

NEWTEK BUSINESS SERVICES, INC.  
Form PRER14A  
August 27, 2014  
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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**

**SCHEDULE 14A INFORMATION**  
**Proxy Statement Pursuant to Section 14(a) of the**  
**Securities Exchange Act of 1934**  
**(Amendment No. 4)**

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to §240.14a-12

**Newtek Business Services, Inc.**

**(Name of Registrant as Specified in Its Charter)**

**(Name of Person(s) Filing Proxy Statement if Other Than the Registrant)**

Payment of Filing Fee (Check the appropriate box):

No fee required.

Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (Set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

Fee paid previously with preliminary materials.

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the form or schedule and the date of its filing.

(1) Amount previously paid:

(2) Form, schedule or registration statement no.:

(3) Filing party:

(4) Date filed:

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**NEWTEK BUSINESS SERVICES, INC.**

**212 West 35<sup>th</sup> Street**

**2<sup>nd</sup> Floor**

**New York, NY 10001**

**(212) 356-9500**

[ ], 2014

Dear Stockholder:

We invite you to attend a Special Meeting of Stockholders (the Special Meeting ) of Newtek Business Services, Inc. (the Company ) to be held at the offices of the Company at 212 West 35<sup>th</sup> Street, 2<sup>nd</sup> Floor, New York, NY 10001 on [ ] at [ ] a.m., local time.

The attached Notice of Special Meeting and Proxy Statement/ Prospectus describe the formal business to be transacted at the Special Meeting. Also enclosed is a proxy card.

**YOUR VOTE IS IMPORTANT, REGARDLESS OF THE NUMBER OF SHARES YOU OWN.** On behalf of the board of directors of the Company (the Board ), we urge you to please sign, date and return the enclosed proxy card in the enclosed postage-prepaid envelope or vote by telephone or Internet as soon as possible even if you currently plan to attend the Special Meeting. This will not prevent you from voting in person, but will assure that your vote is counted if you are unable to attend the Special Meeting.

We look forward to seeing you at the Special Meeting.

Sincerely yours,

Barry Sloane  
Chairman, President and Chief Executive  
Officer

**Important Notice Regarding the Availability of Proxy Materials for the Special Meeting of Stockholders to Be Held on [ ], 2014.**

Our proxy statement and annual report on Form 10-K for the years ended December 31, 2012 and December 31, 2013 are available on the Internet at <http://investor.newtekbusinessservices.com/sec.cfm>.

The following information applicable to the Special Meeting may be found in the proxy statement and accompanying proxy card:

The date, time and location of the meeting;

A list of the matters intended to be acted on and our recommendations regarding those matters;

Any control/identification numbers that you need to access your proxy card; and

Information about attending the meeting and voting in person.

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**NEWTEK BUSINESS SERVICES, INC.**

**212 West 35th Street, 2nd Floor**

**New York, New York 10001**

**(212) 356-9500**

**NOTICE OF SPECIAL MEETING OF STOCKHOLDERS**

**To Be Held on [ ], 2014**

**NOTICE IS HEREBY GIVEN** that the Special Meeting of Stockholders (the Special Meeting ) of Newtek Business Services, Inc. (the Company ) will be held at the offices of the Company at 212 West 35th Street, 2nd Floor, New York, NY 10001 on [ ], 2014 at [ ] a.m., local time.

The Special Meeting is for the following purposes, which are more completely described in the accompanying Proxy Statement/Prospectus:

1. To approve an agreement and plan of merger (the Merger Agreement ) by and between the Company and Newtek Business Services Corp., a Maryland corporation, for the purpose of reincorporating the Company in the state of Maryland (the Merger Agreement and the transactions contemplated thereby are referred to as the Reincorporation Transaction ) in anticipation of the election by the Company to be regulated as a business development company under the Investment Company Act of 1940, as amended (the BDC Election );
2. To approve a reverse stock split to be implemented prior to the Reincorporation Transaction, pursuant to which each stockholder will receive one share of our common stock in exchange for no fewer than four and one-half shares and no greater than six and one-half shares owned at that time, with the exact ratio to be determined by the Company's board of directors (the Board );
3. To approve a proposal to authorize the Company, with the approval of its board, to sell shares of its common stock subsequent to the BDC Election at a price or prices below its then current net asset value per share in one or more offerings, subject to certain conditions as set forth in the Proxy Statement/ Prospectus;

4. To approve the adoption of a new equity compensation plan, which will become effective subsequent to the BDC Election;
  5. To approve any adjournment of the Special Meeting, if necessary or appropriate, to solicit additional proxies in favor of any or all of the foregoing proposals if there are not sufficient votes for such proposals; and
  6. To transact such other business as may properly come before the Special Meeting.
- The Board is not aware of any other business to come before the Special Meeting.

Any action may be taken on any one of the foregoing proposals at the Special Meeting or any adjournments thereof. Stockholders of record at the close of business on [ ], 2014 are entitled to vote at the Special Meeting and any adjournment thereof.

We ask that you fill in and sign the enclosed proxy card which is solicited by the Board and mail it promptly in the enclosed envelope. You may also cast your vote by telephone or Internet as shown on the proxy card. The proxy will not be used if you attend and vote at the Special Meeting in person.

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

Georgeson and Company  
1290 Avenue of the Americas  
9th Floor  
New York, NY 10104

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You have the option to revoke the proxy at any time prior to the vote at the meeting or to vote your shares personally on request if you attend the meeting.

By Order of the Board of Directors

Barry Sloane  
Chairman, President and Chief Executive  
Officer

New York, New York

[        ], 2014

**IMPORTANT: THE PROMPT RETURN OF PROXIES WILL SAVE YOUR COMPANY THE EXPENSE OF A FURTHER REQUEST FOR PROXIES IN ORDER TO ENSURE A QUORUM. A SELF-ADDRESSED ENVELOPE IS ENCLOSED FOR YOUR CONVENIENCE. NO POSTAGE IS REQUIRED IF MAILED WITHIN THE UNITED STATES.**



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**PROXY STATEMENT FOR  
NEWTEK BUSINESS SERVICES INC.  
AND  
PROSPECTUS FOR  
NEWTEK BUSINESS SERVICES CORP.**

Newtek Business Services, Inc. and Newtek Business Services Corp.'s principal executive offices are located at 212 West 35<sup>th</sup> Street, 2<sup>nd</sup> Floor, New York, New York 10001 and can be reached by telephone at (212) 356-9500.

This Proxy Statement/ Prospectus is being furnished in connection with the proposed merger between Newtek Business Services, Inc., a New York corporation ( Newtek NY ) and Newtek Business Services Corp., a Maryland corporation ( Newtek MD ), and together with Newtek NY, the Companies ). In the proposed merger, Newtek NY will merge into Newtek MD and Newtek MD will assume all of the assets and liabilities of Newtek NY (the Reincorporation Transaction ). If the Reincorporation Transaction is approved by the shareholders of Newtek NY, and the merger is completed, shares of Newtek NY will be converted into shares of Newtek MD and Newtek NY will cease to exist. Immediately after the Reincorporation Transaction, you will hold shares of common stock of Newtek MD which have an aggregate net asset value equal to the aggregate net asset value of the shares of Newtek NY you held immediately before the Reincorporate Transaction.

Newtek NY is a New York corporation. Newtek MD is a Maryland corporation that anticipates filing an election to be regulated as a business development company (a BDC ) under the Investment Company Act of 1940, as amended (the BDC Election ), and intends to operate subsequently as an internally managed, non-diversified closed-end investment company. Newtek MD also intends to elect to be treated as a regulated investment company ( RIC ) under Subchapter M of the Internal Revenue Code (the Code ) for U.S. federal income tax purposes. Newtek MD's investment objective will be to invest primarily in debt investments made through its small business finance platform under the SBA 7(a) program and to a lesser extent in equity investments that enhance its integrated operating businesses. Newtek MD's shares are not currently listed on a national exchange. Newtek NY's shares are listed on the NASDAQ Capital Market under the ticker symbol NEWT. Subject to approval of the NASDAQ Stock Market, the shares of Newtek MD will continue to trade on the NASDAQ Capital Market under the ticker symbol NEWT after completion of the Reincorporation Transaction.

**MEETING**

The purposes of the meeting are:

1. To approve an agreement and plan of merger (the Merger Agreement ) by and between Newtek NY and Newtek MD, for the purpose of reincorporating Newtek NY in the state of Maryland (the Merger Agreement and the transactions contemplated thereby are referred to as the Reincorporation Transaction ) in anticipation of the election by the Company to be regulated as a business development company under the Investment

Company Act of 1940, as amended (the 1940 Act );

2. To approve a reverse stock split to be implemented prior to the Reincorporation Transaction, pursuant to which each stockholder will receive one share of our common stock in exchange for no fewer than four and one-half shares and no greater than six and one-half shares of our common stock owned at that time, with the exact ratio to be determined by the Company's Board of Directors;
3. To approve a proposal to authorize the Company, with the approval of its Board of Directors, to sell shares of its common stock subsequent to the BDC Election at a price or prices below its then current net asset value per share in one or more offerings, subject to certain conditions as set forth in the Proxy Statement/ Prospectus;

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4. To approve the adoption of a new equity compensation plan, which will become effective subsequent to the BDC Election;
5. To approve any adjournment of the Special Meeting, if necessary or appropriate, to solicit additional proxies in favor of any or all of the foregoing proposals if there are not sufficient votes for such proposals; and
6. To transact such other business as may properly come before the Special Meeting.

**ADDITIONAL INFORMATION**

This Proxy Statement/ Prospectus contains important information about us that a prospective investor should know before voting on whether or not to approve the merger between Newtek MD and Newtek NY. Please read this prospectus before voting and keep it for future reference. Newtek NY files annual, quarterly and current reports, proxy statements and other information with the Securities and Exchange Commission ( SEC ), and after the completion of this offering, Newtek MD will continue filing such reports and information with the SEC. This information will be available free of charge by contacting us by mail at 212 West 35<sup>th</sup> Street, New York, New York 10001, by telephone at (212) 356-9500 or on our website at <http://www.thesba.com>. The SEC also maintains a website at <http://www.sec.gov> that contains such information. Information contained on our website is not incorporated by reference into this prospectus, and you should not consider that information to be part of this prospectus.

Information relating to Newtek NY contained in both its Annual Report on Form 10-K dated March 31, 2013 (SEC File No. 001-16123) and its Current Report on Form 10-Q dated August 14, 2014 (SEC File No. 001-16123) are incorporated by reference into this document. (This means that such information is legally considered to be part of this Proxy Statement/ Prospectus.)

**The Securities and Exchange Commission has not approved or disapproved these securities or passed upon the adequacy of this prospectus. Any representation to the contrary is a criminal offense.**

**The date of this Proxy Statement/ Prospectus is August 27, 2014**

**Approximate date of proposed sale of securities to the public [ ], 2014**

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**SUMMARY**

THIS SECTION SUMMARIZES THE PRIMARY FEATURES AND CONSEQUENCES OF THE REINCORPORATION TRANSACTION. IT MAY NOT CONTAIN ALL OF THE INFORMATION THAT IS IMPORTANT TO YOU. TO UNDERSTAND THE REINCORPORATION TRANSACTION, YOU SHOULD READ THIS ENTIRE PROXY STATEMENT/PROSPECTUS AND APPENDIX A.

This summary is qualified in its entirety by reference to the additional information contained elsewhere in this combined proxy statement/ prospectus, dated [ ], 2014 (the Proxy Statement/ Prospectus ), and the Agreement and Plan of Merger between Newtek NY and Newtek MD that will affect the Reincorporation Transaction (the Merger Agreement ), which is attached to this Proxy Statement/ Prospectus as *Appendix A*.

This Proxy Statement/ Prospectus is being furnished to shareholders of Newtek NY in connection with the Merger Agreement, pursuant to which Newtek NY will merge into Newtek MD and the outstanding shares of Newtek NY will be converted into shares of Newtek MD in order for the company to reincorporate from New York to Maryland in anticipation of the election by Newtek MD to be regulated as a BDC under the 1940 Act. At a meeting held on [ ], the boards of directors of each of the Companies approved the Reincorporation Transaction (each a Board, and together the Boards ). A copy of the Merger Agreement is attached to this Proxy Statement/ Prospectus as *Appendix A*. This Proxy Statement/ Prospectus also contemplates other matters to be considered by the stockholders at the special meeting including: (i) the approval of a reverse stock split; (ii) the authorization to sell shares of common stock at a price or prices below Newtek NY's then current net asset value per share in one or more offerings; (iii) the approval of a new equity compensation plan and (iv) the approval to adjourn to solicit additional votes. Shareholders should read this entire Proxy Statement/ Prospectus, including the exhibits carefully.

**PROPOSAL I APPROVAL OF THE REINCORPORATION TRANSACTION**

We are seeking approval of the Reincorporation Transaction (including the Merger Agreement) in anticipation of the BDC Election. As a result of the Reincorporation Transaction, Newtek NY will merge into Newtek MD and will cease to exist and Newtek MD will succeed to Newtek NY's operations as the sole surviving entity. Newtek NY's officers and directors immediately before the Reincorporation Transaction will become Newtek MD's officers and directors immediately following the merger. References herein to the Company, we, us or our refer to Newtek NY prior to the Reincorporation Transaction and Newtek MD after the Reincorporation Transaction.

For the reasons set forth below, the Board believes that approval of the Reincorporation Transaction is in the best interests of the Company and its stockholders and has approved the Reincorporation Transaction.

In the proposed merger, all of the assets and liabilities of Newtek NY will be acquired and assumed by Newtek MD and Newtek MD will continue as the surviving company in the merger. If the Reincorporation Transaction is approved by the shareholders of Newtek NY, and the merger is completed, the outstanding shares of Newtek NY will be converted into the same number of shares of Newtek MD. Immediately after the Reincorporation Transaction, you will hold shares of common stock of Newtek MD which have an aggregate net asset value equal to the aggregate net asset value of the shares of Newtek NY you held immediately before the Reincorporate Transaction.

Pursuant to New York law, if the Reincorporation Transaction is approved by the stockholders of the Company, stockholders who dissent from the Reincorporation Transaction will not be entitled to appraisal rights with respect to their Shares.



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### **Background and Reasons for the Reincorporation Transaction**

Newtek NY was organized under the laws of New York on June 29, 1999. Newtek MD was organized under the laws of Maryland on August 26, 2013. The purpose of the Reincorporation Transaction is to change Newtek NY's state of incorporation from New York to Maryland so that Newtek NY is governed by the Maryland General Corporation Law (the "MGCL") rather than by the New York Business Corporation Law (the "NYBCL"). In connection therewith, the Company will be subject to a new charter and bylaws. The Board believes that this new corporate structure will best position the Company to operate as an investment company in connection with its proposed BDC Election. Specifically, the MGCL provides administrative advantages and operating efficiencies to investment companies that are not permissible under the NYBCL. In addition, the MGCL contains a well-established body of investment company precedent that may be relevant in deciding issues pertaining to Newtek NY's operation as a BDC. As of May 2, 2014, seven out of the ten largest BDCs, based on market capitalization, were organized under the MGCL. Finally, Newtek MD's charter and bylaws will provide us greater flexibility in managing our capital structure; for example, by enabling us to change the Company's name, if necessary to indicate a particular focus or to authorize additional shares without seeking stockholder approval.

### **Investment Objectives and Policies**

We are a leading national lender and own and control certain portfolio companies (our "controlled portfolio companies," as defined below) that provide a wide range of business and financial products to small- and medium- sized businesses ("SMBs"). In particular, we and our controlled portfolio companies provide comprehensive lending, payment processing, managed technology, personal and commercial insurance and payroll solutions to over 100,000 SMB accounts, across all industries. We have an established and reliable platform that is not limited by client size, industry type or location. As a result, we have a strong and diversified client base across every state in the U.S and across a variety of different industries. In addition, we have developed a financial and technology based business model that enables us and our controlled portfolio companies to acquire and process our SMB clients in a very cost effective manner. This capability is supported in large part by NewTracker<sup>®</sup>, our patented prospect management technology software. We believe that this technology and business model distinguishes us from our competitors.

We and our controlled portfolio companies operate as an integrated operational business with internal management. Upon the Reincorporation Transaction, as a BDC, we will be internally managed and focus on serving the SMB market, which we estimate to be over 27 million businesses in the U.S. These businesses have historically been underserved by traditional financial institutions and typically lack the capital resources to build a competitive business and marketing infrastructure on their own. Further, in today's economic climate, SMBs have particular difficulty obtaining capital from traditional lending sources. While we do not compete directly with alternative online lenders such as OnDeck Capital, Inc. and Kabbage Inc., we do provide similar financing solutions as an alternative to traditional lending. We believe there is significant demand for such alternative financing among SMBs. Our lending solutions and our controlled portfolio companies' outsourced business solutions help clients manage and grow their businesses and compete effectively in today's marketplace. We obtain our customers through referrals from various business partners, such as banks, credit unions and other affinity groups, as well as through our own direct sales force and advertising campaigns. We source, acquire and process SMB customers in a cost effective manner without reliance on high cost sales staff and time consuming application processes.

In lending, we believe we are a leading capital provider to SMBs based on our loan volume of more than \$600 million through approximately 1,100 transactions since 2003 and we are currently the largest non-financial institution U.S. Small Business Administration ("SBA") licensed lender under the federal Section 7(a) loan program based on annual origination volume. We originate loans through a variety of sourcing channels and, through a rigorous underwriting process, seek to achieve attractive risk-weighted returns. Our multi-faceted relationships with certain borrowers allows



us to closely monitor their credit profile and take an active role in managing our investment. Further, our lending capabilities coupled with the broad outsourced business solutions of our controlled portfolio companies creates attractive cross-selling opportunities within our client base. We believe our business model creates powerful network effects which will help drive growth and operating leverage in our business. In

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addition, our SBA loans are structured so that the government guaranteed portion can be rapidly sold, which, based on our historic ability to securitize the unguaranteed portions and assuming the continuation of current market conditions, allows us to quickly recover our principal and earn excess capital on each loan, usually in less than a year. We retain a residual interest in the securitized loans and we may in the future determine to retain the government guaranteed or unguaranteed portions of loans pending deployment of excess capital.

Our proprietary and patented technology platform which we make available to our controlled portfolio companies enables them to provide our clients with a real-time management solution that organizes all of a business's critical transaction and economic, eCommerce and website traffic data on a smartphone, tablet, laptop or personal computer. This technology provides critical consumer and marketing intelligence, including data mining, and provides a range of differentiated solutions and analytical tools that may be easily customized and integrated within their clients' existing business processes. It also provides clients with seamless connectivity to a payment and managed technology infrastructure that is secure, fully compliant and regularly updated with the latest capabilities, services and functionalities. The platform is highly scalable to facilitate growth and meet the needs of new clients and consists solely of cloud-based offerings.

For the years 2011, 2012 and 2013 and the six months ended June 30, 2014, our revenue was \$125.3 million, \$131.1 million, \$143.6 million and \$74.2 million, respectively. In the same periods, our net income attributable to Newtek NY was \$3.3 million, \$5.6 million, \$7.5 million and \$2.8 million, respectively.

***New Business Structure***

We anticipate filing an election to be regulated as a BDC under the 1940 Act after the Reincorporation Transaction, and we intend to operate subsequently as an internally managed, non-diversified closed-end investment company. We also intend to elect to be treated as a RIC under Subchapter M of the Code for U.S. federal income tax purposes. In connection with the BDC Election, we intend to undertake a public offering of shares of Newtek MD's common stock ( "BDC Shares" ) of up to \$50 million, which we refer to as the "Proposed Offering." Any proceeds from the Proposed Offering will be used primarily to expand our small business finance platform, make direct investments in portfolio companies in accordance with our investment objective and strategies described herein and for general corporate purposes. We cannot assure you when the Proposed Offering will be completed, or if completed, that the Proposed Offering will provide sufficient liquidity to meet our investment objective. The size of the Proposed Offering could be material, and could have a materially dilutive effect on our existing stockholders.

Set forth below is a diagram of our organizational structure following the Reincorporation Transaction and the Proposed Offering:

We intend to use the net proceeds of the Proposed Offering primarily to expand our SMB lending, make direct investments in portfolio companies in accordance with our investment objective and strategies described in

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this Proxy Statement/ Prospectus and for general corporate purposes. We believe that transitioning to a BDC and RIC will provide us with access to lower-cost capital and a business structure conducive to expanding our lending activities and will assist in maximizing our value to shareholders by, among other things, permitting us to value our assets and controlled portfolio companies at fair value. As a BDC, we will seek to generate both current income and capital appreciation primarily through loans originated by our small business finance platform and our equity investments in certain portfolio companies that we control. While our primary investment focus as a BDC will be making loans and providing business services to the SMB market through our controlled portfolio companies, we may also make opportunistic investments in larger or smaller companies. We expect to continue to grow our business organically, both directly and through our controlled portfolio companies, as we have historically. We expect to have the ability to increase our quarterly distributions to our stockholders over time as we invest the proceeds of the Proposed Offering and increase the size of our investment portfolio. Our transition to a BDC and RIC will have certain consequences on our balance sheet and net asset value.

***Small Business Finance***

Our debt portfolio consists of loans that were made through our small business finance platform, comprised of Newtek Small Business Finance, Inc. ( NSBF ), a nationally licensed SBA lender, and CDS Business Services, Inc. d/b/a Newtek Business Credit ( CDS ). NSBF originates, sells and services loans to qualifying SMBs, which are partially guaranteed by the SBA. The small business finance platform also consists of CDS, a portfolio company, which provides receivables financing and management services to SMBs which may obtain \$10,000 to \$2,000,000 per month through the sale of their trade receivables. In addition, CDS offers back office receivables services for SMBs, such as billing and cash collections. An additional wholly-owned portfolio company, Small Business Lending, Inc., engages in third party loan servicing for SBA and non-SBA loans.

As a BDC, we plan to expand our small business finance platform primarily by making senior secured loans through NSBF. NSBF is one of 14 SBA licensed Small Business Lending Corporations that provide loans nationwide under the federal Section 7(a) loan program ( SBA 7(a) loans ). NSBF has received preferred lender program ( PLP ) status, a designation whereby the SBA authorizes the most experienced SBA lenders to place SBA guarantees on loans without seeking prior SBA review and approval. PLP status allows NSBF to serve its clients in an expedited manner since it is not required to present applications to the SBA for concurrent review and approval. We believe our SBA license, combined with our PLP designation, provides us with a distinct competitive advantage over other SMB lenders that have not overcome these significant barriers-to-entry in our primary loan market. NSBF has historically originated in excess of \$110 million of SBA 7(a) loans annually and currently manages a portfolio of approximately \$1.1 billion of SBA 7(a) loans, which as of June 30, 2014 includes \$509 million of SBA 7(a) loans that NSBF services on behalf of third parties. NSBF originated approximately \$178 million of SBA 7(a) loans during 2013. We believe that we will continue to be introduced to a variety of high-quality investment opportunities through our existing loan sourcing channels and our controlled portfolio companies' relationships with their clients, and that our transition to a BDC will help fuel the growth of our loan portfolio by providing us with better access to lower-cost capital. In July 2014 we reached tentative agreement with our current warehouse lender, Capital One, N.A., to increase the line of credit available to support our SBA lending from \$27 million to \$50 million and we are currently awaiting final regulatory approval for this increased loan.

