common stock may be limited by the special veto rights of the holders of the Convertible Notes, as discussed above under [Special Veto Rights of Series B Preferred Stock](#), and of the holders of the Series B Preferred Stock.

Upon effectiveness of the Domestication, the Replacement Capital Covenant will continue as an obligation of MFG Delaware.

### ***Blank Check Preferred Stock***

Under our current bye-laws, our authorized share capital includes 200,000,000 authorized preference shares of which 1,500,000 shares have been issued as Series A preference shares and 1,500,000 have been issued as Series B

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preference shares. The existence of authorized but unissued preference shares may enable our board of directors to delay, defer or prevent a change in control of us by means of an amalgamation, merger, tender offer, proxy contest or otherwise. In this regard, our bye-laws grant our board of directors broad power to establish the rights and preferences of authorized and unissued preference shares. The issuance of preference shares with a liquidation preference could decrease the amount of earnings and assets available for distribution to holders of common shares. The issuance may also adversely affect the rights and powers, including voting rights, of such holders and may have the effect of delaying, deterring or preventing a change in control. The board of directors currently does not intend to seek shareholder approval prior to any issuance of preference shares, unless otherwise required by law.

Upon effectiveness of the Domestication, the authorized share capital of MFG Delaware will include 200,000,000 authorized shares of preferred stock of which 1,500,000 shares will be issued as Series A Preferred Stock and 1,500,000 will be issued as Series B Preferred Stock. The existence of authorized but unissued preferred stock may enable the board of directors of MFG Delaware to delay, defer or prevent a change in control of it by means of an amalgamation, merger, tender offer, proxy contest or otherwise. In this regard, the new certificate of incorporation of MFG Delaware grants its board of directors broad power to establish the rights and preferences of authorized and unissued preferred stock. The issuance of preferred stock with a liquidation preference could decrease the amount of earnings and assets available for distribution to holders of the common stock of MFG Delaware. The issuance may also adversely affect the rights and powers, including voting rights, of such holders and may have the effect of delaying, deterring or preventing a change in control. We note that the board of directors of MFG Bermuda, which will become the exact board of directors of MFG Delaware, currently does not intend to seek stockholder approval prior to any issuance of MFG Bermuda preferred stock, unless otherwise required by law.

### ***Variation of Shareholder Rights***

Currently, under Bermuda law, if at any time we have more than one class of shares, the rights attaching to any class, unless otherwise provided by the terms of issue of the relevant class, may be varied either (i) with the consent in writing of the holders of 75% in nominal value of the issued shares of that class; or (ii) with the sanction of a resolution passed by a majority of the votes cast at a general meeting of the relevant class of shareholders at which a quorum consisting of at least two persons holding or representing one-third of the issued shares of the relevant class is present. Our bye-laws specify that the creation or issuance of shares ranking equally with existing shares will not, unless expressly provided by the terms of issue of those shares, vary the rights attached to existing shares. In addition, the creation or issuance of preference shares ranking prior to common shares will not be deemed to vary the rights attached to common shares.

Under Delaware law, amendments to the certificate of incorporation require the affirmative vote of the holders of a majority of the outstanding shares entitled to vote on that matter (unless the certificate of incorporation provides for a greater vote). In addition, the holders of the outstanding shares of a class are entitled to vote as a class on any amendment to the certificate of incorporation, whether or not they are entitled to vote on that matter by the certificate of incorporation, if the amendment would increase or decrease the aggregate number of authorized shares of the class, increase or decrease the par value of the shares of the class or alter or change the power, preferences or special rights of the class so as to affect them adversely. The new MFG Delaware certificate of incorporation, however, provides that, subject to the rights of the holders of any series of preferred stock, the number of authorized shares of any class or series of preferred stock may be increased or decreased (but not below the number of shares thereof then outstanding) without the vote of any class or series of preferred stock, voting separately as a class. Further, pursuant to the new MFG Delaware certificate of incorporation, the holders of common stock, as such, shall not be entitled to vote on any amendment of the new certificate of incorporation that alters or changes the powers, preferences, rights or other terms of one or more outstanding series of preferred stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other series of preferred stock, to vote thereon as a separate class pursuant to the new certificate of incorporation or pursuant to the DGCL as then in effect. Delaware law provides that the creation or

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issuance of shares ranking equally with existing shares will not, unless expressly provided by the terms of issue of those shares, vary the rights attached to existing shares. In addition, the creation or issuance of preferred stock ranking prior to common stock will not be deemed to vary the rights attached to common stock.