The SBA is an independent government agency that facilitates one of the nation's largest source of SMB financing by providing credit guarantees for its loan programs. Under the SBA's 7(a) lending program, a bank or other lender such as NSBF underwrites a loan between \$50,000 and \$5 million for a variety of general business purposes based on the SBA's guidelines and the SBA provides a partial guarantee on the loan. Depending on the loan size, the SBA typically guarantees between 75% and 85% of the principal and interest due. The recoveries and expenses on the unguaranteed portions of these loans are shared *pari passu* between the SBA and the lender, which substantially reduces the loss

severity on the unguaranteed portion of a loan for all SBA 7(a) loan investors. SBA 7(a) loans are typically between five and 25 years in maturity, are four to five years in duration and bear interest at the prime rate plus a spread from 2.25% to 2.75%. Since the guaranteed portions of SBA 7(a) loans carry the full

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faith and credit of the U.S. government, lenders may, and frequently do, sell the guaranteed portion of SBA 7(a) loans in the capital markets, hold the unguaranteed portion and retain all loan servicing rights.

NSBF has a dedicated capital markets team that sells or securitizes the guaranteed and the unguaranteed portions of its SBA 7(a) loans. Historically, NSBF has sold the guaranteed portion of its originated SBA 7(a) loans within two weeks of origination and retained the unguaranteed portion until accumulating sufficient loans for a securitization. The SBA-guaranteed portions of SBA 7(a) loans have historically traded at a premium ranging from 110% to 120% of par value and have never traded below par value. Since inception, NSBF has sold approximately \$480 million of the SBA guaranteed portions of SBA 7(a) loans at premiums ranging from 106% to 120% of par value and typically any portion of the premium that was above 110% of par value was shared equally between NSBF and the SBA. In December 2010, NSBF launched its securitization program for unguaranteed portions of its SBA 7(a) loans and has successfully completed three securitization transactions with Standard & Poor's AA and A ratings and attractive advance rates of approximately 70% of par value. NSBF intends to do additional securitizations in the future which may be on comparable although not necessarily identical terms and conditions. We may determine to retain the government guaranteed or unguaranteed portions of loans pending deployment of excess capital.

NSBF's senior lending team has focused on making smaller loans, approximately \$1 million or less, in order to maintain a diversified pool of loans that are dispersed both geographically and among industries, which limits NSBF's exposure to regional and industry-specific economic downturns. Specifically, NSBF's current loan portfolio consists of 723 loans originated across 43 states in 68 different industries as defined by the North American Industry Classification System. The following charts summarize NSBF's mix of investment concentrations by industry and geography as of June 30, 2014.

<b>Industry type</b>	<b>Number of Loans</b>	<b>Aggregate Balance (\$)</b>	<b>Average Balance (\$)</b>	<b>Percentage of Balance</b>
Food Services and Drinking Places	74	8,455	114	7.52%
Amusement, Gambling, and Recreation Industries	33	6,767	205	6.02%
Professional, Scientific, and Technical Services	36	5,654	157	5.03%
Repair and Maintenance	43	5,600	130	4.98%
Specialty Trade Contractors	34	5,053	149	4.50%
Ambulatory Health Care Services	63	4,914	78	4.37%
Food Manufacturing	15	4,846	323	4.31%
Truck Transportation	14	4,709	336	4.19%
Fabricated Metal Product Manufacturing	18	4,704	261	4.19%
Accommodation	25	4,582	183	4.08%
Other	368	57,085	155	50.81%
<b>Total</b>	<b>723</b>	<b>112,369</b>	<b>155</b>	<b>100.00%</b>

<b>State</b>	<b>Number of Loans</b>	<b>Aggregate Balance (\$)</b>	<b>Average Balance (\$)</b>	<b>Percentage of Balance</b>
NY	100	14,263	143	12.69%

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FL	73	10,290	141	9.16%
CT	43	7,865	183	7.00%
GA	36	7,682	213	6.84%
TX	42	7,621	181	6.78%
NJ	55	7,378	134	6.57%
PA	41	7,323	179	6.52%
CA	46	5,946	129	5.29%
OH	21	4,269	203	3.80%
MI	21	3,713	177	3.30%
Other	245	36,019	147	32.05%
<b>Total</b>	<b>723</b>	<b>112,369</b>	<b>155</b>	<b>100.00%</b>

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NSBF evaluates the credit quality of its loan portfolio by employing a risk rating system that is similar to the Uniform Classification System, which is the asset classification system adopted by the Federal Financial Institution Examinations Council. NSBF's risk rating system is granular with multiple risk ratings in both the Acceptable and Substandard categories. Assignment of the ratings are predicated upon numerous factors, including credit risk scores, collateral type, loan to value ratios, industry, financial health of the business, payment history, other internal metrics/analysis, and qualitative assessments. Risk ratings are refreshed as appropriate based upon considerations such as market conditions, loan characteristics, and portfolio trends. NSBF's gross SBA loans by credit quality indicator are as follows:

<b>Risk Rating</b>	<b>Number of Loans</b>	<b>Aggregate Balance</b>	<b>Average Balance</b>	<b>Percentage of Balance</b>
Risk Rating 1-4	634	99,821	157	88.83%
Risk Rating 5	16	3,089	193	2.75%
Risk Rating 6	55	7,621	139	6.78%
Risk Rating 6/7 and 7	18	1,837	102	1.64%
<b>Total</b>	<b>723</b>	<b>112,368</b>	<b>155</b>	<b>100.00%</b>

The weighted average term to maturity and weighted average interest rate of NSBF's loan portfolio as of June 30, 2014 was 191 months and 6%, respectively.

As a BDC, using the origination platform and borrower relationships that we have developed over ten years and our experience and knowledge with SBA 7(a) lending, we intend to develop a conventional lending platform that will be similar to the SBA 7(a) lending program in terms of high credit quality and rigorous underwriting, but without the SBA's guarantee. To compensate for the lack of the SBA's guarantee, we intend to charge higher, double-digit interest rates on our loans. By leveraging our infrastructure in this way, we believe we will be able to grow our lending business at a faster rate than we have done historically and potentially provide better returns to our shareholders.

**Controlled Portfolio Companies**

In addition to our debt investments in portfolio companies, either directly or through our small business finance platform, we also hold controlling interests in certain portfolio companies that, as of June 30, 2014, represented approximately 42% of our total investment portfolio on a pro forma fair value basis. Specifically, we hold a controlling interest in Universal Processing Services of Wisconsin, LLC, d/b/a Newtek Merchant Solutions ( NMS ), CrystalTech Web Hosting, Inc. d/b/a/ Newtek Managed Technology Solutions® ( NTS ), CDS Business Services, Inc. ( CDS ) and Newtek Insurance Agency, LLC ( NIA ). In addition, one of our subsidiaries holds a controlling interest in PMTWorks Payroll, LLC, d/b/a Newtek Payroll Services ( NPS ). We refer to these entities, collectively, as our controlled portfolio companies. Our controlled portfolio companies provide us with an extensive network of business relationships that supplement our referral sources and that we believe will help us to maintain a robust pipeline of lending opportunities and expand our small business finance platform.

NMS, our Electronic payment processing segment, markets credit and debit card processing services, check approval services and ancillary processing equipment and software to merchants

who accept credit cards, debit cards, checks and other non-cash forms of payment. As of June 30, 2014, NMS provided services to approximately 14,100 merchants. NMS' s merchant base consists of both eCommerce and brick-and-mortar clients and is principally focused on the SMB market, a segment that offers relatively attractive pricing margins and has been difficult for competitors to penetrate. For the six months ended June 30, 2014, NMS, on a segment basis, generated \$44.7 million of revenue and \$3.9 million of income before income taxes. For the year ended December 31, 2013, NMS, on a segment basis, generated \$89.7 million of revenue and \$8.3 million of income before income taxes and for the year ended December 31, 2012, it generated \$85.5 million of revenue and \$7.0 million of income before income taxes.



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NTS, our Managed technology solutions segment, provides website hosting, dedicated server hosting, cloud hosting, web design and development, internet marketing, e-commerce, data storage and backup, and other related services to more than 124,000 customer accounts in 105 countries. For the six months ended June 30, 2014, NTS generated \$8.2 million of revenue and \$1.7 million of income before taxes. For the year ended December 31, 2013, NTS generated \$17.6 million of revenue and \$3.6 million of income before income taxes and for the year ended December 31, 2012, it generated \$18.2 million of revenue and \$4.3 million of income before income taxes.

NIA serves as a retail and wholesale agency specializing in the sale of commercial and health/benefits lines insurance products to the SMB market as well as various personal lines of insurance. It is licensed in all 50 states.

NPS offers an array of industry standard and competitively priced payroll management, payment and tax reporting services to SMBs.

CDS, which does business as Newtek Business Credit ( NBC ) and is a portion of our small business finance segment, offers traditional factoring and receivables purchase services to SMBs as well as back office services such as billing and cash collections.

Our controlled portfolio companies combined with our lending platform provide us with a network of business relationships that allows to cross-sell our financing options and further establishes us as a one-stop-shop for SMBs.

The revenues that our controlled portfolio companies generate, after deducting operational expenses, may be distributed to us. As a BDC, our Board will determine quarterly the fair value of our controlled portfolio companies in a similar manner as our other investments. In particular, our investments in our controlled portfolio companies are valued using a valuation methodology that incorporates both the market approach (public comparable company analysis) and the income approach (discounted cash flow analysis). In following these approaches, factors that we may take into account in fair value pricing our investments include, as relevant: available current market data, including relevant and applicable market trading comparables, the portfolio company's earnings and discounted cash flows, comparisons of financial ratios of peer companies that are public, and enterprise values, among other factors. Additionally, in June of 2013, Newtek NY engaged a third party valuation firm to provide valuation consulting services for the valuation of NMS and NTS.

At June 30, 2014, our estimated valuation of NMS was approximately \$45.7 million, which represents an enterprise value to LTM EBITDA multiple of 4.75x, and our estimated valuation of NTS was approximately \$21.6 million, which represents an enterprise value to LTM EBITDA multiple of 3.75x. Such valuations and multiples reflect our current estimates and final valuations were determined by the Board.

### ***Newtek Branding***

We have developed our branded line of products and services to offer a full service suite of business and financial solutions for the SMB market. Newtek reaches potential customers through its integrated multi-channel approach featuring direct, indirect and direct outbound solicitation efforts. Although we continue to utilize and grow our primary marketing channel of strategic alliance partners, more recently, and consistent with our intent to elect to be regulated as a BDC, we have initiated a direct marketing strategy to SMB customers through our new go to market

brand, *The Small Business Authority*<sup>®</sup>. Through a coordinated radio and television advertising campaign built around this brand, and our web presence, [www.thesba.com](http://www.thesba.com), we are establishing ourselves as a preferred provider of SMB financing and the services offered by our controlled portfolio companies. In addition, we supplement these efforts with extensive efforts to present Newtek NY as the real authority on small businesses. We have developed the SB Authority Index<sup>®</sup>, a proprietary, multi-dimensional index of small business activity which we prepare and release monthly and which has appeared in numerous media outlets. We also conduct a Market Sentiment Survey each month on a topic which is or should be of vital concern to the SMB market and release these results each month. Finally, we are an approved contributor to the

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Forbes.com website and we frequently post content relevant to the SMB and wider business markets and our Chief Executive Officer is a frequent guest on various business related TV programs on the Fox, Fox Business News, CNN, CNBC and MSNBC networks.

We market services through referrals from our strategic alliance partners such as AIG, Credit Union National Association, EInsure, ENT Federal Credit Union, General Motors Minority Dealers Association, Iberia Bank, Legacy Bank, Morgan Stanley Smith Barney, Navy Federal Credit Union, New York Community Bank, Pershing, Sterling National Bank and UBS Bank, among others, (using our patented NewTracker<sup>®</sup> referral management system) as well as direct referrals from our new web presence, *www.thesba.com*. Our NewTracker<sup>®</sup> referral system has a software application patent covering the systems and methods for tracking, reporting and performing processing activities and transactions in association with referral data and related information for a variety of product and service offerings in a business to business environment. This provides for security and transparency between referring parties and has been material in our ability to obtain referrals from a wide variety of sources. This patented system allows us and our alliance partners to review in real time the status of any referral as well as to provide real time compliance oversight by the respective alliance partner, which we believe creates confidence among the referred business client, the referring alliance partner and us. We own the NewTracker<sup>®</sup> patent, as well as all trademarks and other patented intellectual property used by us or our controlled portfolio companies.

Additional referrals are obtained from individual professionals in geographic markets that have signed up to provide referrals and earn commissions through our BizExec and TechExec Programs. These individuals are traditionally information technology professionals, CPAs, independent insurance agents and sales and/or marketing professionals. In addition, electronic payment processing services are marketed through independent sales representatives and web technology and ecommerce services are marketed through internet-based marketing and third-party resellers. A common thread across all our business lines and of our controlled portfolio companies relates to acquiring customers at low cost and making strategic alliances primarily where we only pay fees for successful referrals. We seek to bundle our marketing efforts through our brand, our portal, our patented NewTracker<sup>®</sup> referral system, our new web presence as *The Small Business Authority*<sup>®</sup> and one easy entry point of contact. We expect that this approach will allow us to continue to cross-sell the financing services of our small business finance platform to customers of our controlled portfolio companies and build upon our extensive deal sourcing infrastructure. The compensation which we pay for referrals is consistent with industry practices.

### **Federal Income Tax Consequences of the Reincorporation Transaction**

If the Reincorporation Transaction is approved and effectuated, we intend to file an election to be regulated as a BDC under the 1940 Act and operate thereafter as an internally managed, non-diversified closed-end investment company. We also intend to elect to be treated as a RIC under Subchapter M of the Code for U.S. federal income tax purposes beginning with our 2015 taxable year, which is our first taxable year that begins after our election to be a BDC. As a RIC, we generally will not have to pay corporate-level federal income taxes on any ordinary income or capital gains that we distribute to our stockholders. We will be taxed as a regular corporation (a C corporation) under subchapter C of the Code for U.S. federal income tax purposes for our 2014 taxable year. We will not complete the Reincorporation Transaction and make the BDC Election unless our shareholders approve this Proposal I.

The following is a summary of certain U.S. federal income tax consequences relating to the Reincorporation Transaction as of the date of this Proxy Statement/ Prospectus. Except where noted, this summary deals only with a stockholder who holds common stock as a capital asset.

For purposes of this summary, a U.S. holder means a beneficial owner of common stock who is any of the following for U.S. federal income tax purposes: (1) a citizen or resident of the United States, (2) a corporation (or any other

entity or arrangement treated as a corporation for U.S. federal income tax purposes) organized in or under the laws of the United States, any state thereof, or the District of Columbia, (3) an estate the income of

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which is subject to U.S. federal income taxation regardless of its source or (4) a trust if (a) its administration is subject to the primary supervision of a court within the United States and one or more U.S. persons have the authority to control all of its substantial decisions or (b) it has a valid election in effect under applicable U.S. Treasury regulations to be treated as a U.S. person.

If a partnership (or other entity classified as a partnership for U.S. federal income tax purposes) is the beneficial owner of common stock, the U.S. federal income tax treatment of a partner in the partnership will generally depend on the status of the partner and the activities of the partnership. Partnerships that hold common stock, and partners in such partnerships, should consult their own tax advisors regarding the U.S. federal income tax consequences of the Reincorporation.

This summary is based upon provisions of the Code, and regulations, rulings and judicial decisions as of the date of this Proxy Statement/ Prospectus. Subsequent developments in U.S. federal income tax law, including changes in law or differing interpretations, perhaps with retroactive effect, could result in U.S. federal income tax considerations different from those summarized below. This summary does not represent a detailed description of the U.S. federal income tax consequences to a stockholder in light of his, her or its particular circumstances. In addition, it does not represent a description of the U.S. federal income tax consequences to a stockholder who is subject to special treatment under the U.S. federal income tax laws and does not address the tax considerations applicable to stockholders who may be subject to special tax rules, such as: financial institutions; insurance companies; real estate investment trusts; regulated investment companies; grantor trusts; tax-exempt organizations; dealers or traders in securities or currencies; stockholders who hold common stock as part of a position in a straddle or as part of a hedging, conversion or integrated transaction for U.S. federal income tax purposes or U.S. holders that have a functional currency other than the U.S. dollar; stockholders who actually or constructively own 10% or more of our Company's voting stock; or a non-U.S. holder who is a U.S. expatriate, controlled foreign corporation or passive foreign investment company. Moreover, this description does not address the U.S. federal estate and gift tax, alternative minimum tax or other tax consequences of the Reincorporation Transaction.

Newtek NY expects that the Reincorporation Transaction pursuant to the Merger Agreement will be a tax-free reorganization under Section 368(a) of the Code. Accordingly, a U.S. holder of common stock (a U.S. Holder) will not recognize gain or loss in respect of the U.S. Holder's common stock as a result of the Reincorporation Transaction. The U.S. Holder's basis in a BDC Share will be the same as the U.S. Holder's basis in the corresponding Share held immediately prior to the Reincorporation Transaction. The U.S. Holder's holding period in a BDC Share will include the period during which the U.S. Holder held the corresponding share prior to the Reincorporation Transaction, provided the U.S. Holder held the corresponding share as a capital asset at the time of the Reincorporation Transaction. In addition, neither Newtek NY or Newtek MD will recognize gain or loss as a result of the Reincorporation Transaction, and Newtek MD will generally succeed, without adjustment, to the tax attributes of the Newtek NY.

Newtek NY has requested, and expects to receive prior to the Special Meeting, an opinion of counsel with respect to the federal income tax consequences of the Reincorporation under the Code. This summary is not binding on the IRS and there can be no assurance that the IRS (or a court, in the event of an IRS challenge) will agree with the conclusions stated herein. A successful IRS challenge to the reorganization status of the Reincorporation Transaction would result in a stockholder recognizing gain or loss with respect to each share exchanged in the Reincorporation Transaction equal to the difference between the stockholder's basis in such shares and the fair market value, as of the time of the Reincorporation Transaction, of the BDC Shares received in exchange therefor. In such event, a stockholder's aggregate basis in the BDC Shares received in the exchange would equal their fair market value on such date, and the stockholder's holding period for such shares would not include the period during which the stockholder held shares prior to the Reincorporation Transaction.

State, local, or foreign income tax consequences to stockholders may vary from the federal tax consequences described above. Stockholders should consult their own tax advisors as to the effect of the Reincorporation Transaction under applicable federal, state, local, or foreign income tax laws.

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**Summary Risk Factors**

**Risks Factors Reincorporation Transaction**

The Reincorporation Transaction and subsequent operation as a BDC involves others risks, including the following:

Throughout our 16 year history we have never operated as a BDC.

We will be dependent upon our senior lending team and our executive committee for our future success and if we are unable to hire and retain qualified personnel or if we lose any member of our senior lending team or our executive committee, our ability to achieve our investment objective could be significantly harmed.

We will operate in a highly competitive market for investment opportunities.

Our portfolio may lack company diversification, which may subject us to a risk of significant loss if one or more of these companies defaults on its obligations under any of its debt instruments.

Our portfolio may be concentrated in a limited number of industries, which may subject us to a risk of significant loss if there is a downturn in a particular industry in which a number of our investments are concentrated.

Our Board may change our investment objective, operating policies and strategies without prior notice or stockholder approval, the effects of which may be adverse.

Investing in small businesses involves a high degree of risk, and our financial results may be affected adversely if one or more of our significant portfolio investments defaults on its loans or fails to perform as we expect.

The lack of liquidity in our investments may adversely affect our business.

An extended disruption in the capital markets and the credit markets could impair our ability to raise capital and negatively affect our business.

We may borrow money, which would magnify the potential for loss on amounts invested and may increase the risk of investing in us.

The necessity of raising additional capital may expose us to risks, including the typical risks associated with leverage as well as the inability to raise such funds when needed.

There will be uncertainty as to the value of our portfolio investments.

We may experience fluctuations in our quarterly and annual results.

We will be subject to corporate-level income tax on all of our income if we are unable to qualify as a RIC under the Code, which would have a material adverse effect on our financial performance.

Regulations governing our operation as a BDC will affect our ability to raise additional capital and the way in which we do so.

The market price of BDC Shares may decline below our net asset value per share.

Our common stock price may be volatile and may decrease substantially.

We may not be able to pay distributions, our distributions may not grow over time and a portion of our distributions may be a return of capital.

Sales of substantial amounts of our common stock in the public market may have an adverse effect on the market price of our common stock.

As a BDC, any failure to comply with the requirements imposed on us by the 1940 Act could cause the SEC to bring an enforcement action against us and/or expose us to claims of private litigants. In addition, upon approval of a majority of our stockholders, we may elect to withdraw our status as a BDC. If we decide to



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withdraw our election, or if we otherwise fail to qualify, or maintain our qualification, as a BDC, we may be subject to the substantially greater regulation under the 1940 Act as a closed-end investment company. Compliance with such regulations would significantly decrease our operating flexibility, and could significantly increase our costs of doing business.

## **Current Risk Factors**

Upon the Reincorporation Transaction, Newtek MD will remain subject to the risks inherent to Newtek NY's operations. See **Risk Factors** for additional information.

### *Risk Relating to Our Business Generally*

Our success depends on our ability to compete effectively in the highly competitive and highly regulated industries in which we operate.

Our success depends upon our ability to enforce and maintain our intellectual property rights.

Our businesses depend on our ability to attract and retain key personnel and any loss of ability to attract these personnel could adversely affect us.

Our businesses depend upon the ability to utilize the Internet for the conduct of a significant portion of their business; disruption to that system could make it impossible for them to continue to conduct their current businesses.

Our success depends on our ability to use effectively our electronic referral and information processing systems.

### *Risks Relating to Our Electronic Payment Processing Business*

NMS relies on a bank sponsor, which has substantial discretion with respect to certain elements of our business practices, in order to process bankcard transactions. If the sponsorship is terminated, and we are not able to secure or transfer the respective merchant portfolio to a new bank sponsor or sponsors, the business, financial condition, results of operations and cash flows of electronic payment processing business could be materially adversely affected. If the sponsorship is terminated, and we are not able to secure or transfer the merchant portfolios to new bank sponsors, we will not be able to conduct our electronic payment processing business. We also rely on service providers who are critical to our business.

If NMS or its processors or bank sponsors fail to adhere to the standards of the Visa® and MasterCard® bankcard associations, our registrations with these associations could be terminated and we could be required to stop providing payment processing services for Visa® and MasterCard®.

On occasion, NMS experiences increases in interchange and sponsorship fees. If we cannot pass along these increases to our merchants, our profit margins will be reduced.

Unauthorized disclosure of merchant or cardholder data, whether through breach of our computer systems or otherwise, could expose us to liability and business losses.

NMS is liable if our processing merchants refuse or cannot reimburse charge-backs resolved in favor of their customers.

NMS has potential liability for customer or merchant fraud.

Our payment processing systems may fail due to factors beyond our control, which could interrupt our business or cause us to lose business and likely increase our costs.

We depend on the uninterrupted operations of our computer network systems, software and our processors data centers. Defects in these systems or damage to them due to factors beyond our control could cause severe disruption to our business and other material adverse effects on our payment processing businesses.

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*Risks Relating to Our Business of Website Hosting*

NTS operates in a highly competitive industry in which technological change can be rapid.

Our website hosting business depends on the efficient and uninterrupted operation of its computer and communications hardware systems and infrastructure.

Our inability to maintain the integrity of our infrastructure and the privacy of confidential information would materially affect our business.

Our business depends on Microsoft Corporation and others for the licenses to use software as well as other intellectual property in the website hosting business.

*Risks Relating to Our Small Business Finance Businesses*

We depend on outside financing.

We have specific risks associated with Small Business Administration (SBA) loans.

Curtailment of the government-guaranteed loan programs could cut off an important segment of our business.

An increase in non-performing assets would reduce our income and increase our expenses.

We could be adversely affected by weakness in the residential housing and commercial real estate markets.

*Risks Relating to Our Insurance Agency Business*

We depend on third parties, particularly property and casualty insurance companies, to supply the products marketed by our agents.

If we fail to comply with government regulations, our insurance agency business could be adversely affected.

We do not have any control over the commissions our insurance agency expects to earn on the sale of insurance products which are based on premiums and commission rates set by insurers and the conditions prevalent in the insurance market.

*Risks Relating to Our Payroll Processing Business*

Unauthorized disclosure of employee data, whether through breach of our computer systems or otherwise, could expose us to liability and business losses.

Our systems may be subject to disruptions that could adversely affect our business and reputation.

If we fail to adapt our technology to meet client needs and preferences, the demand for our services may diminish.

Our payroll business could incur unreimbursed costs or damages due to delays in processing inherent in the banking system.

*Risks Relating to Our Capco Business*

The Capco programs and the tax credits they provide are created by state legislation and implemented through regulation, and such laws and rules are subject to possible action to repeal or retroactively revise the programs for political, economic or other reasons. Such an attempted repeal or revision would create substantial difficulty for the Capco programs and could, if ultimately successful, cause us material financial harm.

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Because our Capcos are subject to requirements under state law, a failure of any of them to meet these requirements could subject the Capco and our stockholders to the loss of one or more Capcos.

### *Risks Relating to Our Common Shares*

Our shares may be delisted.

The application of the penny stock rules to our common shares if we are no longer listed on the NASDAQ Capital Market could limit the trading and liquidity of the common shares, adversely affect the market price of our common shares and increase your transaction costs to sell those shares.

Two of our stockholders, one a current and one a former executive officer, beneficially own in the aggregate approximately 24% of our common shares, and are able to exercise significant influence over the outcome of most stockholder actions.

Future issuances of our common shares or other securities, including preferred shares, may dilute the per share book value of our common shares or have other adverse consequences to our common stockholders.

The authorization and issuance of blank check preferred shares could have an anti-takeover effect detrimental to the interests of our stockholders.

We know of no other publicly-held company that sponsors and operates Capcos as a material part of its business. As such, there are, to our knowledge, no other companies against which investors may compare our Capco business segment, and its operations, results of operations and financial and accounting structures.

Provisions of our certificate of incorporation and New York law place restrictions on our stockholders' ability to recover from our directors for breaches of their duties.

Failure to maintain effective internal controls over financial reporting may lead investors and others to lose confidence in our financial data.

### **Comparative Fees and Expenses**

The following tables are intended to assist you in understanding the costs and expenses that an investor in the common stock of Newtek NY and Newtek MD bears directly or indirectly and Newtek MD's costs and expenses that are expected to be incurred in the first year following the Reincorporation Transaction based on the expenses incurred during the fiscal year ended December 31, 2013, but are not applicable to the Reincorporation Transaction. The cost of the Reincorporation Transaction will be borne by the Company's stockholders. Newtek NY and Newtek MD caution you that some of the percentages indicated in the table below are estimates and may vary. Except where the context suggests otherwise, whenever this document contains a reference to fees or expenses paid or to be paid by you, Newtek NY or Newtek MD, stockholders will indirectly bear such fees or expenses as investors in Newtek NY or

Newtek MD, as applicable. Newtek MD and Newtek NY caution you that some of the percentages indicated in the table below are estimates and may vary.

	<b>Newtek MD(1)</b>	<b>Newtek NY</b>	<b>Newtek MD Pro Forma(2)</b>
<b><i>Stockholder transaction expenses</i></b> (as a percentage of offering price)			
Sales load paid by Newtek NY	(2)	(2)	(2)
Offering expenses borne by Newtek MD and Newtek NY(3)	0.84%(2)	(2)	(2)
Dividend reinvestment plan expenses	(4)		
<b>Total stockholder transaction expenses paid by Newtek MD and Newtek NY</b>	<b>0.84%</b>		

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	Newtek MD	Newtek NY	Newtek MD Pro Forma(2)
<b><i>Estimated annual expenses</i></b> (as a percentage of net assets attributable to common shares):(5)(6)			
Operating expenses		162.91%	31.04%
Interest payments on borrowed funds(7)		7.61%	6.63%
Other expenses(8)	[ ]	0.00%	0.00%
<b>Total annual expenses (estimated)(9)(10)</b>		<b>170.52%</b>	<b>37.67%</b>

- (1) Newtek MD is currently a shell corporation.
- (2) Purchases of shares of common stock of Newtek MD or Newtek NY on the secondary market are not subject to sales charges, but may be subject to brokerage commissions or other charges. The table does not include any sales load (underwriting discount or commission) that stockholders may have paid in connection with their purchase of shares of Newtek MD or Newtek NY common stock.
- (3) Offering expenses borne by Newtek MD and Newtek NY includes the costs associated with the Reincorporation Transaction, estimated at \$816,000. Such costs will be borne by the Company's shareholders.
- (4) The expenses of the dividend reinvestment plan are included in other expenses.
- (5) Consolidated net assets attributable to common stock equals stockholders' equity at 12/31/13. For Pro Forma Combined, the stockholders' equity for Pro Forma Newtek MD Combined as of 12/31/13 was used from the pro forma information beginning on page [ ].
- (6) Newtek MD will not have an investment adviser and will be internally managed by its management team under the supervision of its Board. Therefore, Newtek MD will pay operating costs associated with employing a management team and investment professionals instead of paying investment advisory fees. As a result, the estimate of the annual expenses Newtek MD incurs in connection with the employment of such employees is included in the line item Other expenses.
- (7) Interest Payments on Borrowed Funds represents estimated interest and fee payments on borrowed funds for our actual interest, fees and other debt-related expenses incurred for the year ended December 31, 2013, including our Credit Facility, bank notes payable and securitization notes payable.
- (8) Other expenses (\$[ ] million) are based upon estimates of the twelve months following the Proposed Offering, and include our overhead and administrative expenses that are not included in Operating expenses.
- (9) The decrease in expenses results from the deconsolidation of a number of Newtek NY's wholly-owned subsidiaries, which will instead be treated as non-consolidated portfolio companies. Such portfolio companies are stand alone operating entities that will bear the costs associated with their operations and employees.
- (10) Total annual expenses as a percentage of consolidated net assets attributable to common stock are higher than the total annual expenses percentage would be for a company that is not leveraged. Newtek NY borrows and Newtek MD plans to borrow money to leverage and increase their total assets. The SEC requires that the Total annual expenses percentage be calculated as a percentage of net assets (defined as total assets less indebtedness and before taking into account any incentive fees payable during the period), rather than the total assets, including assets that have been funded with borrowed monies.

The following example is intended to help an investor compare the costs of investing in Newtek MD pro forma after the Reincorporation Transaction with the costs of investing in Newtek NY without the Reincorporation Transaction. An investor would pay the following expenses on a \$1,000 investment, assuming (1) the operating expense ratio for each of Newtek NY and Newtek MD (as a percentage of net assets attributable to shares of common stock) set forth in the table above and (2) on a 5% annual return throughout the period:

	1 year	3 years	5 years	10 years
<b>An investor would pay the following expenses on a \$1,000 investment, assuming a 5% annual return in:</b>				
Newtek MD	\$	\$	\$	\$
Newtek NY	\$ 1,705	\$ 1,790	\$ 1,880	\$ 1,974
The <i>pro forma</i> combined company following the merger	\$ 377	\$ 396	\$ 415	\$ 436

**We will not effectuate the BDC Election or take action on any other proposal included in this proxy statement, other than Proposal V, UNLESS our stockholders approve this Proposal I and each of the other**



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**proposals set forth herein. Our Board of Directors does not reserve any additional rights to effectuate the BDC Election.**

**Reduced Expenses Per Share**

Newtek MD's fixed expenses will be reduced on a per share basis as a result of the Reincorporation Transaction. Upon effectuating the BDC Election, certain of Newtek NY's wholly-owned subsidiaries will be treated as Newtek MD's portfolio companies. As portfolio companies, their financial statements will no longer be consolidated with the Company. Rather, the portfolio companies' expenses will be reflected in their financial statements. Each such portfolio company is an operating company with its own employees, management, and expenses. As the costs associated with these portfolio companies will no longer be consolidated into the Company's financial statements, its fixed expenses will be reduced.

**Required Vote**

The approval of the Reincorporation Transaction will require the affirmative vote of a majority of the outstanding Shares entitled to vote at the Special Meeting. Abstentions and Broker Non-Votes will have the effect of a vote against this proposal.

**THE BOARD BELIEVES THAT A VOTE FOR PROPOSAL I TO APPROVE THE REINCORPORATION TRANSACTION AS DESCRIBED ABOVE IS IN THE BEST INTERESTS OF OUR STOCKHOLDERS AND RECOMMENDS A VOTE FOR PROPOSAL I.**

**PROPOSAL II APPROVAL OF THE REVERSE STOCK SPLIT**

Our Board has approved a reverse stock split to be implemented prior to the Reincorporation Transaction pursuant to which a number of shares of common stock in a range not less than four and one-half shares and no greater than six and one-half shares will be combined into a single share of common stock, with the exact ratio between 4.5:1 and 6.5:1 to be determined by the Board (the Reverse Stock Split), and believes that it is in our best interests to undertake the Reverse Stock Split in order to increase the trading price of our Shares on the NASDAQ Capital Market. Our Board believes that such an increased trading price will make our shares more attractive to a wider array of investors, which will improve our ability to raise additional capital in connection with and subsequent to effectuating the BDC Election discussed in Proposal I. In addition, we expect our stockholders will also benefit from relatively lower trading costs for higher priced shares and the greater liquidity of the shares which is likely to result. For additional information, see Proposal II Approval of the Reverse Stock Split.

**We will not effectuate the Reverse Stock Split UNLESS stockholders approve this Proposal II and each of the other proposals set forth herein other than Proposal V.**

**Required Vote**

The approval of the Reverse Stock Split requires the affirmative vote of a majority of the outstanding Shares entitled to vote at the Special Meeting. Abstentions and Broker Non-Votes will have the effect of a vote against this proposal.

**THE BOARD BELIEVES THAT A VOTE FOR PROPOSAL II TO APPROVE THE REVERSE STOCK SPLIT AS DESCRIBED ABOVE IS IN THE BEST INTERESTS OF OUR STOCKHOLDERS AND RECOMMENDS A VOTE FOR PROPOSAL II.**

**PROPOSAL III AUTHORIZATION TO SELL SHARES OF COMMON STOCK AT A PRICE OR PRICES BELOW THE COMPANY'S THEN CURRENT NET ASSET VALUE PER SHARE IN ONE OR MORE OFFERINGS**

If our stockholders approve Proposal I, as well as all other Proposals herein, we intend to effectuate the Reverse Stock Split, Reincorporation Transaction, make the BDC Election and undertake the Proposed Offering.

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Under the 1940 Act, a BDC may not sell shares of its common stock at a price below the then current net asset value per share of such stock ( NAV ), exclusive of sales compensation, unless its stockholders approve such a sale and the company's board of directors make certain determinations. It is not possible to predict whether our BDC Shares will trade at a price above or below their NAV on the date we complete the Proposed Offering. **We will not sell any BDC Shares pursuant to this Proposal III UNLESS our stockholders approve this Proposal III and each of the other proposals set forth herein other than Proposal V.**

We are seeking the authorization of our stockholders so that, subsequent to effectuating the Reincorporation Transaction and BDC Election, we may, in one or more public or private offerings, sell or otherwise issue BDC Shares at a price below our then current NAV, subject to certain conditions discussed below, including that our then current NAV is not diluted by an amount greater than 25%. Our Board believes that having the flexibility to sell our common stock below NAV in certain instances is in the best interests of stockholders. In particular, such flexibility will improve our ability, subsequent to the BDC Election, to undertake the Proposed Offering promptly, as discussed in Proposal I. Subsequent to effectuating the BDC Election, flexibility to sell our common stock below NAV will provide us with better access to the capital markets as attractive investment opportunities arise, and improve our ability to grow over time and pay dividends to stockholders. Generally, common stock offerings by BDCs are priced based on the market price of the currently outstanding shares, less a small discount of approximately 5% (which may be higher or lower depending on market conditions). Accordingly, even when BDC Shares trade at a market price below NAV, this Proposal III would permit the Company to offer and sell shares of its common stock in accordance with pricing standards that market conditions generally require, subject to the conditions described below. If approved, as required under the 1940 Act, the authorization would be effective for securities sold during a period beginning on the date of such stockholder approval and expiring on the earlier of the anniversary of the date of this Special Meeting or the date of the Company's 2015 Annual Meeting of Stockholders.

After the Proposed Offering, the Company has no immediate plans to sell BDC Shares below NAV. However, it is seeking stockholder approval for multiple such offerings in order to maintain access to the markets if the Company determines it should sell BDC Shares below NAV. These sales typically must be undertaken quickly. The final terms of any such sale will be determined by the Board at the time of sale. Other than the Proposed Offering, as discussed herein, it is impracticable to describe the transaction or transactions in which our Shares would be sold at a price below NAV. Instead, any transaction where the Company sells such shares, including the nature and amount of consideration that would be received by the Company at the time of sale and the use of any such consideration, will be reviewed and approved by the Board at the time of sale. Subject to the condition that our then current NAV is not diluted by an amount greater than 25%, there will be no limit on the percentage below NAV at which shares may be sold in an offering by the Company under this Proposal III. If this Proposal III is approved, no further authorization from the stockholders will be solicited prior to any such sale in accordance with the terms of this Proposal III. For additional information, see Proposal III Approval to Sell Shares Below NAV.

**We will not sell any BDC Shares pursuant to this Proposal III UNLESS our stockholders approve this Proposal III and each of the other proposals set forth herein other than Proposal V.**

## **Required Vote**

The authorization of the Company to sell BDC Shares at a price or prices below the Company's then current net asset value per share in one or more offerings will require the affirmative vote of (1) a majority of the outstanding Shares entitled to vote at the Special Meeting; and (2) a majority of the outstanding Shares entitled to vote at the Special Meeting that are not held by affiliated persons of us, which includes our officers, directors, employees and 5% shareholders. Because we intend to elect to be regulated as a BDC under the 1940 act, the 1940 Act definition of a majority of the outstanding shares must be used for purposes of this proposal. The 1940 Act defines a majority of the

outstanding shares as: (1) 67% or more of the voting securities present at the Special Meeting if the holders of more than 50% of the outstanding voting securities of such company are present or represented by proxy; or (2) 50% of the outstanding voting securities of the company, whichever is the less. Abstentions and Broker Non-Votes will have the effect of a vote against this proposal.

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**THE BOARD BELIEVES THAT A VOTE FOR PROPOSAL III TO AUTHORIZE THE COMPANY TO SELL SHARES OF ITS COMMON STOCK AT A PRICE OR PRICES BELOW THE COMPANY'S THEN CURRENT NET ASSET VALUE PER SHARE IN ONE OR MORE OFFERINGS AS DESCRIBED ABOVE IS IN THE BEST INTERESTS OF OUR STOCKHOLDERS AND RECOMMENDS A VOTE FOR PROPOSAL III.**

**PROPOSAL IV APPROVAL OF A NEW EQUITY COMPENSATION PLAN**

On [ ], 2014, a required majority of the Board, as defined in Section 57(o) of the 1940 Act unanimously approved and adopted the Newtek Business Services Corp. 2014 Stock Incentive Plan (the Stock Plan ) in accordance with Section 61 of the 1940 Act, authorized 3,000,000 Shares for issuance under the Stock Plan, and directed that the Stock Plan be submitted to stockholders for approval in connection with the approval of the Reincorporation Transaction. The Stock Plan is intended to replace the Company's 2000 Stock Incentive and Deferred Compensation Plan (the 2000 Plan ), 2003 Stock Incentive Plan (the 2003 Plan ) and 2010 Stock Incentive Plan (the 2010 Plan, and collectively with the 2000 Plan and 2003 Plan, the Existing Plans ), which will be terminated in connection with the BDC Election. For additional information, see Proposal IV Approval of a New Equity Compensation Plan.

**Required Vote**

The approval of the Stock Plan requires the affirmative vote of a majority of the Shares cast in person or by proxy at the Special Meeting. Abstentions and Broker Non-Votes will not be included in determining the number of votes cast and, as a result, will have no effect on this proposal.

**THE BOARD BELIEVES THAT A VOTE FOR PROPOSAL IV TO APPROVE A NEW EQUITY COMPENSATION PLAN, AS DESCRIBED ABOVE IS IN THE BEST INTERESTS OF OUR STOCKHOLDERS AND RECOMMENDS A VOTE FOR PROPOSAL IV.**

**PROPOSAL V APPROVAL TO ADJOURN TO SOLICIT ADDITIONAL VOTES**

The company's stockholders may be asked to consider and act upon one or more adjournments of the Special Meeting, if necessary or appropriate, to solicit additional proxies in favor of any or all of the other proposals set forth in this Proxy Statement / Prospectus. For additional information, see Proposal V Approval to Adjourn to Solicit Additional Votes.

**Required Vote**

Any proposal to adjourn the Special Meeting, if necessary or appropriate, to solicit additional proxies if there are not sufficient votes for the foregoing proposals requires the affirmative vote of a majority of the Shares represented at the Special Meeting in person or by proxy. An abstention from the vote on an adjournment will have the same effect as a vote against the adjournment motion. The persons named as proxies will vote those proxies for such adjournment, unless marked to be voted against any proposal for which an adjournment is sought, to permit further solicitation of proxies.

**THE BOARD BELIEVES THAT A VOTE FOR PROPOSAL V TO APPROVE ANY ADJOURNMENT OF THE SPECIAL MEETING, IF NECESSARY OR APPROPRIATE, TO SOLICIT ADDITIONAL PROXIES IN FAVOR OF ANY OR ALL OF PROPOSALS I-IV IF THERE ARE NOT SUFFICIENT VOTES FOR THESE PROPOSALS, IS IN THE BEST INTEREST OF OUR STOCKHOLDERS AND RECOMMENDS A VOTE FOR PROPOSAL V.**



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**SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS**

Some of the statements in this document constitute forward-looking statements, which relate to future events or the future performance or financial condition of Newtek NY, Newtek MD or, following the merger and subsequent combination, the combined company. The forward-looking statements contained in this document involve a number of risks and uncertainties, including statements concerning:

Newtek NY, Newtek MD or, following the merger and subsequent combination, the combined company s, or their portfolio companies , future business, operations, operating results or prospects;

the return or impact of current and future investments;

the impact of a protracted decline in the liquidity of credit markets;

the impact of fluctuations in interest rates;

the valuation of investments in portfolio companies, particularly those having no liquid trading market;

Newtek NY, Newtek MD s or, following the merger and subsequent combination, the combined company s ability to recover unrealized losses;

market conditions and Newtek NY, Newtek MD s or, following the merger and subsequent combination, the combined company s ability to access alternative debt markets and additional debt and equity capital;

contractual arrangements and relationships with third parties;

the general economy and its impact on the industries in which Newtek NY, Newtek MD or, following the merger and subsequent combination, the combined company invests;

the financial condition of and ability of current and prospective portfolio companies to achieve their objectives;

expected financings and investments;

the adequacy of cash resources and working capital;

the timing, form and amount of any dividend distributions;

the timing of cash flows, if any, from the operations of portfolio companies;

the outcome and impact of any litigation relating to the merger;

the likelihood that the merger and subsequent combination are completed and the anticipated timing of their completion;

the period following the completion of the merger and subsequent combination;

the ability of Newtek NY, Newtek MD's businesses to successfully integrate if the merger and subsequent combination are completed; and

Newtek MD's future operating results and business prospects if the merger and subsequent combination are not completed.



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**RISK FACTORS**

In addition to the other information included in this document, stockholders should consider the matters described below in determining whether to approve Reincorporation Transaction and the Merger Agreement. The risks set out below are not the only risks Newtek NY, Newtek MD and, following the merger and subsequent combination, the combined company face. Additional risks and uncertainties not currently known to Newtek NY or Newtek MD or that they currently deem to be immaterial also may materially adversely affect their or, following the merger and subsequent combination, the combined company's business, financial condition or operating results. If any of the following events occur, Newtek NY or, following the merger and subsequent combination, the combined company's business, financial condition or results of operations could be materially adversely affected.

**RISKS ASSOCIATED WITH AN INVESTMENT IN NEWTEK MD**

These risks are particularly relevant to a decision a shareholder of Newtek NY will make in approving the Reincorporation Transaction.

**Risks Relating to Our Business and Structure**

*Throughout our 16 year history we have never operated as a BDC.*

Although Newtek has operated since 1998, we have no operating history as a BDC. As a result, we can offer no assurance that we will achieve our investment objective and that the value of your investment will not decline substantially. As a BDC, we will be subject to the regulatory requirements of the SEC, in addition to the specific regulatory requirements applicable to BDCs under the 1940 Act and RICs under the Code. Our management has not had any prior experience operating under this BDC regulatory framework, and we may incur substantial additional costs, and expend significant time or other resources, to do so. In addition, we may be unable to generate sufficient revenue from our operations to make or sustain distributions to our stockholders.

*Our investment portfolio will be recorded at fair value, with our board of directors having final responsibility for overseeing, reviewing and approving, in good faith, its estimate of fair value and, as a result, there will be uncertainty as to the value of our portfolio investments.*

Under the 1940 Act, we will be required to carry our portfolio investments at market value or, if there is no readily available market value, at fair value as determined by us, with our board of directors having final responsibility for overseeing, reviewing and approving, in good faith, our estimate of fair value. Typically, there will not be a public market for the securities of the privately held companies in which we invest. As a result, we will value these securities quarterly at fair value based on input from management, a third-party valuation firm and our audit committee, and with the oversight, review and approval of our Board.