### ***Access to Books and Records and Dissemination of Information***

Under Bermuda law, members of the general public have a right to inspect the public documents of a Bermuda company available at the Bermuda Registrar of Companies. These documents include a company's memorandum of association (including its objects and powers and certain alterations to the memorandum of association), certificate of incorporation, notice of registered office, register of charges, and any prospectus filed with the Bermuda Registrar of Companies. Shareholders have the additional right to inspect the bye-laws of the company, minutes of general meetings and the company's audited financial statements. The register of members and the register of directors and officers are required to be open for inspection by members of the public without charge for not less than two hours in any business day (subject to the ability of a company to close the register of members for not more than 30 days in a year). The register of directors and officers must be kept at the registered office. A Bermuda company is required to maintain its share register in Bermuda but may, subject to the provisions of the Companies Act, keep a branch register outside of Bermuda. Bermuda law does not provide a general right for shareholders to inspect or obtain copies of any other corporate records including accounting records or minutes of meetings of the board of directors.

Delaware law provides that any stockholder of record, in person or by attorney or other agent, upon written demand under oath stating the purpose of the demand, has the right during the corporation's usual hours for business to inspect or make copies or extracts of a corporation's stock ledger and its other books and records for any purpose reasonably related to such person's interest as a stockholder. In connection with any meeting of stockholders, the stock ledger of MFG Delaware will be open to inspection by stockholders for a period of at least 10 days prior to the meeting and at all times during the meeting.

Pursuant to the new MFG Delaware by-laws, the MFG Delaware stock ledger may be closed for not more than 30 days in a year. MFG Delaware will be required to keep at its registered office a register of stockholders and register of directors and officers that is open for inspection by stockholders without charge for not less than two hours in any business day.

### ***Limitation of Liability and Indemnification Matters***

Section 98 of the Companies Act provides generally that a Bermuda company may indemnify its directors, officers and auditors against any liability that by virtue of any rule of law would otherwise be imposed on them in respect of any negligence, default, breach of duty or breach of trust, except in cases where such liability arises from fraud or dishonesty of which such director, officer or auditor may be guilty in relation to the company. Section 98 further provides that a Bermuda company may (i) indemnify its directors, officers and auditors against any liability incurred by them in defending any proceedings, whether civil or criminal, in which judgment is awarded in their favor, in which they are acquitted or when relief is granted by the Bermuda Supreme Court under section 281 of the Companies Act and (ii) advance moneys to its directors, officers and auditors for the costs, charges and expenses incurred by such directors, officers or auditors in defending any civil or criminal proceedings against them, on condition that any such director, officer or auditor shall repay the advance if any allegation of fraud or dishonesty is proved against them.

Our current bye-laws provide that we shall indemnify our officers and directors in respect of their actions and omissions, except in each case in respect of their fraud or dishonesty and we shall advance funds to officers and directors for the costs, charges and expenses (including fees of counsel) incurred by such officers and directors in defending or investigating any civil or criminal proceedings against them, on condition that they shall repay the advance if any allegation of fraud or dishonesty is proved against them. Our bye-laws also provide that the shareholders waive all claims or rights of action that they might have, individually or in right of the company,



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against any of the company's directors or officers for any act or failure to act in the performance of such director's or officer's duties, except in respect of any fraud or dishonesty of such director or officer. Our shareholders should not assume that they will be able to bring lawsuits against our directors and officers.

Section 98A of the Companies Act and our current bye-laws permit us to purchase and maintain insurance for the benefit of any officer or director in respect of any loss or liability attaching to him in respect of any negligence, default, breach of duty or breach of trust, whether or not we may otherwise indemnify such officer or director.

Under Delaware law, a corporation may include in its certificate of incorporation a provision that, subject to the limitations described below, eliminates or limits director liability to MFG Delaware or its shareholders for monetary damages for breaches of their fiduciary duty of care. Under Delaware law, a director's liability cannot be eliminated or limited for (i) breaches of the duty of loyalty, (ii) acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) the payment of unlawful dividends or expenditure of funds for unlawful stock purchases or redemptions, or (iv) transactions from which such director derived an improper personal benefit. The new MFG Delaware certificate of incorporation provides that, to the fullest extent permitted by the DGCL, directors of MFG Delaware shall not be liable to MFG Delaware or its stockholders for monetary damages for breach of fiduciary duty as a director, including with regard to any actions taken or omitted as a director of MFG Bermuda (whether taken or omitted prior to the Effective Time, in connection with the discontinuance of MFG Bermuda in Bermuda or the continuance of MFG Bermuda in Delaware or otherwise).

Delaware law provides that a corporation may indemnify a director, officer, employee or agent of the corporation against any liability or expenses incurred in any civil, criminal, administrative or investigative proceeding if they acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal proceeding, had no reasonable cause to believe their conduct was unlawful, except that in any action brought by or in the right of the corporation, such indemnification may be made only for expenses (not judgments or amounts paid in settlement) and may not be made even for expenses if the officer, director or other person is adjudged liable to the corporation (unless otherwise determined by the court). In addition, under Delaware law, to the extent that a director or officer of a corporation has been successful on the merits or otherwise in defense of any proceeding referred to above, he or she must be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by that party. Furthermore, under Delaware law, a corporation is permitted to maintain directors' and officers' insurance.