The determination of fair value and consequently, the amount of unrealized gains and losses in our portfolio, are to a certain degree, subjective and dependent on a valuation process approved by our board of directors. Certain factors that may be considered in determining the fair value of our investments include external events, such as private mergers, sales and acquisitions involving comparable companies. Because such valuations, and particularly valuations of private securities and private companies, are inherently uncertain, they may fluctuate over short periods of time and may be based on estimates. Our determinations of fair value may differ materially from the values that would have been used if a ready market for these securities existed. Due to this uncertainty, our fair value determinations may cause our net asset value on a given date to materially understate or overstate the value that we may ultimately realize on one or more of our investments. As a result, investors purchasing our common stock based on an overstated net

asset value would pay a higher price than the value of our investments might warrant. Conversely, investors selling shares during a period in which the net asset value understates the value of our investments will receive a lower price for their shares than the value of our investments might warrant.

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***Our financial condition and results of operations will depend on our ability to manage and deploy capital effectively.***

Our ability to achieve our investment objective will depend on our ability to manage and deploy capital, which will depend, in turn, on our management's ability to identify, evaluate and monitor, and our ability to finance and invest in, companies that meet our investment criteria.

Accomplishing our investment objective on a cost-effective basis will largely be a function of our management's handling of the investment process, its ability to provide competent, attentive and efficient services and our access to investments offering acceptable terms. In addition to monitoring the performance of our existing investments, our senior lending team and our executive committee will also be called upon, from time to time, to provide managerial assistance to some of our portfolio companies. These demands on their time may distract them or slow the rate of investment.

Even if we are able to grow and build upon our investment operations, any failure to manage our growth effectively could have a material adverse effect on our business, financial condition, results of operations and prospects. The results of our operations will depend on many factors, including the availability of opportunities for investment, readily accessible short and long-term funding alternatives in the financial markets and economic conditions. Furthermore, if we cannot successfully operate our business or implement our investment policies and strategies as described herein, it could negatively impact our ability to pay dividends.

***We operate in a highly competitive market for investment opportunities, which could reduce returns and result in losses.***

We will compete for investments with other BDCs with similar investment strategies, private equity funds with similar investment strategies, venture lending funds, finance companies with venture lending units and banks focused on venture lending. Many of our competitors will be substantially larger and have considerably greater financial, technical and marketing resources than us. For example, some competitors may have a lower cost of capital and access to funding sources that will not be available to us. In addition, some of our competitors may have higher risk tolerances or different risk assessments than we will have. These characteristics could allow our competitors to consider a wider variety of investments, establish more relationships and offer better pricing and more flexible structuring than we will be able to offer. We may lose investment opportunities if we do not match our competitors pricing, terms and structure. If we are forced to match our competitors pricing, terms and structure, we may not be able to achieve acceptable returns on our investments or may bear substantial risk of capital loss. Furthermore, many of our competitors will have greater experience operating under, or will not be subject to, the regulatory restrictions that the 1940 Act will impose on us as a BDC.

***If we are unable to source investments effectively, we may be unable to achieve our investment objective.***

Our ability to achieve our investment objective depends on our senior lending team's and our executive committee's ability to identify, evaluate and invest in suitable companies that meet our investment criteria. Accomplishing this result on a cost-effective basis is largely a function of our marketing capabilities, our management of the investment process, our ability to provide efficient services and our access to financing sources on acceptable terms. In addition to monitoring the performance of our existing investments, members of our senior lending team, our executive committee and our other investment professionals may also be called upon to provide managerial assistance to our portfolio companies. These demands on their time may distract them or slow the rate of investment. To grow, we need to continue to hire, train, supervise and manage new employees and to implement computer and other systems capable of effectively accommodating our growth. However, we cannot provide assurance that any such employees will

contribute to the success of our business or that we will implement such systems effectively. Failure to manage our future growth effectively could have a material adverse effect on our business, financial condition and results of operations.

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***Our business model depends to a significant extent upon strong referral relationships, and our inability to maintain or further develop these relationships, as well as the failure of these relationships to generate investment opportunities, could adversely affect our business.***

We expect that members of our senior lending team and our executive committee will maintain their relationships with intermediaries, financial institutions, investment bankers, commercial bankers, financial advisors, attorneys, accountants, consultants and other individuals within their networks, and we will rely to a significant extent upon these relationships to provide us with potential investment opportunities. If our senior lending team and our executive committee fail to maintain its existing relationships or develop new relationships with sources of investment opportunities, we will not be able to grow our investment portfolio. In addition, individuals with whom members of our senior lending team and our executive committee have relationships are not obligated to provide us with investment opportunities, and, therefore, there is no assurance that such relationships will generate investment opportunities for us.

***Any failure on our part to maintain our status as a BDC would reduce our operating flexibility.***

We intend to elect to be treated as a BDC under the 1940 Act prior to the completion of the Proposed Offering. The 1940 Act imposes numerous constraints on the operations of BDCs. For example, BDCs are required to invest at least 70% of their gross assets in specified types of securities, primarily in private companies or thinly-traded U.S. public companies, cash, cash equivalents, U.S. government securities and other high quality debt investments that mature in one year or less. Furthermore, any failure to comply with the requirements imposed on BDCs by the 1940 Act could cause the SEC to bring an enforcement action against us and/or expose us to claims of private litigants. In addition, upon approval of a majority of our stockholders, we may elect to withdraw our status as a BDC. If we decide to withdraw our election, or if we otherwise fail to qualify, or maintain our qualification, as a BDC, we may be subject to the substantially greater regulation under the 1940 Act as a closed-end investment company. Compliance with such regulations would significantly decrease our operating flexibility, and could significantly increase our costs of doing business.

***Regulations governing our operation as a BDC affect our ability to raise additional capital and the way in which we do so. As a BDC, the necessity of raising additional capital may expose us to risks, including the typical risks associated with leverage.***

We may issue debt securities or preferred stock and/or borrow money from banks or other financial institutions, which we refer to collectively as senior securities, up to the maximum amount permitted by the 1940 Act. Under the provisions of the 1940 Act, we will be permitted, as a BDC, to issue senior securities in amounts such that our asset coverage ratio, as defined in the 1940 Act, equals at least 200% of gross assets less all liabilities and indebtedness not represented by senior securities, after each issuance of senior securities. If the value of our assets declines, we may be unable to satisfy this test. If that happens, we may be required to sell a portion of our investments and, depending on the nature of our leverage, repay a portion of our indebtedness at a time when such sales may be disadvantageous. Also, any amounts that we use to service our indebtedness would not be available for distributions to our common stockholders. Furthermore, as a result of issuing senior securities, we would also be exposed to typical risks associated with leverage, including an increased risk of loss. If we issue preferred stock, the preferred stock would rank senior to common stock in our capital structure, preferred stockholders would have separate voting rights on certain matters and might have other rights, preferences, or privileges more favorable than those of our common stockholders, and the issuance of preferred stock could have the effect of delaying, deferring or preventing a transaction or a change of control that might involve a premium price for holders of our common stock or otherwise be in your best interest.

We will not generally be able to issue and sell our common stock at a price below net asset value per share. We may, however, sell our common stock, or warrants, options or rights to acquire our common stock, at a price below the then-current net asset value per share of our common stock if our board of directors determines that such sale is in our best interests and in the best interests of our stockholders, and our stockholders approve such sale. In any such case, the price at which our securities are to be issued and sold may not be less than a price that, in the determination of our Board, closely approximates the market value of such securities (less any distributing commission or discount). If we raise additional funds by issuing more common stock or senior securities

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convertible into, or exchangeable for, our common stock, then the percentage ownership of our stockholders at that time will decrease, and you may experience dilution.

***Because we borrow money, the potential for loss on amounts invested in us is magnified and may increase the risk of investing in us.***

Borrowings, also known as leverage, magnify the potential for loss on investments in our indebtedness and on invested equity capital. As we use leverage to partially finance our investments, you will experience increased risks of investing in our securities. As of June 30, 2014, on a pro-forma basis, we had an aggregate of \$93.1 million of debt outstanding, including \$38.1 million outstanding under a credit facility with Capital One, National Association, and securitization notes payable of \$55.0 million. If the value of our assets increases, then leveraging would cause the net asset value attributable to our common stock to increase more sharply than it would have had we not leveraged. Conversely, if the value of our assets decreases, leveraging would cause net asset value to decline more sharply than it otherwise would have had we not leveraged our business. Similarly, any increase in our income in excess of interest payable on the borrowed funds would cause our net investment income to increase more than it would without the leverage, while any decrease in our income would cause net investment income to decline more sharply than it would have had we not borrowed. Such a decline could negatively affect our ability to pay common stock dividends, scheduled debt payments or other payments related to our securities. Leverage is generally considered a speculative investment technique.

*Illustration.* The following table illustrates the effect of leverage on returns from an investment in our common stock assuming various annual returns, net of expenses. The calculations in the table below are hypothetical and actual returns may be higher or lower than those appearing below.

**Assumed Return on our Portfolio<sup>(1)</sup>**

**(net of expenses)**

	<b>(10)%</b>	<b>(5)%</b>	<b>0%</b>	<b>5%</b>	<b>10%</b>
Corresponding net return to common stockholders <sup>(2)</sup>	(22.12)%	(12.67)%	(3.22)%	6.24%	15.69%

(1) Assumes on a proforma basis \$254.9 million in total assets, \$93.1 million in debt outstanding, \$134.8 million in net assets, and an average cost of funds of 4.66%. Actual interest payments may be different.

(2) In order for us to cover our annual interest payments on indebtedness, we must achieve annual returns on our June 30, 2014, total assets of at least 1.70%.

Our ability to achieve our investment objective may depend in part on our ability to access additional leverage on favorable terms, and there can be no assurance that such additional leverage can in fact be achieved.

***Because we use debt to finance our investments, changes in interest rates will affect our cost of capital and net investment income.***

Because we borrow money to make investments, our net investment income will depend, in part, upon the difference between the rate at which we borrow funds and the rate at which we invest those funds. As a result, we can offer no assurance that a significant change in market interest rates will not have a material adverse effect on our net

investment income in the event we use debt to finance our investments. In periods of rising interest rates, our cost of funds would increase, which could reduce our net investment income. If we make any long-term fixed-rate investments, they will be financed primarily with equity and/or long-term debt. We may use interest rate risk management techniques in an effort to limit our exposure to interest rate fluctuations. Such techniques may include various interest rate hedging activities to the extent permitted by the 1940 Act. If we do not implement these techniques properly, we could experience losses on our hedging positions, which could be material.

***We may experience fluctuations in our quarterly and annual results.***

We may experience fluctuations in our quarterly and annual operating results due to a number of factors, including our ability or inability to make investments in companies that meet our investment criteria, the interest



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rate payable on the debt securities we acquire, the level of portfolio dividend and fee income, the level of our expenses, variations in and the timing of the recognition of realized and unrealized gains or losses, the degree to which we encounter competition in our markets and general economic conditions. As a result of these factors, results for any period should not be relied upon as being indicative of performance in future periods.

***Our Board may change our investment objective, operating policies and strategies without prior notice or stockholder approval, the effects of which may be adverse.***

Although we must obtain shareholder approval to cease to be, or withdraw our election as, a BDC, our Board will have the authority to modify or waive our investment objective, current operating policies, investment criteria and strategies without prior notice and without stockholder approval. We cannot predict the effect any changes to our current operating policies, investment criteria and strategies would have on our business, net asset value, operating results and value of our stock. However, the effects might be adverse, which could negatively impact our ability to pay you dividends and cause you to lose all or part of your investment.

***We will be subject to corporate-level income tax if we are unable to qualify as a RIC.***

Although we intend to elect to be treated as a RIC commencing with our tax year ending December 31, 2015, no assurance can be given that we will be able to qualify for and maintain our qualification as a RIC. To obtain and maintain our qualification as a RIC, we must meet certain source-of-asset diversification, and distribution requirements.

The income source requirement will be satisfied if we obtain at least 90% of our income for each year from dividends, interest, gains from the sale of stock or securities or similar sources.

The asset diversification requirement will be satisfied if we meet certain asset diversification requirements at the end of each quarter of our taxable year. Failure to meet those requirements may result in our having to dispose of certain investments quickly in order to prevent the loss of our qualification as a RIC. Because most of our investments will be in private companies, and therefore will be relatively illiquid, any such dispositions could be made at disadvantageous prices and could result in substantial losses. The annual distribution requirement for a RIC will be satisfied if we distribute to our stockholders on an annual basis at least 90% of our net ordinary income and net short-term capital gains in excess of our net long-term capital losses, if any. Because we use debt financing, we are subject to certain asset coverage ratio requirements under the 1940 Act and financial covenants under loan and credit agreements that could, under certain circumstances, restrict us from making distributions necessary to satisfy the distribution requirement. If we are unable to obtain cash from other sources, we could fail to qualify as a RIC.

If we fail to qualify for RIC tax treatment for any reason and remain or become subject to corporate income tax, the resulting corporate taxes could substantially reduce our net assets, the amount of income available for distribution and the amount of our distributions.

***We may not be able to pay you distributions, our distributions may not grow over time and a portion of our distributions may be a return of capital.***

We intend to pay distributions to our stockholders out of assets legally available for distribution. We cannot assure you that we will achieve investment results that will allow us to make a specified level of cash distributions or year-to-year increases in cash distributions. Our ability to pay distributions might be adversely affected by, among other things, the impact of one or more of the risk factors described in this prospectus. In addition, the inability to satisfy the asset coverage test applicable to us as a BDC can limit our ability to pay distributions. All distributions will

be paid at the discretion of our Board and will depend on our earnings, our financial condition, maintenance of our RIC status, compliance with applicable BDC regulations and such other factors as our board of directors may deem relevant from time to time. We cannot assure you that we will pay distributions to our stockholders in the future.

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The amount to be paid out as a distributions is determined by the Board each quarter and is based upon the annual earnings estimated by the management of the Company. To the extent that the Company's taxable earnings fall below the amount of distributions declared, however, a portion of the total amount of the Company's distributions for the fiscal year may be deemed a return of capital for tax purposes to the Company's stockholders. Stockholders should not assume distributions reflect earnings or are derived from net profit. The Company does intend to report a distribution yield.

When we make distributions, we will be required to determine the extent to which such distributions are paid out of current or accumulated earnings and profits. Distributions in excess of current and accumulated earnings and profits will be treated as a non-taxable return of capital to the extent of an investor's basis in our stock and, assuming that an investor holds our stock as a capital asset, thereafter as a capital gain. Generally, a non-taxable return of capital will reduce an investor's basis in our stock for federal tax purposes, which will result in higher tax liability when the stock is sold. Stockholders should read any written disclosure accompanying a distribution carefully and should not assume that the source of any distribution is our ordinary income or gains.

***We may have difficulty paying our required distributions if we recognize income before or without receiving cash representing such income.***

For U.S. federal income tax purposes, we will include in our taxable income certain amounts that we have not yet received in cash, such as original issue discount, which may arise if we receive warrants in connection with the origination of a loan or possibly in other circumstances, or PIK interest. Such original issue discount or increases in loan balances as a result of contractual PIK arrangements will be included in our taxable income before we receive any corresponding cash payments. We also may be required to include in our taxable income certain other amounts that we will not receive in cash.

Since, in certain cases, we may recognize taxable income before or without receiving corresponding cash payments, we may have difficulty meeting the annual distribution requirement necessary to maintain our qualification as a RIC. Accordingly, to satisfy our RIC distribution requirements, we may have to sell some of our investments at times and/or at prices we would not consider advantageous, raise additional debt or equity capital or forgo new investment opportunities. If we are not able to obtain cash from other sources, we may fail to qualify as a RIC and thus become subject to corporate-level income tax. For additional discussion regarding the tax implications of our election to be taxed as a RIC, please see "Material U.S. Federal Income Tax Considerations - Taxation as a Regulated Investment Company."

***We may in the future choose to pay dividends in our own stock, in which case you may be required to pay tax in excess of the cash you receive.***

We may distribute taxable dividends that are payable in part in our stock. In accordance with certain applicable Treasury regulations and private letter rulings issued by the Internal Revenue Service ( "IRS" ), a RIC may treat a distribution of its own stock as fulfilling the RIC distribution requirements if each stockholder may elect to receive his or her entire distribution in either cash or stock of the RIC, subject to a limitation that the aggregate amount of cash to be distributed to all stockholders must be at least 20% of the aggregate declared distribution. If too many stockholders elect to receive cash, each stockholder electing to receive cash must receive a pro rata amount of cash (with the balance of the distribution paid in stock). In no event will any stockholder, electing to receive cash, receive less than 20% of his or her entire distribution in cash. If these and certain other requirements are met, for U.S. federal income tax purposes, the amount of the dividend paid in stock will be equal to the amount of cash that could have been received instead of stock. Taxable stockholders receiving such dividends will be required to include the full value of such stock as ordinary income (or as long-term capital gain to the extent such distribution is properly reported as a

capital gain dividend) to the extent of our current and accumulated earnings and profits for United States federal income tax purposes. As a result, a U.S. Holder may be required to pay tax with respect to such dividends in excess of any cash received. If a U.S. Holder sells the stock it receives as a dividend in order to pay this tax, the sales proceeds may be less than the amount included in

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income with respect to the dividend, depending on the market price of our stock at the time of the sale. Furthermore, with respect to non-U.S. Holders, we may be required to withhold U.S. tax with respect to such dividends, including in respect of all or a portion of such dividend that is payable in stock. In addition, if a significant number of our stockholders determine to sell shares of our stock in order to pay taxes owed on dividends, it may put downward pressure on the trading price of our stock.

***We recently identified material weaknesses in our internal control over financial reporting. Future internal control deficiencies could impact the accuracy of our financial results or prevent the detection of fraud. As a result, stockholders could lose confidence in our financial and other public reporting, which would harm our business and the trading price of our common stock.***

Effective internal controls over financial reporting are necessary for us to provide reliable financial reports and, together with adequate disclosure controls and procedures, are designed to prevent fraud. We recently identified material weaknesses in our internal control over financial reporting. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of the Company's annual or interim financial statements will not be prevented or detected on a timely basis. We have taken steps to remediate our internal control processes, but any failure by us to identify future deficiencies in our internal control over financial reporting in a timely manner or remediate any such deficiencies, could prevent us from accurately and timely reporting our financial results. Inferior internal controls could also cause investors to lose confidence in our reported financial information, which could have a negative effect on the trading price of our common stock.

We will be required to disclose changes made in our internal control and procedures on a quarterly basis and our management will be required to assess the effectiveness of these controls annually. An independent assessment of the effectiveness of our internal controls could detect problems that our management's assessment might not. Undetected material weaknesses in our internal controls could lead to financial statement restatements and require us to incur the expense of remediation. In the event that we are unable to maintain or achieve compliance with Section 404 of the Sarbanes-Oxley Act of 2002 ( "SOX" ) and related rules, the market price of our common stock may be adversely affected.

***Changes in laws or regulations governing our operations may adversely affect our business or cause us to alter our business strategy.***

We and our portfolio companies will be subject to applicable local, state and federal laws and regulations, including, without limitation, federal immigration laws and regulations. New legislation may be enacted or new interpretations, rulings or regulations could be adopted, including those governing the types of investments we are permitted to make, any of which could harm us and our stockholders, potentially with retroactive effect. Additionally, any changes to the laws and regulations governing our operations relating to permitted investments may cause us to alter our investment strategy in order to avail ourselves of new or different opportunities. Such changes could result in material differences to the strategies and plans set forth herein and may result in our investment focus shifting from the areas of expertise of our senior lending team and our executive committee to other types of investments in which our senior lending team and our executive committee may have less expertise or little or no experience. Thus, any such changes, if they occur, could have a material adverse effect on our results of operations and the value of your investment.

***Curtailment of the government-guaranteed loan programs could cut off an important segment of our business.***

Although the program has been in existence since 1953, there can be no assurance that the federal government will maintain the SBA program, or that it will continue to guarantee loans at current levels. If we cannot continue making

and selling government-guaranteed loans, we will generate fewer origination fees and our ability to generate gains on sale of loans will decrease. From time-to-time, the government agencies that guarantee these loans reach their internal budgeted limits and cease to guarantee loans for a stated time period. In addition, these agencies may change their rules for extending loans. Also, Congress may adopt legislation that would have the

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effect of discontinuing or changing the programs. Non-governmental programs could replace government programs for some borrowers, but the terms might not be equally acceptable. If these changes occur, the volume of loans to SMBs and industrial borrowers of the types that now qualify for government-guaranteed loans could decline, as could the profitability of these loans.

***Our business is subject to increasingly complex corporate governance, public disclosure and accounting requirements that are costly and could adversely affect our business and financial results.***

As a publicly traded company, we incur legal, accounting and other expenses, including costs associated with the periodic reporting requirements under the Securities Exchange Act of 1934, as amended (the Exchange Act), or the Exchange Act, as well as additional corporate governance requirements, including requirements under SOX and other rules implemented by the SEC. Also, we are subject to changing rules and regulations of federal and state government as well as the stock exchange on which our common stock is listed. These entities, including the Public Company Accounting Oversight Board, the SEC and the NASDAQ Capital Market, have issued a significant number of new and increasingly complex requirements and regulations over the course of the last several years and continue to develop additional regulations and requirements in response to laws enacted by Congress. Our efforts to comply with these requirements may result in an increase in expenses and a diversion of management's time from other business activities.

***A disruption in the capital markets and the credit markets could impair our ability to raise capital and negatively affect our business.***

As a BDC, we must maintain our ability to raise additional capital for investment purposes. Without sufficient access to the capital markets or credit markets, we may be forced to curtail our business operations or we may not be able to pursue new business opportunities.

In recent years, the capital markets and the credit markets have experienced periods of extreme volatility and disruption and, accordingly, there has been and may continue to be uncertainty in the financial markets in general. Continuing U.S. debt ceiling and budget deficit concerns, including automatic spending cuts stemming from sequestration and together with deteriorating sovereign debt conditions in Europe, have increased the possibility of additional credit-rating downgrades and economic slowdowns, or a recession in the United States. The impact of this or any further downgrades to the U.S. government's sovereign credit rating or its perceived creditworthiness could adversely affect the U.S. and global financial markets and economic conditions. Absent further quantitative easing by the Federal Reserve Board, these developments, along with the European sovereign debt crisis, could cause interest rates and borrowing costs to rise, which may negatively impact our ability to access the debt markets on favorable terms. Continued adverse economic conditions could have a material adverse effect on our business, financial condition and results of operations. Any further disruptive conditions in the financial industry and the impact of new legislation in response to those conditions could restrict our business operations and could adversely impact our results of operations and financial condition.

If the fair value of our assets declines substantially, we may fail to maintain the asset coverage ratios imposed upon us by the 1940 Act. Any such failure would affect our ability to issue securities, including borrowings, and pay dividends, which could materially impair our business operations. Our liquidity could be impaired further by an inability to access the capital markets or to consummate new borrowing facilities to provide capital for normal operations, including new originations. In recent years, reflecting concern about the stability of the financial markets, many lenders and institutional investors have reduced or ceased providing funding to borrowers.

***We are highly dependent on information systems and systems failures could significantly disrupt our business, which may, in turn, negatively affect the market price of our common stock and our ability to make distributions to our stockholders.***

Our business is highly dependent on our communications and information systems. Certain of these systems are provided to us by third party service providers. Any failure or interruption of such systems, including as a result of the termination of an agreement with any such third party service provider, could cause delays or other



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problems in our activities. This, in turn, could have a material adverse effect on our operating results and negatively affect the market price of our common stock and our ability to make distributions to our stockholders.

***Terrorist attacks, acts of war or natural disasters may affect any market for our common stock, impact the businesses in which we invest and harm our business, operating results and financial condition.***

Terrorist acts, acts of war or natural disasters may disrupt our operations, as well as the operations of the businesses in which we invest. Such acts have created, and continue to create, economic and political uncertainties and have contributed to global economic instability. Future terrorist activities, military or security operations, or natural disasters could further weaken the domestic/global economies and create additional uncertainties, which may negatively impact the businesses in which we invest directly or indirectly and, in turn, could have a material adverse impact on our business, operating results and financial condition. Losses from terrorist attacks and natural disasters are generally uninsurable.

## **Risks Relating to Our Investments Generally**

***Our investments are very risky and highly speculative.***

We invest primarily in senior secured term loans and select equity investments issued by companies, some of which are highly leveraged.

***Senior Secured Loans.*** There is a risk that the collateral securing our loans may decrease in value over time, may be difficult to sell in a timely manner, may be difficult to appraise and may fluctuate in value based upon the success of the business and market conditions, including as a result of the inability of the portfolio company to raise additional capital, and, in some circumstances, our lien could be subordinated to claims of other creditors. In addition, deterioration in a portfolio company's financial condition and prospects, including its inability to raise additional capital, may be accompanied by deterioration in the value of the collateral for the loan. Consequently, the fact that a loan is secured does not guarantee that we will receive principal and interest payments according to the loan's terms, or at all, or that we will be able to collect on the loan should we be forced to enforce our remedies. In some cases we may take second lien position on additional business or personal assets to secure further our first lien positions.

***Equity Investments.*** We occasionally invest directly in the equity securities of portfolio companies. The equity interests we receive may not appreciate in value and, in fact, may decline in value. Accordingly, we may not be able to realize gains from our equity interests, and any gains that we do realize on the disposition of any equity interests may not be sufficient to offset any other losses we experience.

In addition, investing in SMBs involves a number of significant risks, including:

these companies may have limited financial resources and may be unable to meet their obligations under their debt securities that we hold, which may be accompanied by a deterioration in the value of any collateral and a reduction in the likelihood of us realizing any guarantees we may have obtained in connection with our investment;

they typically have shorter operating histories, narrower product lines and smaller market shares than larger businesses, which tend to render them more vulnerable to competitors' actions and market conditions, as well

as general economic downturns;

they are more likely to depend on the management talents and efforts of a small group of persons; therefore, the death, disability, resignation or termination of one or more of these persons could have a material adverse impact on our portfolio company and, in turn, on us;

they generally have less predictable operating results, may from time to time be parties to litigation, may be engaged in rapidly changing businesses with products subject to a substantial risk of obsolescence, and may require substantial additional capital to support their operations, finance expansion or maintain their competitive position;

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they may have difficulty accessing the capital markets to meet future capital needs, which may limit their ability to grow or to repay their outstanding indebtedness upon maturity; and

our executive officers and directors may, in the ordinary course of business, be named as defendants in litigation arising from our investments in the portfolio companies.

***An investment strategy focused primarily on smaller privately held companies involves a high degree of risk and presents certain challenges, including the lack of available information about these companies, a dependence on the talents and efforts of only a few key portfolio company personnel and a greater vulnerability to economic downturns.***

Our portfolio will consist primarily of debt and equity investments in smaller privately-owned companies. Investing in these types of companies involves a number of significant risks. Typically, the debt in which we will invest is not initially rated by any rating agency; however, we believe that if such investments were rated, they would be below investment grade. Compared to larger publicly owned companies, these small companies may be in a weaker financial position and experience wider variations in their operating results, which may make them more vulnerable to economic downturns. Typically, these companies need more capital to compete; however, their access to capital is limited and their cost of capital is often higher than that of their competitors. Our portfolio companies often face intense competition from larger companies with greater financial, technical and marketing resources and their success typically depends on the managerial talents and efforts of an individual or a small group of persons. Therefore, any loss of its key employees could affect a portfolio company's ability to compete effectively and harm its financial condition. Further, some of these companies conduct business in regulated industries that are susceptible to regulatory changes. These factors could impair the cash flow of our portfolio companies and result in other events, such as bankruptcy. These events could limit a portfolio company's ability to repay its obligations to us, which may have an adverse effect on the return on, or the recovery of, our investment in these businesses. Deterioration in a borrower's financial condition and prospects may be accompanied by deterioration in the value of the loan's collateral.

Generally, little public information exists about these companies, and we are required to rely on the ability of our senior lending team and our executive committee to obtain adequate information to evaluate the potential returns from investing in these companies. If we are unable to uncover all material information about these companies, we may not make a fully informed investment decision, and we may lose money on our investments. Also, privately held companies frequently have less diverse product lines and smaller market presence than larger competitors. These factors could adversely affect our investment returns as compared to companies investing primarily in the securities of public companies.

***Our investments in leveraged portfolio companies may be risky, and you could lose all or part of your investment.***

Investment in leveraged companies involves a number of significant risks. Leveraged companies in which we invest may have limited financial resources and may be unable to meet their obligations under their loans and debt securities that we hold. Such developments may be accompanied by a deterioration in the value of any collateral and a reduction in the likelihood of our realizing any guarantees that we may have obtained in connection with our investment. Smaller leveraged companies also may have less predictable operating results and may require substantial additional capital to support their operations, finance their expansion or maintain their competitive position.

***Our portfolio companies may incur debt that ranks equally with, or senior to, our investments in such companies.***

Our portfolio companies may have, or may be permitted to incur, other debt that ranks equally with, or in some cases senior to, the debt in which we invest. By their terms, such debt instruments may entitle the holders to receive

payment of interest or principal on or before the dates on which we are entitled to receive payments with

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respect to the debt instruments in which we invest. Also, in the event of insolvency, liquidation, dissolution, reorganization or bankruptcy of a portfolio company, holders of debt instruments ranking senior to our investment in that portfolio company would typically be entitled to receive payment in full before we receive any distribution. After repaying such senior creditors, such portfolio company may not have sufficient remaining assets to repay its obligation to us. In the case of debt ranking equally with debt instruments in which we invest, we would have to share on an equal basis any distributions with other creditors holding such debt in the event of an insolvency, liquidation, dissolution, reorganization or bankruptcy of the relevant portfolio company.

***Second priority liens on collateral securing loans that we make to our portfolio companies may be subject to control by senior creditors with first priority liens. If there is a default, the value of the collateral may not be sufficient to repay in full both the first priority creditors and us.***

Certain loans that we make are secured by a second priority security interest in the same collateral pledged by a portfolio company to secure senior first lien debt owed by the portfolio company to commercial banks or other traditional lenders. Often the senior lender has procured covenants from the portfolio company prohibiting the incurrence of additional secured debt without the senior lender's consent. Prior to and as a condition of permitting the portfolio company to borrow money from us secured by the same collateral pledged to the senior lender, the senior lender will require assurances that it will control the disposition of any collateral in the event of bankruptcy or other default. In many such cases, the senior lender will require us to enter into an intercreditor agreement prior to permitting the portfolio company to borrow from us. Typically the intercreditor agreements we will be requested to expressly subordinate our debt instruments to those held by the senior lender and further provide that the senior lender shall control: (1) the commencement of foreclosure or other proceedings to liquidate and collect on the collateral; (2) the nature, timing and conduct of foreclosure or other collection proceedings; (3) the amendment of any collateral document; (4) the release of the security interests in respect of any collateral; and (5) the waiver of defaults under any security agreement. Because of the control we may cede to senior lenders under intercreditor agreements we may enter, we may be unable to realize the proceeds of any collateral securing some of our loans.

***If we make subordinated investments, the obligors or the portfolio companies may not generate sufficient cash flow to service their debt obligations to us.***

We may make subordinated investments that rank below other obligations of the obligor in right of payment. Subordinated investments are subject to greater risk of default than senior obligations as a result of adverse changes in the financial condition of the obligor or economic conditions in general. If we make a subordinated investment in a portfolio company, the portfolio company may be highly leveraged, and its relatively high debt-to-equity ratio may create increased risks that its operations might not generate sufficient cash flow to service all of its debt obligations.

***The disposition of our investments may result in contingent liabilities.***

We currently expect that substantially all of our investments will involve loans and private securities. In connection with the disposition of an investment in loans and private securities, we may be required to make representations about the business and financial affairs of the portfolio company typical of those made in connection with the sale of a business. We may also be required to indemnify the purchasers of such investment to the extent that any such representations turn out to be inaccurate or with respect to potential liabilities. These arrangements may result in contingent liabilities that ultimately result in funding obligations that we must satisfy through our return of distributions previously made to us.

***There may be circumstances where our debt investments could be subordinated to claims of other creditors or we could be subject to lender liability claims.***

Even though we may have structured certain of our investments as secured loans, if one of our portfolio companies were to go bankrupt, depending on the facts and circumstances, and based upon principles of

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equitable subordination as defined by existing case law, a bankruptcy court could subordinate all or a portion of our claim to that of other creditors and transfer any lien securing such subordinated claim to the bankruptcy estate. The principles of equitable subordination defined by case law have generally indicated that a claim may be subordinated only if its holder is guilty of misconduct or where the senior loan is re-characterized as an equity investment and the senior lender has actually provided significant managerial assistance to the bankrupt debtor. We may also be subject to lender liability claims for actions taken by us with respect to a borrower's business or instances where we exercise control over the borrower. It is possible that we could become subject to a lender's liability claim, including as a result of actions taken in rendering significant managerial assistance or actions to compel and collect payments from the borrower outside the ordinary course of business.

***Economic recessions could impair our portfolio companies and harm our operating results.***

Certain of our portfolio companies may be susceptible to an economic downturn and may be unable to repay our loans during this period. Therefore, assets may become non-performing and the value of our portfolio may decrease during this period. The adverse economic conditions also may decrease the value of collateral securing some of our loans and the value of our equity investments. A recession could lead to financial losses in our portfolio and a decrease in revenues, net income and the value of our assets.

***The lack of liquidity in our investments may adversely affect our business.***

We generally invest in companies whose securities are not publicly traded, and whose securities will be subject to legal and other restrictions on resale or will otherwise be less liquid than publicly traded securities. There is no established trading market for the securities in which we invest. The illiquidity of these investments may make it difficult for us to sell these investments when desired. In addition, if we are required to liquidate all or a portion of our portfolio quickly, we may realize significantly less than the value at which we had previously recorded these investments. As a result, we do not expect to achieve liquidity in our investments in the near-term. Further, we may face other restrictions on our ability to liquidate an investment in a portfolio company to the extent that we have material non-public information regarding such portfolio company.

***We have not yet identified all of the portfolio companies we will invest in using the proceeds of the Proposed Offering.***

We have not yet identified all of the additional potential investments for our portfolio that we will acquire with the proceeds of the offering. As a result, you will be unable to evaluate any future portfolio company investments prior to purchasing our shares. Additionally, our senior lending team or our executive committee will select our investments subsequent to the closing of the Proposed Offering, and our stockholders will have no input with respect to such investment decisions. These factors increase the uncertainty, and thus the risk, of investing in our common stock.

***Our failure to make follow-on investments in our portfolio companies could impair the value of our portfolio.***

Following an initial investment in a portfolio company, we may make additional investments in that portfolio company as follow-on investments, in order to: (1) increase or maintain in whole or in part our equity ownership percentage; (2) exercise warrants, options or convertible securities that were acquired in the original or a subsequent financing; or (3) attempt to preserve or enhance the value of our investment. We may elect not to make follow-on investments or otherwise lack sufficient funds to make those investments. We will have the discretion to make any follow-on investments, subject to the availability of capital resources. The failure to make follow-on investments may, in some circumstances, jeopardize the continued viability of a portfolio company and our initial investment, or may result in a missed opportunity for us to increase our participation in a successful operation. Even if we have sufficient

capital to make a desired follow-on investment, we may elect not to make a follow-on investment because we do not want to increase our concentration of risk, we prefer other opportunities, we are subject to BDC requirements that would prevent such follow-on investments, or the follow-on investment would affect our qualification as a RIC.



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***Our portfolio may lack diversification among portfolio companies which may subject us to a risk of significant loss if one or more of these companies defaults on its obligations under any of its debt instruments.***

Our portfolio may hold a limited number of portfolio companies. Beyond the asset diversification requirements associated with our qualification as a RIC under the Code, we will not have fixed guidelines for diversification, and our investments may be concentrated in relatively few companies. As our portfolio is less diversified than the portfolios of some larger funds, we are more susceptible to failure if a single loan fails. Similarly, the aggregate returns we realize may be significantly adversely affected if a small number of investments perform poorly or if we need to write down the value of any one investment.

***We are a non-diversified investment company within the meaning of the 1940 Act, and therefore we may invest a significant portion of our assets in a relatively small number of issuers, which subjects us to a risk of significant loss if any of these issuers defaults on its obligations under any of its debt instruments or as a result of a downturn in the particular industry.***

We are classified as a non-diversified investment company within the meaning of the 1940 Act, and therefore we may invest a significant portion of our assets in a relatively small number of issuers in a limited number of industries. As of December 31, 2013, on a pro forma basis not reflecting any effect for the completion of this offering, our two largest investments, NMS and NTS equaled approximately 19% and 9.4%, respectively, of the fair value of our total assets. Beyond the asset diversification requirements associated with our qualification as a RIC, we do not have fixed guidelines for diversification, and while we are not targeting any specific industries, relatively few industries may become significantly represented among our investments. To the extent that we assume large positions in the securities of a small number of issuers, our net asset value may fluctuate to a greater extent than that of a diversified investment company as a result of changes in the financial condition or the market's assessment of the issuer, changes in fair value over time or a downturn in any particular industry. We may also be more susceptible to any single economic or regulatory occurrence than a diversified investment company.

***Our portfolio may be concentrated in a limited number of industries, which may subject us to a risk of significant loss if there is a downturn in a particular industry in which a number of our investments are concentrated.***

Our portfolio may be concentrated in a limited number of industries. A downturn in any particular industry in which we are invested could significantly impact the aggregate returns we realize. If an industry in which we have significant investments suffers from adverse business or economic conditions, as these industries have to varying degrees, a material portion of our investment portfolio could be affected adversely, which, in turn, could adversely affect our financial position and results of operations.

***Because we may not hold controlling equity interests in certain of our portfolio companies, we may not be in a position to exercise control over our portfolio companies or to prevent decisions by management of our portfolio companies that could decrease the value of our investments.***

We do not currently hold controlling equity positions in the majority of our portfolio companies where our investments are in the form of debt, particularly SBA loans. As a result, we are subject to the risk that a portfolio company may make business decisions with which we disagree, and that the management and/or stockholders of a portfolio company may take risks or otherwise act in ways that are adverse to our interests. Due to the lack of liquidity of the debt and equity investments that we typically hold in our portfolio companies, we may not be able to dispose of our investments in the event we disagree with the actions of a portfolio company and may therefore suffer a decrease in the value of our investments.

***Defaults by our portfolio companies will harm our operating results.***

A portfolio company's failure to satisfy financial or operating covenants imposed by us or other lenders could lead to defaults and, potentially, termination of its loans and foreclosure on its secured assets, which could trigger

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cross-defaults under other agreements and jeopardize our portfolio company's ability to meet its obligations under the debt securities that we hold. We may incur expenses to the extent necessary to seek recovery upon default or to negotiate new terms with a defaulting portfolio company. Any extension or restructuring of our loans could adversely affect our cash flows. In addition, if one of our portfolio companies were to go bankrupt, even though we may have structured our interest as senior debt, depending on the facts and circumstances, including the extent to which we actually provided managerial assistance to that portfolio company, a bankruptcy court might recharacterize our debt holding and subordinate all or a portion of our claim to that of other creditors. If any of these occur, it could materially and adversely affect our operating results and cash flows.

***If we and our portfolio companies are unable to protect our intellectual property rights, our business and prospects could be harmed, and if we and our portfolio companies are required to devote significant resources to protecting their intellectual property rights, the value of our investment could be reduced.***

The proprietary software essential to our business and that of our controlled portfolio companies is owned by us and made available to them for their use. Our future success and competitive position will depend in part upon our ability to maintain and protect proprietary technology used in our products and services. We will rely, in part, on patent, trade secret and trademark law to protect that technology, but competitors may misappropriate our intellectual property, and disputes as to ownership of intellectual property may arise. We may, from time to time, be required to institute litigation to enforce the patents, copyrights or other intellectual property rights, protect trade secrets, determine the validity and scope of the proprietary rights of others or defend against claims of infringement. Such litigation could result in substantial costs and diversion of resources.

***Prepayments of our debt investments by our portfolio companies could adversely impact our results of operations and reduce our return on equity.***

We will be subject to the risk that the investments we make in our portfolio companies may be repaid prior to maturity; our SBA loans do not carry prepayment penalties. When this occurs, we will generally reinvest these proceeds in temporary investments or repay outstanding debt, depending on future investment in new portfolio companies. Temporary investments will typically have substantially lower yields than the debt being prepaid and we could experience significant delays in reinvesting these amounts. Any future investment in a new portfolio company may also be at lower yields than the debt that was repaid. As a result, our results of operations could be materially adversely affected if one or more of our portfolio companies elect to prepay amounts owed to us. Additionally, prepayments could negatively impact our return on equity, which could result in a decline in the market price of our common stock.

***We may not realize gains from our equity investments.***

Certain investments that we may make in the future include warrants or other equity securities. Investments in equity securities involve a number of significant risks, including the risk of further dilution as a result of additional issuances, inability to access additional capital and failure to pay current distributions. Investments in preferred securities involve special risks, such as the risk of deferred distributions, credit risk, illiquidity and limited voting rights. In addition, we may from time to time make non-control, equity investments in portfolio companies. Our goal is ultimately to realize gains upon our disposition of such equity interests. However, the equity interests we receive may not appreciate in value and, in fact, may decline in value. Accordingly, we may not be able to realize gains from our equity interests, and any gains that we do realize on the disposition of any equity interests may not be sufficient to offset any other losses we experience. We also may be unable to realize any value if a portfolio company does not have a liquidity event, such as a sale of the business, recapitalization or public offering, which would allow us to sell the underlying equity interests. We will often seek puts or similar rights to give us the right to sell our equity securities back to the

portfolio company issuer. We may be unable to exercise these puts rights for the consideration provided in our investment documents if the issuer is in financial distress.

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***We may expose ourselves to risks if we engage in hedging transactions.***

If we engage in hedging transactions, we may expose ourselves to certain risks associated with such transactions. We may utilize instruments such as forward contracts, currency options and interest rate swaps, caps, collars and floors to seek to hedge against fluctuations in the relative values of our portfolio positions from changes in currency exchange rates and market interest rates. Hedging against a decline in the values of our portfolio positions does not eliminate the possibility of fluctuations in the values of such positions or prevent losses if the values of such positions decline. However, such hedging can establish other positions designed to gain from those same developments, thereby offsetting the decline in the value of such portfolio positions. Such hedging transactions may also limit the opportunity for gain if the values of the underlying portfolio positions increase. It may not be possible to hedge against an exchange rate or interest rate fluctuation that is so generally anticipated that we are not able to enter into a hedging transaction at an acceptable price. Moreover, for a variety of reasons, we may not seek to establish a perfect correlation between such hedging instruments and the portfolio holdings being hedged. Any such imperfect correlation may prevent us from achieving the intended hedge and expose us to risk of loss. In addition, it may not be possible to hedge fully or perfectly against currency fluctuations affecting the value of securities denominated in non-U.S. currencies because the value of those securities is likely to fluctuate as a result of factors not related to currency fluctuations.

***We have specific risks associated with SBA loans.***

We have generally sold the guaranteed portion of SBA loans in the secondary market. Such sales have resulted in our earning premiums and creating a stream of servicing income. There can be no assurance that we will be able to continue originating these loans, or that a secondary market will exist for, or that we will continue to realize premiums upon the sale of the guaranteed portions of the SBA 7(a) loans.

Since we sell the guaranteed portion of substantially all of our SBA 7(a) loan portfolio, we retain credit risk on the non-guaranteed portion of the SBA loans. We share pro rata with the SBA in any recoveries. In the event of default on an SBA loan, our pursuit of remedies against a borrower is subject to SBA approval, and where the SBA establishes that its loss is attributable to deficiencies in the manner in which the loan application has been prepared and submitted, the SBA may decline to honor its guarantee with respect to our SBA loans or it may seek the recovery of damages from us. If we should experience significant problems with our underwriting of SBA loans, such failure to honor a guarantee or the cost to correct the problems could have a material adverse effect on us. Although the SBA has never declined to honor its guarantees with respect to SBA loans made by us since our acquisition of NSBF in 2003, no assurance can be given that the SBA would not attempt to do so in the future.

***An increase in non-performing assets would reduce our income and increase our expenses.***

If our level of non-performing assets in our SBA lending business rises in the future, it could adversely affect our revenue and earnings. Non-performing assets are primarily loans on which borrowers are not making their required payments. Non-performing assets also include loans that have been restructured to permit the borrower to have smaller payments and real estate that has been acquired through foreclosure of unpaid loans. To the extent that our financial assets are non-performing, we will have less cash available for lending and other activities.

***Our reserve for credit losses may not be sufficient to cover unexpected losses.***

Our business depends on the behavior of our customers. In addition to our credit practices and procedures, we maintain a reserve for credit losses on our SBA loans, which management has judged to be adequate given the loans we originate. We periodically review our reserve for adequacy considering current economic conditions and trends,

collateral values, charge-off experience, levels of past due loans and non-performing assets, and we adjust our reserve accordingly. However, because of the poor current economic conditions caused by the recession, our reserves may prove inadequate, which could have a material adverse effect on our financial condition and results of operations.

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*We could be adversely affected by weakness in the residential housing and commercial real estate markets.*

Continued weakness in residential home and commercial real estate values could impair our ability to collect on defaulted SBA loans as real estate is pledged in many of our SBA loans as part of the collateral package.

**Risks Relating to Our Controlled Portfolio Companies    Newtek Merchant Services (NMS)**

*NMS relies on two bank sponsors, which have substantial discretion with respect to certain elements of our electronic payment processing business practices, in order to process bankcard transactions. If either of the sponsorships is terminated, and we are not able to secure or transfer the respective merchant portfolio to a new bank sponsor or sponsors, the business, financial condition, results of operations and cash flows of electronic payment processing business could be materially adversely affected. If both sponsorships are terminated, and NMS is not able to secure or transfer the merchant portfolios to new bank sponsors, NMS will not be able to conduct its electronic payment processing business. NMS also relies on service providers who are critical to its business.*

Because NMS is not a bank, it is unable to belong to and directly access the Visa® and MasterCard® bankcard associations. The Visa® and MasterCard® operating regulations require NMS to be sponsored by a bank in order to process bankcard transactions. NMS is currently sponsored by two banks. If both the sponsorships are terminated and NMS is unable to secure a bank sponsor for the merchant portfolios, it will not be able to process bankcard transactions for the affected portfolios. Consequently, the loss of both of NMS's sponsorships would have a material adverse effect on our business. Furthermore, NMS's agreement with sponsoring banks gives the sponsoring banks substantial discretion in approving certain elements of its business practices, including its solicitation, application and qualification procedures for merchants, the terms of our agreements with merchants, the processing fees that we charge, its customer service levels and its use of independent sales organizations and independent sales agents. We cannot guarantee that NMS's sponsoring banks' actions under these agreements will not be detrimental to us.