The new MFG Delaware by-laws also provide that MFG Delaware shall indemnify to the fullest extent permitted by Delaware law its directors and officers, or former directors and officers (including directors and officers of MFG Bermuda), or any person who serves or served at the request of MFG Delaware (or MFG Bermuda) as a director or officer (or as a trustee of an employee benefit plan or in any other capacity approved for this purpose by the board of directors or any committee thereof) of MFG Delaware (or MFG Bermuda) or any of its subsidiaries or other affiliates. MFG Delaware will remain obligated on any indemnification obligations with respect to directors and officers of MFG Bermuda arising prior to the Domestication.

## ***Dissolution***

Under Bermuda law, a solvent company may be wound up by way of a shareholders' voluntary liquidation. Prior to the company entering liquidation, the board of directors must approve by an affirmative majority vote a statutory declaration, which states that the directors have made a full enquiry into the affairs of the company and have formed the opinion that the company will be able to pay its debts within a period of 12 months of the commencement of the winding up and must file the statutory declaration with the Bermuda Registrar of Companies. The general meeting will be convened primarily for the purposes of passing a resolution that the company be wound up voluntarily and appointing a liquidator. The winding up of the company is deemed to commence at the time of the passing of the resolution.

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Under Delaware law, a corporation may voluntarily dissolve (1) if a majority of the board of directors adopts a resolution to that effect and the holders of a majority of the outstanding shares entitled to vote thereon vote for such dissolution; or (2) if all stockholders entitled to vote thereon consent in writing to such dissolution.

## **Listing**

Our common shares are listed on the New York Stock Exchange and trade under the symbol **MF**. There is currently no established public trading market for the common stock of MFG Delaware. MFG Delaware will submit an application to the NYSE, if necessary, so that its common stock will continue to be listed on the NYSE under the symbol **MF** following the Domestication.

The Series A and Series B preference shares of MFG Bermuda are not listed on any exchange, and we do not intend to list the corresponding preferred stock of MFG Delaware.

## **Transfer Agent and Registrar**

The Transfer Agent for our common shares is Computershare Trust Company, N.A. Upon effectiveness of the Domestication, the Transfer Agent for the common stock of MFG Delaware will be Computershare Trust Company, N.A.

## **Governing Documents**

To change our jurisdiction of incorporation, we must file a certificate of incorporation and a certificate of domestication with the Secretary of State of the State of Delaware. We will also adopt a new set of by-laws governed by Delaware law. The new certificate of incorporation and by-laws will replace our current memorandum of association and bye-laws as our governing documents after the Domestication. Nevertheless, there are some differences between our new governing documents and Delaware law, on one hand, and our current governing documents and Bermuda law, on the other hand, that may affect the rights of shareholders. See **Description of Capital Stock** **Differences between the Governing Corporate Law and Organizational Documents for MFG Bermuda and MFG Delaware** above.

## **Termination**

We may terminate or abandon the Domestication at any time before it becomes effective. In that event, we would continue to be a Bermuda company and our current governing documents would remain in effect.

## **Effective Time**

The Domestication will become effective when all of the following three steps have been taken: (i) we file the new MFG Delaware certificate of incorporation and the certificate of domestication of MFG Bermuda with the Secretary of State of the State of Delaware, (ii) we file with the Bermuda Registrar of Companies certified copies of the certificates filed in Delaware and (iii) we receive a certificate of discontinuance from the Bermuda Registrar of Companies which we expect will provide that the effective date of the discontinuance of MFG Bermuda under Bermuda law is the date that MFG Delaware's domestication in Delaware is effective pursuant to Delaware law. We expect these steps to be completed on or about January 4, 2010.

## **Expenses of the Domestication**

We will pay the expenses of the Domestication incurred by us and any related transactions regardless of whether the Domestication is completed.

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**MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE DOMESTICATION**

This section describes the material U.S. federal income tax consequences of owning our common shares and preference shares (hereinafter Shares ). It applies to you only if you hold our Shares as capital assets for tax purposes. This section does not apply to you if you are a member of a special class of holders subject to special rules, including:

a dealer in securities,

a trader in securities that elects to use a mark-to-market method of accounting for securities holdings,

a tax-exempt organization,

a life insurance company,

a person liable for alternative minimum tax,

a U.S. expatriate,

a person that actually or constructively owns 10% or more of our voting Shares (except as specifically provided below),

a partnership or other pass-through entity, or a beneficial owner of a partnership or other pass-through entity,

a person that holds our Shares as part of a straddle or a hedging or conversion transaction, or