Other service providers, some of whom are NMS's competitors, are necessary for the conduct of NMS's business. The termination by service providers of these arrangements with NMS or their failure to perform these services efficiently and effectively may adversely affect NMS's relationships with the merchants whose accounts it serves and may cause those merchants to terminate their processing agreements with NMS.

*If NMS or its processors or bank sponsors fail to adhere to the standards of the Visa® and MasterCard® bankcard associations, its registrations with these associations could be terminated and it could be required to stop providing payment processing services for Visa® and MasterCard®.*

Substantially all of the transactions NMS processes involve Visa® or MasterCard®. If NMS, its bank sponsors or its processors fail to comply with the applicable requirements of the Visa® and MasterCard® bankcard associations, Visa® or MasterCard® could suspend or terminate its registration. The termination of NMS's registration or any changes in the Visa® or MasterCard® rules that would impair its registration could require it to stop providing payment processing services, which would have a material adverse effect on its business.

*On occasion, NMS experiences increases in interchange and sponsorship fees. If it cannot pass along these increases to its merchants, its profit margins will be reduced.*

Our electronic payment processing subsidiary pays interchange fees or assessments to bankcard associations for each transaction it processes using their credit, debit and gift cards. From time to time, the bankcard associations increase the interchange fees that they charge processors and the sponsoring banks, which generally pass on such increases to NMS. From time to time, the sponsoring banks increase their fees as well. If NMS is not able to pass these fee

increases along to merchants through corresponding increases in its processing fees, its profit margins in this line of business will be reduced.



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**Table of Contents*****Unauthorized disclosure of merchant or cardholder data, whether through breach of our computer systems or otherwise, could expose us to liability and business losses.***

Through NMS, we collect and store sensitive data about merchants and cardholders, and we maintain a database of cardholder data relating to specific transactions, including payment, card numbers and cardholder addresses, in order to process the transactions and for fraud prevention and other internal processes. If anyone penetrates our network security or otherwise misappropriates sensitive merchant or cardholder data, we could be subject to liability or business interruption. While we subject these systems to periodic independent testing and review, we cannot guarantee that our systems will not be penetrated in the future. If a breach of our system occurs, we may be subject to liability, including claims for unauthorized purchases with misappropriated card information, impersonation or other similar fraud claims. Similar risks exist with regard to the storage and transmission of such data by our processors. In the event of any such a breach, we may also be subject to a class action lawsuit. SMBs are less prepared for the complexities of safeguarding cardholder data than their larger counterparts. In the event of noncompliance by a customer of card industry rules, we could face fines from payment card networks. There can be no assurance that we would be able to recover any such fines from such customer.

***NMS is liable if its processing merchants refuse or cannot reimburse charge-backs resolved in favor of their customers.***

If a billing dispute between a merchant and a cardholder is not ultimately resolved in favor of the merchant, the disputed transaction is charged back to the merchant's bank and credited to the account of the cardholder. If NMS or our processing banks are unable to collect the charge-back from the merchant's account, or if the merchant refuses or is financially unable due to bankruptcy or other reasons to reimburse the merchant's bank for the charge-back, NMS must bear the loss for the amount of the refund paid to the cardholder's bank. Most of NMS's merchants deliver products or services when purchased, so a contingent liability for charge-backs is unlikely to arise, and credits are issued on returned items. However, some of its merchants do not provide services until sometime after a purchase, which increases the potential for contingent liability and future charge backs. NMS and the sponsoring bank can require that merchants maintain cash reserves under our control to cover charge back liabilities but such reserves may not be sufficient to cover the liability or may not even be available to us in the event of a bankruptcy or other legal action.

***NMS has potential liability for customer or merchant fraud.***

Credit card fraud occurs when a merchant's customer uses a stolen card (or a stolen card number in a card-not-present transaction) to purchase merchandise or services. In a traditional card-present transaction, if the merchant swipes the card, receives authorization for the transaction from the card issuing bank and verifies the signature on the back of the card against the paper receipt signed by the customer, the card issuing bank remains liable for any loss. In a fraudulent card-not-present transaction, even if the merchant receives authorization for the transaction, the merchant is liable for any loss arising from the transaction. Many NMS customers are small and transact a substantial percentage of their sales over the Internet or by telephone or mail orders. Because their sales are card-not-present transactions, these merchants are more vulnerable to customer fraud than larger merchants, and NMS could experience charge-backs arising from cardholder fraud more frequently with these merchants.

Merchant fraud occurs when a merchant, rather than a customer, knowingly uses a stolen or counterfeit card or card number to record a false sales transaction or intentionally fails to deliver the merchandise or services sold in an otherwise valid transaction. Anytime a merchant is unable to satisfy a charge-back, NMS is ultimately responsible for that charge-back unless it has required that a cash reserve be established. We cannot assure that the systems and procedures we have established to detect and reduce the impact of merchant fraud are or will be effective. Failure to effectively manage risk and prevent fraud could increase NMS charge-back liability and adversely affect our results of

operations.

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***NMS payment processing systems may fail due to factors beyond its control, which could interrupt its business or cause it to lose business and likely increase costs.***

NMS depends on the uninterrupted operations of our computer network systems, software and our processors' data centers. Defects in these systems or damage to them due to factors beyond its control could cause severe disruption to NMS's business and other material adverse effects on its payment processing businesses.

***NMS and others in the payment processing industry have come under increasing pressures from various regulatory agencies seeking to use the leverage of the payment processing business to limit or modify the practices of merchants which could lead to increased costs.***

Various agencies, particularly the Federal Trade Commission, have within the past few years attempted to pressure merchants to discontinue or modify various sales or other practices. As a part of the payment processing industry, processors such as NMS could experience pressure and/or litigation aimed at restricting access to credit card sales by such merchants. These efforts could cause an increase in the cost to NMS of doing business or otherwise make its business less profitable and may subject NMS and others to attempts to assess penalties for not taking actions deemed sufficiently aggressive to limit such practices.

### **Risks Relating to Our Controlled Portfolio Companies – Newtek Managed Technology Solutions (NTS)**

***NTS operates in a highly competitive industry in which technological change can be rapid.***

The information technology business and its related technology involve a broad range of rapidly changing technologies. NTS equipment and the technologies on which it is based may not remain competitive over time, and others may develop superior technologies that render its products non-competitive without significant additional capital expenditures. Some of NTS's competitors are significantly larger and have substantially greater market presence as well as greater financial, technical, operational, marketing and other resources and experience than NTS. In the event that such a competitor expends significant sales and marketing resources in one or several markets, NTS may not be able to compete successfully in such markets. We believe that competition will continue to increase, placing downward pressure on prices. Such pressure could adversely affect NTS gross margins if it is not able to reduce its costs commensurate with such price reductions. There can be no assurances that NTS will remain competitive.

***NTS's managed technology solutions business depends on the efficient and uninterrupted operation of its computer and communications hardware systems and infrastructure.***

Despite precautions taken by NTS against possible failure of its systems, interruptions could result from natural disasters, power loss, the inability to acquire fuel for its backup generators, telecommunications failure, terrorist attacks and similar events. NTS also leases telecommunications lines from local, regional and national carriers whose service may be interrupted. NTS's business, financial condition and results of operations could be harmed by any damage or failure that interrupts or delays its operations. There can be no assurance that its insurance will cover all of the losses or compensate NTS for the possible loss of clients occurring during any period that NTS is unable to provide service.

***NTS's inability to maintain the integrity of its infrastructure and the privacy of confidential information would materially affect its business.***

The NTS infrastructure is potentially vulnerable to physical or electronic break-ins, viruses or similar problems. If its security measures are circumvented, it could jeopardize the security of confidential information stored on NTS s systems, misappropriate proprietary information or cause interruptions in NTS s operations. We may be required to make significant additional investments and efforts to protect against or remedy security breaches. Security breaches that result in access to confidential information could damage our reputation and expose us to a

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risk of loss or liability. The security services that NTS offers in connection with customers' networks cannot assure complete protection from computer viruses, break-ins and other disruptive problems. The occurrence of these problems may result in claims against NTS or us or liability on our part. These claims, regardless of their ultimate outcome, could result in costly litigation and could harm our business and reputation and impair NTS's ability to attract and retain customers.

***NTS's business depends on Microsoft Corporation and others for the licenses to use software as well as other intellectual property in the managed technology solutions business.***

NTS's managed technology business is built on technological platforms relying on the Microsoft Windows® products and other intellectual property that NTS currently licenses. As a result, if NTS is unable to continue to have the benefit of those licensing arrangements or if the products upon which its platform is built become obsolete, its business could be materially and adversely affected.

***Increased regulatory focus on the payments industry may result in costly new compliance burdens on NMS clients and on NMS itself, leading to increased costs and decreased payments volume and revenues.***

Regulation of the payments industry has increased significantly in recent years. Complying with these and other regulations increases costs and can reduce revenue opportunities. Similarly, the impact of such regulations on clients may reduce the volume of payments processed. Moreover, such regulations can limit the types of products and services that offered. Any of these occurrences can materially and adversely affect NMS' business, prospects for future growth, financial condition and results of operations.

Examples include:

*Data Protection and Information Security.* Aspects of NMS' operations and business are subject to privacy and data protection regulation. NMS' financial institution clients are subject to similar requirements under the guidelines issued by the federal banking agencies. In addition, many individual states have enacted legislation requiring consumer notification in the event of a security breach.

*Anti-Money Laundering and Anti-Terrorism Financing.* The U.S.A. PATRIOT Act requires NMS to maintain an anti-money laundering program. Sanctions imposed by the U.S. Treasury Office of Foreign Assets Control (OFAC) restrict NMS from dealing with certain parties considered to be connected with money laundering, terrorism or narcotics. NMS has controls in place designed to ensure OFAC compliance, but if those controls should fail, it could be subject to penalties, reputational damage and loss of business.

*Money Transfer Regulations.* As NMS expands its product offerings, it may become subject to money transfer regulations, increasing regulatory oversight and costs of compliance.

*Formal Investigation.* If NMS is suspected of violating government statutes, such as the Federal Trade Commission Act or the Telemarketing and Consumer Fraud and Abuse Prevention Act, governmental agencies may formally investigate NMS. As a result of such a formal investigation, criminal or civil charges could be filed against NMS and it could be required to pay significant fines or penalties in connection with

such investigation or other governmental investigations. Any criminal or civil charges by a governmental agency, including any fines or penalties, could materially harm NMS' business, results of operations, financial position and cash flows. Currently, NMS is subject to a complaint issued by the Federal Trade Commission as explained below. Also see Legal Proceedings for additional information.

***NMS is a party to a complaint issued by the Federal Trade Commission and it cannot predict the timing of developments and outcomes in this matter.***

NMS is a party to a complaint issued by the Federal Trade Commission which relates to an alleged violation of the Federal Trade Commission Act and the Telemarketing and Consumer Fraud and Abuse Prevention Act. NMS

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cannot predict when the complaint will be resolved or the further timing of any other developments in connection with the complaint. NMS also cannot predict its results or outcomes. Expenses incurred in connection with this complaint, which include fees for lawyers and other professional advisors, and any other future investigations (which could result in the filing of future complaints) adversely affect NMS' cash position and profitability. NMS may also have potential obligations to indemnify officers and directors, who could, at a future date, be parties to such complaints. Negative developments or outcomes in the complaint could have an adverse effect on NMS' defense of other lawsuits. Also, the Federal Trade Commission could impose sanctions and/or fines on NMS in connection with the aforementioned complaint. Finally, this complaint and inquiry could divert the attention of NMS' management and other personnel for significant periods of time. See [Legal Proceedings](#) for additional information.

**Risks Relating to Our Controlled Portfolio Companies – Insurance Agency Business (NIA)**

*NIA depends on third parties, particularly property and casualty insurance companies, to supply the products marketed by its agents.*

NIA contracts with property and casualty insurance companies typically provide that the contracts can be terminated by the supplier without cause. NIA's inability to enter into satisfactory arrangements with these suppliers or the loss of these relationships for any reason would adversely affect the results of its new insurance business. Also, NIA's inability to obtain these products at competitive prices could make it difficult for it to compete with larger and better capitalized providers of such insurance services.

*If NIA fails to comply with government regulations, its insurance agency business would be adversely affected.*

NIA insurance agency business is subject to comprehensive regulation in the various states in which it conducts business. NIA's success will depend in part upon its ability to satisfy these regulations and to obtain and maintain all required licenses and permits. NIA's failure to comply with any statutes and regulations could have a material adverse effect on it. Furthermore, the adoption of additional statutes and regulations, changes in the interpretation and enforcement of current statutes and regulations could have a material adverse effect on it.

*NIA does not have any control over the commissions it earns on the sale of insurance products which are based on premiums and commission rates set by insurers and the conditions prevalent in the insurance market.*

NIA earns commissions on the sale of insurance products. Commission rates and premiums can change based on the prevailing economic and competitive factors that affect insurance underwriters. In addition, the insurance industry has been characterized by periods of intense price competition due to excessive underwriting capacity and periods of favorable premium levels due to shortages of capacity. We cannot predict the timing or extent of future changes in commission rates or premiums or the effect any of these changes will have on the operations of NIA's insurance agency.

**Risks Relating to Our Controlled Portfolio Companies – Payroll Processing Business (NPS)**

*Unauthorized disclosure of employee data, whether through a cyber-security breach of our computer systems or otherwise, could expose NPS to liability and business losses.*

NPS collects and stores sensitive data about individuals in order to process the transactions and for other internal processes. If anyone penetrates its network security or otherwise misappropriates sensitive individual data, NPS could be subject to liability or business interruption. NPS is subject to laws and rules issued by different agencies concerning safeguarding and maintaining the confidentiality of this information. Its activities have been, and will continue to be,

subject to an increasing risk of cyber-attacks, the nature of which is continually evolving. Cyber-



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security risks include unauthorized access to privileged and sensitive customer information, including passwords and account information of NPS customers. While it subjects its data systems to periodic independent testing and review, NPS cannot guarantee that its systems will not be penetrated in the future. Experienced computer programmers and hackers may be able to penetrate NPS network security, and misappropriate or compromise our confidential information, create system disruptions, or cause shutdowns. As a result, NPS customers information may be lost, disclosed, accessed or taken without our customers consent. If a breach of NPS system occurs, it may be subject to liability, including claims for impersonation or other similar fraud claims. In the event of any such a breach, NPS may also be subject to a class action lawsuit. Any significant violations of data privacy could result in the loss of business, litigation and regulatory investigations and penalties that could damage NPS reputation, and the growth of its business could be adversely affected.

*NPS systems may be subject to disruptions that could adversely affect its business and reputation.*

NPS payroll business relies heavily on its payroll, financial, accounting and other data processing systems. If any of these systems or any of the vendors which supply them fails to operate properly or becomes disabled even for a brief period of time, NPS could suffer financial loss, a disruption of its business, liability to clients, regulatory intervention or damage to its reputation. NPS has disaster recovery plans in place to protect its businesses against natural disasters, security breaches, military or terrorist actions, power or communication failures or similar events. Despite NPS preparations, its disaster recovery plans may not be successful in preventing the loss of client data, service interruptions, and disruptions to its operations or damage to its important facilities.

*If NPS fails to adapt its technology to meet client needs and preferences, the demand for its services may diminish.*

NPS operates in industries that are subject to rapid technological advances and changing client needs and preferences. In order to remain competitive and responsive to client demands, NPS continually upgrades, enhances and expands its existing solutions and services. If NPS fails to respond successfully to technology challenges, the demand for its services may diminish.

*NPS could incur unreimbursed costs or damages due to delays in processing inherent in the banking system.*

NPS generally determines the availability of customer (employer) funds prior to making payments to employees or taxing authorities, and such employer funds are generally transferred in to its accounts prior to making payments out. Due to the structure of the banking system however, there are times when NPS may make payroll or tax payments and not immediately receive the funds to do so from the employer. There can be no assurance that the procedures NPS has in place to prevent these occurrences or mitigate the damages will be sufficient to prevent loss to its business.

#### **Risks Relating to Our Controlled Portfolio Companies Receivables Financing and Servicing Business (CDS)**

*An unexpected level of defaults in CDS s accounts receivables portfolio would reduce its income and increase its expenses.*

If CDS s level of non-performing assets in its receivable financing business rises in the future, it could adversely affect its revenue, earnings and cash flow. Non-performing assets primarily consist of receivables for which the customer has not made timely payment. In certain situations, CDS may restructure the receivable to permit such a customer to have smaller payments over a longer period of time. Such a restructuring or non-payment by a receivables customer will result in lower revenue and less cash available for CDS s operational activities.

*CDS s reserve for credit losses may not be sufficient to cover unexpected losses.*

CDS's business depends on the behavior of its customers. In addition to its credit practices and procedures, CDS maintains a reserve for credit losses on its accounts receivable portfolio, which it has judged to be adequate given

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the receivables it purchases. CDS periodically reviews its reserve for adequacy considering current economic conditions and trends, charge-off experience and levels of non-performing assets, and adjusts its reserve accordingly. However, because of recent unstable economic conditions, its reserves may prove inadequate, which could have a material adverse effect on its financial condition and results of operations.

***CDS depends on outside financing to support its receivables financing business.***

CDS's receivables financing business depends on outside financing to support its acquisition of receivables. Termination of the credit lines for any reason would have a material adverse effect on its business, including but not limited to, the liquidation of its receivables portfolios to pay down the lines. If funds from such sale were insufficient to completely pay down the line of credit, CDS would be responsible for any short fall. In particular, CDS depends on a line of credit which matures in February 2014. Loss of this line and CDS's inability to replace it would materially impact the business.

## **Risks Relating to Our Controlled Portfolio Companies – Capco Business**

***The Capco programs and the tax credits they provide are created by state legislation and implemented through regulation, and such laws and rules are subject to possible action to repeal or retroactively revise the programs for political, economic or other reasons. Such an attempted repeal or revision would create substantial difficulty for the Capco programs and could, if ultimately successful, cause us material financial harm.***

The tax credits associated with the Capco programs and provided to our Capcos' investors are to be utilized by the investors over a period of time, which is typically ten years. Much can change during such a period and it is possible that one or more states may revise or eliminate the tax credits. Any such revision or repeal could have a material adverse economic impact on our Capcos, either directly or as a result of the Capco's insurer's actions. Any such final state action that jeopardizes the tax credits could result in the provider of our Capco insurance assuming partial or full control of the particular Capco in order to minimize its liability under the Capco insurance policies issued to our investors.

***Because our Capcos are subject to requirements under state law, a failure of any of them to meet these requirements could subject the Capco and our stockholders to the loss of one or more Capcos.***

Despite the fact that we have met all applicable minimum requirements of the Capco programs in which we still participate, each Capco remains subject to state regulation until it has invested 100 percent of its funds and otherwise remained in full legal compliance. There can be no assurance that we will continue to be able to do so. A major regulatory violation, while not fatal to our Capco business, would materially increase the cost of operating the Capcos.

## **Risks Relating to The Proposed Offering By Newtek MD**

***Our common stock price may be volatile and may decrease substantially.***

The trading price of our common stock may fluctuate substantially. The price of our common stock that will prevail in the market after the Proposed Offering may be higher or lower than the price you pay, depending on many factors, some of which are beyond our control and may not be directly related to our operating performance. These factors include, but are not limited to, the following:

price and volume fluctuations in the overall stock market from time to time;

investor demand for our shares;

significant volatility in the market price and trading volume of securities of business development companies or other companies in our sector, which are not necessarily related to the operating performance of these companies;

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changes in regulatory policies or tax guidelines with respect to RICs, BDCs, or SBICs;

failure to qualify as a RIC, or the loss of RIC status;

any shortfall in revenue or net income or any increase in losses from levels expected by investors or securities analysts;

changes, or perceived changes, in the value of our portfolio investments;

departures of key Newtek personnel;

operating performance of companies comparable to us; or

general economic conditions and trends and other external factors.

In the past, following periods of volatility in the market price of a company's securities, securities class action litigation has often been brought against that company. Due to the potential volatility of our stock price once a market for our stock is established, we may become the target of securities litigation in the future. Securities litigation could result in substantial costs and divert management's attention and resources from our business.

***We cannot assure you that we will be able to successfully deploy the proceeds of the Proposed Offering within the timeframe we have contemplated.***

We anticipate that substantially all of the net proceeds of the Proposed Offering will be invested in accordance with our investment objective and strategies described in this prospectus within six to nine months from the consummation of the Proposed Offering. We cannot assure you, however, that we will be able to locate a sufficient number of suitable investment opportunities to allow us to successfully deploy substantially all of the net proceeds of the Proposed Offering in that timeframe. To the extent we are unable to invest substantially all of the net proceeds of the Proposed Offering within our contemplated timeframe, our investment income, and in turn our results of operations, will likely be materially adversely affected.

***We will have broad discretion over the use of proceeds of the Proposed Offering and we will use such proceeds in part to satisfy operating expenses.***

We will have significant flexibility in applying the proceeds of the Proposed Offering and may use the net proceeds from this offering in ways with which you may not agree, or for purposes other than those contemplated at the time of the Proposed Offering. We will also pay operating expenses and may pay other expenses, such as due diligence expenses of potential new investments, from the net proceeds of the Proposed Offering. Our ability to achieve our investment objective may be limited to the extent that net proceeds of the Proposed offering, pending full investment, are used to pay operating expenses.

***Our Board will be authorized to reclassify any unissued shares of common stock into one or more classes of preferred stock, which could convey special rights and privileges to its owners.***

Under MGCL and our charter, our Board will be authorized to classify and reclassify any authorized but unissued shares of stock into one or more classes of stock, including preferred stock. Prior to issuance of shares of each class or series, our Board will be required by MGCL and our charter to set the terms, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption for each class or series. Thus, our Board could authorize the issuance of shares of preferred stock with terms and conditions that could have the effect of delaying, deferring or preventing a transaction or a change in control that might involve a premium price for holders of our common stock or otherwise be in their best interest. The cost of any such reclassification would be borne by our common stockholders. Certain matters under the 1940 Act require the separate vote of the holders of any issued and outstanding preferred stock. For example, holders of preferred stock would vote separately from the holders of common stock on a proposal to cease operations as a BDC. In addition, the 1940 Act provides that holders of preferred stock are entitled to vote separately from holders of common stock to elect two preferred stock

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directors. We currently have no plans to issue preferred stock. The issuance of preferred shares convertible into shares of common stock may also reduce the net income and net asset value per share of our common stock upon conversion, provided, that we will only be permitted to issue such convertible preferred stock to the extent we comply with the requirements of Section 61 of the 1940 Act, including obtaining common stockholder approval. These effects, among others, could have an adverse effect on your investment in our common stock.

***Provisions of the MGCL and of our charter and bylaws could deter takeover attempts and have an adverse impact on the price of our common stock.***

The MGCL and our charter and bylaws contain provisions that may discourage, delay or make more difficult a change in control of Newtek or the removal of our directors. We are subject to the Maryland Business Combination Act (the Business Combination Act), subject to any applicable requirements of the 1940 Act. Our Board has adopted a resolution exempting from the Business Combination Act any business combination between us and any other person, subject to prior approval of such business combination by our Board, including approval by a majority of our independent directors. If the resolution exempting business combinations is repealed or our Board does not approve a business combination, the Business Combination Act may discourage third parties from trying to acquire control of us and increase the difficulty of consummating such an offer. Our bylaws exempt from the Maryland Control Share Acquisition Act (the Control Share Acquisition Act) acquisitions of our stock by any person. If we amend our bylaws to repeal the exemption from the Control Share Acquisition Act, the Control Share Acquisition Act also may make it more difficult for a third party to obtain control of us and increase the difficulty of consummating such a transaction.

We have also adopted measures that may make it difficult for a third party to obtain control of us, including provisions of our charter classifying our Board in three classes serving staggered three-year terms, and authorizing our Board to classify or reclassify shares of our stock in one or more classes or series, to cause the issuance of additional shares of our stock, to amend our charter without stockholder approval and to increase or decrease the number of shares of stock that we have authority to issue. These provisions, as well as other provisions of our charter and bylaws, may delay, defer or prevent a transaction or a change in control that might otherwise be in the best interests of our stockholders.

***Sales of substantial amounts of our common stock in the public market may have an adverse effect on the market price of our common stock.***

All of the common stock to be held by our executive officers, directors, and other stockholders, representing approximately [ ] shares, or approximately [ ]% of our total outstanding shares subsequent to completion of the Proposed Offering (or approximately [ ]% of our total outstanding shares subsequent to completion of the Proposed Offering if the over-allotment option is exercised), will be subject to lock-up periods of at least [ ] days. Upon expiration of this lock-up period, or earlier upon the consent of JMP Securities LLC, Keefe, Bruyette and Woods, Incorporated and William Blair & Company L.L.C., such shares will generally be freely tradable in the public market. Sales of substantial amounts of our common stock, or the availability of such common stock for sale, could adversely affect the prevailing market prices for our common stock. If this occurs and continues, it could impair our ability to raise additional capital through the sale of securities should we desire to do so.

**RISKS ASSOCIATED WITH AN INVESTMENT IN NEWTEK NY**

The following risks are the company's current risks and will remain risks upon the completion of the Reincorporation Transaction.

***Our success depends on our ability to compete effectively in the highly competitive and highly regulated industries in which we operate.***

We face intense competition in providing web hosting services, processing electronic payments and originating SBA loans, as well as in the other industries in which we or our affiliated companies operate. Low barriers to



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entry often result in a steady stream of new competitors entering certain of these businesses. Current and potential competitors are or may be better established, substantially larger and have more capital and other resources than we do. If we expand into additional geographical markets, we will face competition from others in those markets as well. In addition, some of the industries in which we operate are highly regulated and we cannot assure you that we will continue to be in full compliance with applicable laws, rules and regulations. Failure to maintain full compliance or if new laws limit or eliminate some of the benefits of our business lines, our financial condition, results of operations and cash flows could be materially adversely affected.

### ***Our success depends upon our ability to enforce and maintain our intellectual property rights.***

Our success depends, in significant part, on the proprietary nature of our technology, including both patentable and non-patentable intellectual property related to our NewTracker® referral system. We have filed one patent application with the United States Patent office but there can be no assurance that such patent will be granted. To the extent that a competitor is able to reproduce or otherwise capitalize on our technology, it may be difficult, expensive or impossible for us to obtain necessary legal protection. In addition to patent protection of intellectual property rights, we consider elements of our product designs and processes to be proprietary and confidential. We rely upon employee, consultant and vendor non-disclosure agreements and contractual provisions and a system of internal safeguards to protect our proprietary information. However, any of our registered or unregistered intellectual property rights may be challenged or exploited by others in the industry, which might harm our operating results. We have several trademarks and service marks which are of material importance to us. Litigation, which could result in substantial cost to and diversion of our efforts, may be necessary to enforce our trademarks or to determine the enforceability, scope and validity of the proprietary rights of others. Adverse determinations in any litigation or interference proceeding could subject us to costs related to changing brand names and a loss of established brand recognition.

### ***We are dependent upon our senior lending team and our executive committee for our future success, and if we are unable to hire and retain qualified personnel or if we lose any member of our senior lending team or our executive committee our ability to achieve our investment objective could be significantly harmed.***

We depend on our senior lending team and executive committee as well as other key personnel for the identification, final selection, structuring, closing and monitoring of our investments. These executive officers and employees have critical industry experience and relationships that we rely on to implement our business plan. Our future success depends on the continued service of our senior lending team and our executive committee. The departure of any of the members of our senior lending team, our executive committee or a significant number of our senior personnel could have a material adverse effect on our ability to achieve our investment objective. As a result, we may not be able to operate our business as we expect, and our ability to compete could be harmed, which could cause our operating results to suffer.

### ***Our businesses depend upon the ability to utilize the Internet for the conduct of a significant portion of their business; disruption to that system could make it impossible for them to continue to conduct their current businesses.***

Possible disruption to the normal functioning of the Internet through, for example, power failure or terrorist sabotage, could make it impossible for aspects of the lending, electronic payment processing, web hosting and our referral system to function. In the event of a major disruption, and assuming that such disruptions would be long-lived, we would be required to make extensive changes in the way these companies do business. There is no assurance that we will have the time and resources to make these changes.

### ***Our success depends on our ability to use effectively our electronic referral and information processing systems.***

We have developed an electronic referral and processing system for the applications necessary for the sales of each of our business lines other than web site hosting. This system is critical to our ability to process such

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business with a low cost advantage and to obtain referrals from our alliance partners. In particular, the ability to access the referral system and to track the progress of a referred customer is a major feature of the perceived attractiveness of our system. If this referral system should develop problems which we cannot address, it would have a material negative impact on our business strategy. In addition, our ability to provide business services increasingly depends on our capacity to store, retrieve, process and manage significant amounts of data. Interruption or loss of our information processing capabilities through loss of stored data, breakdown or malfunctioning of computer equipment and software systems, telecommunications failure or damage caused by acts of nature or other disruption, could have a material adverse effect on our business, financial condition, results of operations and cash flows.

**Risks Relating to Our Electronic Payment Processing Business**

*NMS relies on a bank sponsor, which has substantial discretion with respect to certain elements of our business practices, in order to process bankcard transactions. If the sponsorship is terminated, and we are not able to secure or transfer the respective merchant portfolio to a new bank sponsor or sponsors, the business, financial condition, results of operations and cash flows of electronic payment processing business could be materially adversely affected. If the sponsorship is terminated, and we are not able to secure or transfer the merchant portfolios to new bank sponsors, we will not be able to conduct our electronic payment processing business. We also rely on service providers who are critical to our business.*

Because we are not a bank, we are unable to belong to and directly access the Visa® and MasterCard® bankcard associations. The Visa® and MasterCard® operating regulations require us to be sponsored by a bank in order to process bankcard transactions. We are currently sponsored by two banks. If the sponsorship is terminated and we are unable to secure a bank sponsor for the merchant portfolios, we will not be able to process bankcard transactions for the affected portfolios. Consequently, the loss of both of our sponsorships would have a material adverse effect on our business. Furthermore, our agreement with our sponsoring banks gives the sponsoring banks substantial discretion in approving certain elements of our business practices, including our solicitation, application and qualification procedures for merchants, the terms of our agreements with merchants, the processing fees that we charge, our customer service levels and our use of independent sales organizations and independent sales agents. We cannot guarantee that our sponsoring banks' actions under these agreements will not be detrimental to us.

Other service providers, some of whom are our competitors, are necessary for the conduct of our business. The termination by our service providers of these arrangements with us or their failure to perform these services efficiently and effectively may adversely affect our relationships with the merchants whose accounts we serve and may cause those merchants to terminate their processing agreements with us.

*If NMS or its processors or bank sponsors fail to adhere to the standards of the Visa® and MasterCard® bankcard associations, our registrations with these associations could be terminated and we could be required to stop providing payment processing services for Visa® and MasterCard®.*

Substantially all of the transactions NMS processes involve Visa® or MasterCard®. If we, our bank sponsors or our processors fail to comply with the applicable requirements of the Visa® and MasterCard® bankcard associations, Visa® or MasterCard® could suspend or terminate our registration. The termination of our registration or any changes in the Visa® or MasterCard® rules that would impair our registration could require us to stop providing payment processing services, which would have a material adverse effect on our business.

*On occasion, NMS experiences increases in interchange and sponsorship fees. If we cannot pass along these increases to our merchants, our profit margins will be reduced.*

Our electronic payment processing subsidiary pays interchange fees or assessments to bankcard associations for each transaction we process using their credit, debit and gift cards. From time to time, the bankcard associations

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increase the interchange fees that they charge processors and the sponsoring banks, which generally pass on such increases to us. From time to time, our sponsoring banks increase their fees as well. If we are not able to pass these fee increases along to merchants through corresponding increases in our processing fees, our profit margins in this line of business will be reduced.

***Unauthorized disclosure of merchant or cardholder data, whether through breach of our computer systems or otherwise, could expose us to liability and business losses.***

Through our electronic payment processing subsidiary, we collect and store sensitive data about merchants and cardholders, and we maintain a database of cardholder data relating to specific transactions, including payment, card numbers and cardholder addresses, in order to process the transactions and for fraud prevention and other internal processes. If anyone penetrates our network security or otherwise misappropriates sensitive merchant or cardholder data, we could be subject to liability or business interruption. While we subject these systems to periodic independent testing and review, we cannot guarantee that our systems will not be penetrated in the future. If a breach of our system occurs, we may be subject to liability, including claims for unauthorized purchases with misappropriated card information, impersonation or other similar fraud claims. Similar risks exist with regard to the storage and transmission of such data by our processors. In the event of any such a breach, we may also be subject to a class action lawsuit. Small businesses are less prepared for the complexities of safeguarding cardholder data than their larger counterparts. In the event of noncompliance by a customer of card industry rules, we could face fines from payment card networks. There can be no assurance that we would be able to recover any such fines from such customer.

***NMS is liable if our processing merchants refuse or cannot reimburse charge-backs resolved in favor of their customers.***

If a billing dispute between a merchant and a cardholder is not ultimately resolved in favor of the merchant, the disputed transaction is charged back to the merchant's bank and credited to the account of the cardholder. If we or our processing banks are unable to collect the charge-back from the merchant's account, or if the merchant refuses or is financially unable due to bankruptcy or other reasons to reimburse the merchant's bank for the charge-back, we bear the loss for the amount of the refund paid to the cardholder's bank. Most of our merchants deliver products or services when purchased, so a contingent liability for charge-backs is unlikely to arise, and credits are issued on returned items. However, some of our merchants do not provide services until sometime after a purchase, which increases the potential for contingent liability and future charge backs. We and the sponsoring bank can require that merchants maintain cash reserves under our control to cover charge back liabilities but such reserves may not be sufficient to cover the liability or may not even be available to us in the event of a bankruptcy or other legal action.

***NMS has potential liability for customer or merchant fraud.***

Credit card fraud occurs when a merchant's customer uses a stolen card (or a stolen card number in a card-not-present transaction) to purchase merchandise or services. In a traditional card-present transaction, if the merchant swipes the card, receives authorization for the transaction from the card issuing bank and verifies the signature on the back of the card against the paper receipt signed by the customer, the card issuing bank remains liable for any loss. In a fraudulent card-not-present transaction, even if the merchant receives authorization for the transaction, the merchant is liable for any loss arising from the transaction. Many of our business customers are small and transact a substantial percentage of their sales over the Internet or by telephone or mail orders. Because their sales are card-not-present transactions, these merchants are more vulnerable to customer fraud than larger merchants, and we could experience charge-backs arising from cardholder fraud more frequently with these merchants.

Merchant fraud occurs when a merchant, rather than a customer, knowingly uses a stolen or counterfeit card or card number to record a false sales transaction or intentionally fails to deliver the merchandise or services sold in an otherwise valid transaction. Anytime a merchant is unable to satisfy a charge-back, we are responsible for that

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charge-back unless we have required that a cash reserve be established. We cannot assure that the systems and procedures we have established to detect and reduce the impact of merchant fraud are or will be effective. Failure to effectively manage risk and prevent fraud could increase our charge-back liability and adversely affect our results of operations.

***Our payment processing systems may fail due to factors beyond our control, which could interrupt our business or cause us to lose business and likely increase our costs.***

We depend on the uninterrupted operations of our computer network systems, software and our processors' data centers. Defects in these systems or damage to them due to factors beyond our control could cause severe disruption to our business and other material adverse effects on our payment processing businesses.

## **Risks Relating to Our Business of Website Hosting**

***NTS operates in a highly competitive industry in which technological change can be rapid.***

The information technology business and its related technology involve a broad range of rapidly changing technologies. Our equipment and the technologies on which it is based may not remain competitive over time, and others may develop superior technologies that render our products non-competitive without significant additional capital expenditures. Some of our competitors are significantly larger and have substantially greater market presence as well as greater financial, technical, operational, marketing and other resources and experience than we do. In the event that such a competitor expends significant sales and marketing resources in one or several markets, we may not be able to compete successfully in such markets. We believe that competition will continue to increase, placing downward pressure on prices. Such pressure could adversely affect our gross margins if we are not able to reduce our costs commensurate with such price reductions. There can be no assurances that we will remain competitive.

***Our website hosting business depends on the efficient and uninterrupted operation of its computer and communications hardware systems and infrastructure.***

Despite precautions taken by NTS against possible failure of its systems, interruptions could result from natural disasters, power loss, the inability to acquire fuel for our backup generators, telecommunications failure, terrorist attacks and similar events. NTS also leases telecommunications lines from local, regional and national carriers whose service may be interrupted. Our business, financial condition and results of operations could be harmed by any damage or failure that interrupts or delays our operations. There can be no assurance that our insurance will cover all of the losses or compensate NTS for the possible loss of clients occurring during any period that NTS is unable to provide service.

***Our inability to maintain the integrity of our infrastructure and the privacy of confidential information would materially affect our business.***

The NTS infrastructure is potentially vulnerable to physical or electronic break-ins, viruses or similar problems. If our security measures are circumvented, it could jeopardize the security of confidential information stored on NTS's systems, misappropriate proprietary information or cause interruptions in NTS's operations. We may be required to make significant additional investments and efforts to protect against or remedy security breaches. Security breaches that result in access to confidential information could damage our reputation and expose us to a risk of loss or liability. The security services that NTS offers in connection with customers' networks cannot assure complete protection from computer viruses, break-ins and other disruptive problems. The occurrence of these problems may result in claims against NTS or us or liability on our part. These claims, regardless of their ultimate outcome, could result in costly

litigation and could harm our business and reputation and impair NTS's ability to attract and retain customers.



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***Our business depends on Microsoft Corporation and others for the licenses to use software as well as other intellectual property in the website hosting business.***

NTS's managed technology business is built on technological platforms relying on the Microsoft Windows® products and other intellectual property that NTS currently licenses. As a result, if we are unable to continue to have the benefit of those licensing arrangements or if the products upon which NTS's platform is built become obsolete, our business could be materially and adversely affected.

## **Risks Relating to Our Small Business Finance Businesses**

***We depend on outside financing.***

Our SBA lending and receivables financing businesses depend on outside financing to support their loan making and acquisition of receivables. Termination of the credit lines for any reason would have a material adverse effect on our business, including but not limited to, the liquidation of the guaranteed loan and receivables portfolios to pay down the lines. If funds from such sale were insufficient to completely pay down the line of credit, the holding company and certain of its subsidiaries would be responsible for any short fall. In December 2010 and again in December 2011 and 2013, the Company securitized a portion of its unguaranteed, retained loan portions of its SBA 7(a) loans; the Company anticipates using securitizations to continue to fund future loan creation, assuming the market for such securitizations continues to exist and future securitizations can be executed on an economic basis beneficial to the Company. Although a securitization potentially provides a long term funding source for the Company's SBA lender, it does not provide liquidity in the short term for funding SBA loans. Because its resources will be insufficient to maintain current SBA loan originations, failure of our SBA lender to arrange a line to fund and warehouse the origination of unguaranteed, retained loan portions, beyond the current maturity date in February 2015, would materially impact our business. In addition, our receivables financing company depends on a line of credit which has been extended to mature in February 2016. Loss of this line and our inability to replace it would materially impact the business.

***We have specific risks associated with Small Business Administration (SBA) loans.***

We have generally sold the guaranteed portion of SBA loans in the secondary market. Such sales have resulted in our earning premiums and creating a stream of servicing income. There can be no assurance that we will be able to continue originating these loans, or that a secondary market will exist for, or that we will continue to realize premiums upon the sale of the guaranteed portions of the SBA 7(a) loans.

Since we sell the guaranteed portion of substantially our entire SBA 7(a) loan portfolio, we incur credit risk on the non-guaranteed portion of the SBA loans. We share pro rata with the SBA in any recoveries. In the event of default on an SBA loan, our pursuit of remedies against a borrower is subject to SBA approval, and where the SBA establishes that its loss is attributable to deficiencies in the manner in which the loan application has been prepared and submitted, the SBA may decline to honor its guarantee with respect to our SBA loans or it may seek the recovery of damages from us. If we should experience significant problems with our underwriting of SBA loans, such failure to honor a guarantee or the cost to correct the problems could have a material adverse effect on us. Although the SBA has never declined to honor its guarantees with respect to SBA loans made by us since our acquisition of the lender in 2003, no assurance can be given that the SBA would not attempt to do so in the future.

***Curtailed of the government-guaranteed loan programs could cut off an important segment of our business.***

Although the program has been in existence since 1953, there can be no assurance that the federal government will maintain the SBA program, or that it will continue to guarantee loans at current levels. If we cannot continue making and selling government-guaranteed loans, we will generate fewer origination fees and our ability to generate gains on sale of loans will decrease. From time-to-time, the government agencies that guarantee these loans reach their internal budgeted limits and cease to guarantee loans for a stated time period. In addition, these

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agencies may change their rules for loans. Also, Congress may adopt legislation that would have the effect of discontinuing or changing the programs. Non-governmental programs could replace government programs for some borrowers, but the terms might not be equally acceptable. If these changes occur, the volume of loans to small business and industrial borrowers of the types that now qualify for government-guaranteed loans could decline, as could the profitability of these loans.

### ***An increase in non-performing assets would reduce our income and increase our expenses.***

If our level of non-performing assets in our SBA lending and receivable financing businesses rise in the future, it could adversely affect our revenue and earnings. Non-performing assets are primarily loans on which borrowers are not making their required payments or receivables for which the customer has not made timely payment. Non-performing assets also include loans that have been restructured to permit the borrower to have smaller payments and real estate that has been acquired through foreclosure of unpaid loans. To the extent that our financial assets are non-performing, we will have less cash available for lending and other activities.

### ***Our reserve for credit losses may not be sufficient to cover unexpected losses.***

Our business depends on the behavior of our customers. In addition to our credit practices and procedures, we maintain a reserve for credit losses on our SBA loans and accounts receivable portfolio, which management has judged to be adequate given the loans we originate and receivables we purchase. We periodically review our reserve for adequacy considering current economic conditions and trends, collateral values, charge-off experience, levels of past due loans and non-performing assets, and we adjust our reserve accordingly. However, because of the poor current economic conditions caused by the recession, our reserves may prove inadequate, which could have a material adverse effect on our financial condition and results of operations.

### ***We could be adversely affected by weakness in the residential housing and commercial real estate markets.***

Continued weakness in residential home and commercial real estate values could impair our ability to collect on defaulted SBA loans as real estate is pledged in many of our SBA loans as part of the collateral package.

## **Risks Relating to Our Insurance Agency Business**

### ***We depend on third parties, particularly property and casualty insurance companies, to supply the products marketed by our agents.***

Our contracts with property and casualty insurance companies typically provide that the contracts can be terminated by the supplier without cause. Our inability to enter into satisfactory arrangements with these suppliers or the loss of these relationships for any reason would adversely affect the results of our new insurance business. Also, our inability to obtain these products at competitive prices could make it difficult for us to compete with larger and better capitalized providers of such insurance services.

### ***If we fail to comply with government regulations, our insurance agency business could be adversely affected.***

Our insurance agency business is subject to comprehensive regulation in the various states in which we plan to conduct business. Our success will depend in part upon our ability to satisfy these regulations and to obtain and maintain all required licenses and permits. Our failure to comply with any statutes and regulations could have a material adverse effect on us. Furthermore, the adoption of additional statutes and regulations, changes in the interpretation and enforcement of current statutes and regulations or the expansion of our business into jurisdictions

that have adopted more stringent regulatory requirements than those in which we currently conduct business could have a material adverse effect on us.

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*We do not have any control over the commissions our insurance agency expects to earn on the sale of insurance products which are based on premiums and commission rates set by insurers and the conditions prevalent in the insurance market.*

Our insurance agency earns commissions on the sale of insurance products. Commission rates and premiums can change based on the prevailing economic and competitive factors that affect insurance underwriters. In addition, the insurance industry has been characterized by periods of intense price competition due to excessive underwriting capacity and periods of favorable premium levels due to shortages of capacity. We cannot predict the timing or extent of future changes in commission rates or premiums or the effect any of these changes will have on the operations of our insurance agency.

## **Risks Relating to Our Payroll Processing Business**

*Unauthorized disclosure of employee data, whether through breach of our computer systems or otherwise, could expose us to liability and business losses.*

Through our payroll processing subsidiary, we collect and store sensitive data about individuals, in order to process the transactions and for other internal processes. If anyone penetrates our network security or otherwise misappropriates sensitive individual data, we could be subject to liability or business interruption. While we subject these systems to periodic independent testing and review, we cannot guarantee that our systems will not be penetrated in the future. If a breach of our system occurs, we may be subject to liability, including claims for impersonation or other similar fraud claims. In the event of any such a breach, we may also be subject to a class action lawsuit. Any significant violations of data privacy could result in the loss of business, litigation and regulatory investigations and penalties that could damage our reputation, and the growth of our business could be adversely affected.

*Our systems may be subject to disruptions that could adversely affect our business and reputation.*

Our payroll business relies heavily on our payroll, financial, accounting and other data processing systems. If any of these systems fails to operate properly or becomes disabled even for a brief period of time, we could suffer financial loss, a disruption of our business, liability to clients, regulatory intervention or damage to our reputation. We have disaster recovery plans in place to protect our businesses against natural disasters, security breaches, military or terrorist actions, power or communication failures or similar events. Despite our preparations, our disaster recovery plans may not be successful in preventing the loss of client data, service interruptions, and disruptions to our operations or damage to our important facilities.

*If we fail to adapt our technology to meet client needs and preferences, the demand for our services may diminish.*

Our businesses operate in industries that are subject to rapid technological advances and changing client needs and preferences. In order to remain competitive and responsive to client demands, we continually upgrade, enhance and expand our existing solutions and services. If we fail to respond successfully to technology challenges, the demand for our services may diminish.

*Our payroll business could incur unreimbursed costs or damages due to delays in processing inherent in the banking system.*

Our payroll processing business generally determines the availability of customer (employer) funds prior to making payments to employees or taxing authorities, and such employer funds are generally transferred in to our accounts prior to making payments out. Due to the structure of the banking system however, there are times when we may

make payroll or tax payments and not immediately receive the funds to do so from the employer. There can be no assurance that the procedures we have in place to prevent these occurrences or mitigate the damages will be sufficient to prevent loss to our business.

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**Risks relating to Our Capco Business**

*The Capco programs and the tax credits they provide are created by state legislation and implemented through regulation, and such laws and rules are subject to possible action to repeal or retroactively revise the programs for political, economic or other reasons. Such an attempted repeal or revision would create substantial difficulty for the Capco programs and could, if ultimately successful, cause us material financial harm.*

The tax credits associated with the Capco programs and provided to our Capcos' investors are to be utilized by the investors over a period of time, which is typically ten years. Much can change during such a period and it is possible that one or more states may revise or eliminate the tax credits. Any such revision or repeal could have a material adverse economic impact on our Capcos, either directly or as a result of the Capco's insurer's actions. Any such final state action that jeopardizes the tax credits could result in the provider of our Capco insurance assuming partial or full control of the particular Capco in order to minimize its liability under the Capco insurance policies issued to our investors.

During 2002, a single legislator in Louisiana introduced such a proposed bill, on which no action was taken, and in Colorado in 2003 and 2004 bills to modify (not repeal) its Capco program were introduced; the 2003 Colorado legislation was defeated in a legislative committee. The 2004 Colorado legislation was adopted but implementing regulations made clear the application of the new rules only to investments made after passage. There can be no assurance that we will not be subject to further legislative or regulatory action which might adversely impact our Capco business, or that we will be able to successfully challenge any such action.

*Because our Capcos are subject to requirements under state law, a failure of any of them to meet these requirements could subject the Capco and our stockholders to the loss of one or more Capcos.*

Despite the fact that we have met all applicable minimum requirements of the Capco programs in which we still participate, each Capco remains subject to state regulation until it has invested 100 percent of its funds and otherwise remained in full legal compliance. There can be no assurance that we will continue to be able to do so. A major regulatory violation, while not fatal to our Capco business, would materially increase the cost of operating the Capcos.

**Risks Relating to the Common Shares of Newtek MD and Newtek NY**

*Our shares may be delisted.*

If we do not continue to meet the requirements for continued listing on the NASDAQ Capital Market our common shares could be delisted. One such requirement is maintaining a minimum bid price for shares of \$1.00. As compliance with the minimum trading price for common shares is beyond our control, there can be no assurance that the price will remain above \$1.00 indefinitely and, therefore, no assurance that the threat of delisting can be avoided. In the event that the common shares are delisted, there can be no assurance that an active public market for our shares can be sustained or that current trading levels can be sustained or not diminished.

*The application of the penny stock rules to our common shares if we are no longer listed on the NASDAQ Capital Market could limit the trading and liquidity of the common shares, adversely affect the market price of our Common Shares and increase your transaction costs to sell those shares.*

If we are no longer listed on the NASDAQ Capital Market, as long as the trading price of our common shares is below \$5.00 per share, open-market trading will be subject to the penny stock rules, which impose additional sales practice requirements on broker-dealers who sell securities to persons other than established customers and accredited

investors and otherwise have the effect of limiting the trading activity of the common shares, reducing the liquidity of an investment in the common shares and increasing the transaction costs for their sales and purchases.



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***Two of our stockholders, one a current and one a former executive officer, beneficially own in the aggregate approximately 24% of our common shares, and are able to exercise significant influence over the outcome of most stockholder actions.***

Although there is no agreement or understanding between them, because of their ownership of our shares, Messrs. Barry Sloane and Jeffrey G. Rubin will be able to have significant influence over actions requiring stockholder approval, including the election of directors, the adoption of amendments to the certificate of incorporation, approval of stock incentive plans and approval of major transactions such as a merger or sale of assets. This could delay or prevent a change in control of our company, deprive our stockholders of an opportunity to receive a premium for their common shares as part of a change in control and have a negative effect on the market price of our common shares.

***Future issuances of our common shares or other securities, including preferred shares, may dilute the per share book value of our common shares or have other adverse consequences to our common stockholders.***

Our Board has the authority, without the action or vote of our stockholders, to issue all or part of the approximately 19,000,000 authorized but unissued shares of our common stock. Our business strategy relies upon investments in and acquisitions of businesses using the resources available to us, including our common shares which number will increase as a result of the Reverse Stock Split. We have made acquisitions during each of the years from 2002 to 2005 involving the issuance of our common shares and we expect to make additional acquisitions in the future using our common shares. Additionally, we anticipate granting additional options or restricted stock awards to our employees and directors in the future. We may also issue additional securities, through public or private offerings, in order to raise capital to support our growth, including in connection with possible acquisitions or in connection with purchases of minority interests in affiliated companies or Capcos. Future issuances of our common shares will dilute the percentage of ownership interest of current stockholders and could decrease the per share book value of our common shares. In addition, option holders may exercise their options at a time when we would otherwise be able to obtain additional equity capital on more favorable terms.

Pursuant to Newtek NY's certificate of incorporation, our Board is authorized to issue, without action or vote of our stockholders, up to 1,000,000 shares of "blank check" preferred shares, meaning that our board of directors may, in its discretion, cause the issuance of one or more series of preferred shares and fix the designations, preferences, powers and relative participating, optional and other rights, qualifications, limitations and restrictions thereof, including the dividend rate, conversion rights, voting rights, redemption rights and liquidation preference, and to fix the number of shares to be included in any such series. The preferred shares so issued may rank superior to the common shares with respect to the payment of dividends or amounts upon liquidation, dissolution or winding-up, or both. In addition, the shares of preferred stock may have class or series voting rights.

***The authorization and issuance of "blank check" preferred shares could have an anti-takeover effect detrimental to the interests of our stockholders.***

Newtek NY's certificate of incorporation allows our Board to issue preferred shares with rights and preferences set by the Board without further stockholder approval. The issuance of these "blank check" preferred shares could have an anti-takeover effect detrimental to the interests of our stockholders. For example, in the event of a hostile takeover attempt, it may be possible for management and the board to impede the attempt by issuing the preferred shares, thereby diluting or impairing the voting power of the other outstanding common shares and increasing the potential costs to acquire control of us. Our Board has the right to issue any new shares, including preferred shares, without first offering them to the holders of common shares, as they have no preemptive rights.



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***We know of no other publicly-held company that sponsors and operates Capcos as a material part of its business. As such, there are, to our knowledge, no other companies against which investors may compare our Capco business segment, and its operations, results of operations and financial and accounting structures.***

In the absence of any meaningful peer group comparisons for our Capco business, investors may have a difficult time understanding and judging the strength of our business. This, in turn, may have a depressing effect on the value of our shares.

***Provisions of our certificate of incorporation and New York law place restrictions on our stockholders' ability to recover from our directors for breaches of their duties.***

As permitted by the NYBCL, our amended and restated certificate of incorporation limits the liability of our directors for monetary damages for breach of a director's fiduciary duty except for liability in certain instances. As a result of these provisions and the NYBCL, stockholders have restrictions and limitations upon their rights to recover from directors for breaches of their duties. In addition, our certificate of incorporation provides that we must indemnify our directors and officers to the fullest extent permitted by law.

***Failure to maintain effective internal controls over financial reporting may lead investors and others to lose confidence in our financial data.***

In evaluating the effectiveness of its internal controls over financial reporting in connection with the preparation of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2012, management concluded that there was a material weakness in internal control over financial reporting related to accounting for one bank account holding funds belonging to customers of our merchant processing subsidiary. These material weaknesses made it possible for a former senior manager to utilize funds in this account to conceal knowledge of growing merchant processing chargeback losses among a group of merchants solicited by one of the Company's agents. Following discovery, this resulted in the need for the restatement of the Company's financial statements for the year ended December 31, 2011, together with financial statements for the quarters ended March 31, 2012, June 30, 2012 and September 30, 2012, the periods over which these losses occurred.

The Company has remediated these material weaknesses and has, among other things, replaced the manager responsible, strengthened its internal control team by hiring a very seasoned Chief Risk Officer, augmented its finance team and has implemented and modified certain accounting and internal control procedures. If the Company fails to otherwise maintain effective controls over financial reporting in the future, it could again result in a material misstatement of its financial statements that might not be prevented or detected on a timely basis and which could then cause investors and others to lose confidence in the Company's financial statements, which in turn could have a negative effect on the value of the Company's equity securities.

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**SPECIAL MEETING OF NEWTEK NY**

**Date, Time and Place of Newtek NY Special Meeting**

The Special Meeting of Stockholders (the Special Meeting ) will be held at the offices of Newtek NY at 212 West 35th Street, 2nd Floor, New York, NY 10001 on [ ], 2014 at [ ] a.m., local time.

**Voting and Revocation of Proxies**

Proxies solicited by the Board of Newtek NY will be voted in accordance with the direction given therein. If any other matters are properly brought before the Special Meeting as to which proxies confer discretionary authority, the persons named in the proxy will vote the shares represented thereby on such matters as determined by the Board. The proxies solicited by the Board confer discretionary authority on the persons named therein to vote with respect to matters incident to the conduct of the Special Meeting and with respect to any other matter presented at the Special Meeting if notice of such matter has not been delivered to us within a reasonable time before the date of this Proxy Statement/ Prospectus. Proxies marked as abstentions will not be counted as votes cast. In addition, shares held in street name that have been designated by brokers on proxy cards as not voted ( broker non-votes ) will not be counted as votes cast. Proxies marked as abstentions or as broker non-votes, however, will be treated as shares present for purposes of determining whether a quorum is present.

**How Do You Exercise Your Rights to Vote on the Proposals?**

You may vote using any of the following methods:

**By Mail** Stockholders of record may submit proxies by completing, signing and dating each proxy card received and returning it in the prepaid envelope. Sign your name exactly as it appears on the proxy. If you return your signed proxy but do not indicate your voting preferences, your shares will be voted on your behalf FOR each of the proposals listed on the proxy. Stockholders who hold shares beneficially in street name may provide voting instructions by mail by completing, signing and dating the voting instruction forms provided by their brokers, banks or other nominees.

**By Telephone** Stockholders of record may submit proxies by following the telephone voting instructions on each proxy card. Most stockholders who hold shares beneficially in street name may provide voting instructions by telephone by calling the number specified on the voting instruction form provided by their brokers, banks or nominees. Please check the voting instruction form for telephone voting availability. Please be aware that if you submit voting instructions by telephone, you may incur costs such as telephone access charges for which you will be responsible. The telephone voting facilities will close at 11:59 p.m., Eastern Time, the day before the Special Meeting date.

**By Internet** Stockholders of record with internet access may submit proxies by following the internet voting instructions on their proxy cards. Most stockholders who hold shares beneficially in street name may provide voting instructions by accessing the website specified on the voting instruction form provided by their brokers, banks or nominees. Please check the voting instruction form for internet voting availability. Please be aware that if you vote over the internet, you may incur costs such as internet access charges for

which you will be responsible. The internet voting facilities will close at 11:59 p.m., Eastern Time, the day before the Special Meeting date.

**In Person at the Special Meeting** Shares held in your name as the stockholder of record may be voted at the Special Meeting. Shares held beneficially in street name may be voted in person only if you obtain a legal proxy from the broker, bank or nominee that holds your shares giving you the right to vote the shares. *Even if you plan to attend the Special Meeting, we recommend that you also submit your proxy or voting instructions or vote by telephone or the internet so that your vote will be counted if you later decide not to attend the Special Meeting.*

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Stockholders who execute the enclosed proxy card retain the right to revoke such proxies at any time prior to voting. Unless so revoked, the shares represented by properly executed proxies will be voted at the Special Meeting and all adjournments thereof. Proxies may be revoked at any time prior to exercise by written notice to our Secretary or by the filing of a properly executed, later-dated proxy. A proxy will not be voted if a stockholder attends the Special Meeting and votes in person. The presence of a stockholder at the Special Meeting alone will not revoke such stockholder's proxy.

## **Voting Securities**

The securities which can be voted at the Special Meeting consist of the issued and outstanding shares of Newtek NY's common stock, par value \$0.02 per share (the Shares). Stockholders of record as of the close of business on [ ], 2014 (the Record Date) are entitled to one vote for each Share then held on all matters. As of the Record Date, [ ] Shares were issued and outstanding (excluding treasury Shares which do not vote). The presence, in person or by proxy, of at least a majority of the total number of Shares outstanding and entitled to vote will be necessary to constitute a quorum at the Special Meeting.

Persons and groups owning in excess of 5% of the Shares are required to file certain reports regarding such ownership with the SEC pursuant to the Exchange Act.

## **Required Vote**

The matter described in Proposal I Approval of the Reincorporation Transaction, requires the affirmative vote of a majority of the outstanding Shares entitled to vote at the Special Meeting. Abstentions and Broker Non-Votes will have the effect of a vote against this proposal.

The matter described in Proposal II Approval of the Reverse Stock Split requires the affirmative vote of a majority of the outstanding Shares entitled to vote at the Special Meeting. Abstentions and Broker Non-Votes will have the effect of a vote against this proposal.

The matter described in Proposal III Approval to Sell Shares Below Net Asset Value requires the affirmative vote of (1) a majority of the outstanding Shares entitled to vote at the Special Meeting; and (2) a majority of the outstanding Shares entitled to vote at the Special Meeting that are not held by affiliated persons of us, which includes our officers, directors, employees, and 5% share holders. Because we intend to elect to be regulated as a BDC under the 1940 Act, the 1940 Act definition of a majority of the outstanding shares must be used for purposes of this proposal. The 1940 Act defines a majority of the outstanding shares as: (1) 67% or more of the voting securities present at the Special Meeting if the holders of more than 50% of the outstanding voting securities of such company are present or represented by proxy; or (2) 50% of the outstanding voting securities of the company, whichever is less. Abstentions and Broker Non-Votes will have the effect of a vote against this proposal.

The matter described in Proposal IV Approval of a New Equity Compensation Plan requires the affirmative vote of a majority of the Shares cast in person or by proxy at the Special Meeting. Abstentions are treated as Shares cast and will be counted as a vote Against this proposal. Broker Non-Votes will not be included in determining the number of Shares cast and, as a result, will have no effect on this proposal.

The matter described in Proposal V Approval to Adjourn to Solicit Additional Votes requires the affirmative vote of a majority of the Shares cast in person or by proxy at the Special Meeting. Abstentions are treated as Shares cast and will be counted as a vote Against this proposal. Broker Non-Votes will not be included in determining the number of Shares cast and, as a result, will have no effect on this proposal.

If there are not enough votes to approve any proposals at the Special Meeting, the stockholders who are represented may adjourn the Special Meeting to permit the further solicitation of proxies if Proposal V is approved.

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**Confidentiality of Proxies**

The Company's policy is that proxies identifying individual stockholders are private except as necessary to determine compliance with law, to assert or defend legal claims, in a contested proxy solicitation or in the event that a stockholder makes a written comment on a proxy card or an attachment to it.

**Cost of Proxy Solicitations; Stockholder Communications**

The cost of solicitation of proxies will be borne by the Company. The Company will reimburse brokerage firms and other custodians, nominees and fiduciaries for reasonable expenses incurred by them in sending proxy material to the beneficial owners of Shares. In addition to solicitations by mail, directors, officers and regular employees of the Company may solicit proxies personally, by telephone or by email without additional compensation. The Company has engaged Georgeson and Company as its proxy solicitor.

Stockholders may send written communications to the Board to the attention of the Board of Directors, c/o Newtek Business Services, Inc., 212 West 35th Street, 2nd Floor, New York, New York 10001. Stockholder communications must be signed by the stockholder and identify the number of Shares held by the stockholder. Each properly submitted stockholder communication will be provided to the Board at its next meeting or, if such communication requires more immediate attention, it will be forwarded to the directors promptly after receipt.

**PROPOSAL I APPROVAL OF THE REINCORPORATION TRANSACTION**

We are seeking approval of the Reincorporation Transaction for the purpose of reincorporating the Company in the state of Maryland in anticipation of the election by the Company to be regulated as a BDC under the 1940 Act. The Merger Agreement that will effect the Reincorporation Transaction is included as *Appendix A* to this Proxy Statement/Prospectus. As a result of the Reincorporation Transaction, Newtek NY will cease to exist and Newtek MD will succeed to Newtek NY's operations as the sole surviving entity. Newtek NY's officers and directors immediately before the Reincorporation Transaction will become Newtek MD's officers and directors. References herein to the Company, we, us or our refer to Newtek NY prior to the Reincorporation Transaction and Newtek MD after the Reincorporation Transaction.

For the reasons set forth below, the Board believes that approval of the Reincorporation Transaction is in the best interests of the Company and its stockholders and has approved the Reincorporation Transaction.

Pursuant to NYBCL, if the Reincorporation Transaction is approved by the stockholders of the Company, stockholders who dissent from the Reincorporation Transaction will not be entitled to appraisal rights with respect to their Shares.

**We will not effectuate the BDC Election or take action on any other proposal included in this Proxy Statement/Prospectus, other than Proposal V, UNLESS our stockholders approve this Proposal I and each of the other**



**proposals set forth herein. Our Board of Directors does not reserve any additional rights to effectuate the BDC Election.**

### **Reasons for the Reincorporation Transaction**

The purpose of the Reincorporation Transaction is to change the Company's state of incorporation from New York to Maryland so that the Company is governed by the MGCL rather than by the NYBCL. In connection therewith, the Company will adopt a new charter and bylaws. The Board believes that this new corporate structure will best position the Company to operate as an investment company in connection with its proposed BDC Election. Specifically, the MGCL provides administrative advantages and operating efficiencies to investment companies that are not permissible under the NYBCL. In addition, the MGCL contains a

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well-established body of investment company precedent that may be relevant in deciding issues pertaining to the Company's operation as a BDC. As of May 2, 2014, seven out of the ten largest BDCs, based on market capitalization, were organized under the MGCL. Finally, Newtek MD's charter and bylaws will provide us greater flexibility in managing our capital structure.

**BDC and RIC Elections**

If the Reincorporation Transaction is approved and effectuated, we intend to file an election to be regulated as a BDC under the 1940 Act and operate thereafter as an internally managed, non-diversified closed-end investment company. We also intend to elect to be treated as a regulated investment company ( RIC ) under Subchapter M of the Internal Revenue Code (the Code ) for U.S. federal income tax purposes beginning with our 2015 taxable year, which is our first taxable year that begins after our election to be a BDC. As a RIC, we generally will not have to pay corporate-level federal income taxes on any ordinary income or capital gains that we distribute to our stockholders. We will be taxed as a regular corporation (a C corporation ) under subchapter C of the Internal Revenue Code (the Code ) for U.S. federal income tax purposes for our 2014 taxable year as the RIC election will be effective as of January 1, 2015. We will not complete the Reincorporation Transaction and make the BDC Election unless our shareholders approve this Proposal I.

As a BDC, we will be subject to only certain provisions of the 1940 Act. We will also continue to be subject to the Securities Act of 1933, as amended, or the Securities Act, and the Exchange Act. In general, BDCs make investments in private or thinly-traded public companies in the form of long-term debt or equity capital, with the goal of generating current income and/or capital growth. As a BDC, we intend to expand our small business financing platform by making debt and equity investments directly, as well as through our financing subsidiaries. Because we will be internally managed by our executive officers, under the supervision of our Board of Directors, and will not depend on a third party investment advisor, we will not pay investment advisory fees and all of our income will be available to pay our operating costs and to make distributions to our stockholders. NSBF, a primary component of our small business finance platform, will continue to be treated as our consolidated subsidiary, and CDS, another component of our small business platform, will be treated as a non-consolidated portfolio company. Upon effectuating the BDC Election, certain of our historical operating subsidiaries, including but not limited to NMS and NTS, will be treated as non-consolidated portfolio companies (our controlled portfolio companies ). The revenues that our controlled portfolio companies generate, after deducting operational expenses and taxes, may be distributed to us in the form of dividend or interest income in connection with our equity or debt investments in such entities. As a BDC, our board of directors will determine quarterly the fair value of our controlled portfolio companies in a similar manner as our other investments.

Set forth below is a diagram of our organizational structure following the BDC Election:

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In connection with the BDC Election, we intend to undertake a public offering of BDC Shares of up to \$50 million in the Proposed Offering. Any proceeds from the Proposed Offering will be used primarily to expand our small business finance platform, make direct investments in portfolio companies in accordance with our investment objective and strategies described herein and for general corporate purposes. We cannot assure you when the Proposed Offering will be completed, or if completed, that the Proposed Offering will provide sufficient liquidity to meet our investment objective. The size of the Proposed Offering could be material, and could have a materially dilutive effect on our existing stockholders. This Proxy Statement/ Prospectus is not an offer to sell securities in the Proposed Offering. Securities may not be offered or sold in the United States absent registration with the SEC or an applicable exemption from SEC registration requirements.

**Operating as a BDC**

We believe that transitioning to a BDC and RIC will provide us with a business structure that will allow us to operate as an investment company and expand our lending activities as well as allow us to build a collateral base that we believe will provide us with access to lower-cost capital. As a BDC, a significant portion of the Company's cost of capital will be comprised of its cost of debt. A substantial portion of the Company's debt will be drawn from revolving credit facilities underwritten by banks. Funds drawn from such facilities are typically priced at a modest margin over a benchmark interest rate, such as LIBOR. Given the depression of global interest rates, BDCs have generally enjoyed access to lower interest rates on their revolving credit facilities in recent years. Recently, BDCs have also issued medium term publicly-traded notes, which also provide capital at lower interest rates, in some cases only a few percentage points higher than the interest rates of a revolving credit facility. Upon completing the BDC Election, the Company believes that it will be able to access these methods of debt financing to lower its overall cost of capital. As a BDC, we will seek to generate both current income and capital appreciation primarily through loans originated by our small business finance platform and our equity investments in certain portfolio companies that we control. While our primary investment focus as a BDC will be making loans to small businesses, we may also make opportunistic investments in larger or smaller companies. As a BDC, we do not expect our small business lending practices will differ from the current lending practices of NSBF, although given the flexibility we will have to grow our lending activities without regard to our overall assets as an investment company, we intend such lending practices to comprise a greater portion of our operations as we expand our small business finance platform. We expect our controlled portfolio companies will provide us with an extensive network of business relationships that will supplement our referral sources and that we believe will help us to maintain a robust pipeline of lending opportunities and expand our small business finance platform. Specifically, we believe our controlled portfolio companies combined with our small business finance platform will provide us with a network of business relationships that will allow us to cross-sell our financing options and further establish us as a one-stop shop for small businesses.

As a BDC, we will be required to meet regulatory tests, including the requirement to invest at least 70% of our gross assets in qualifying assets. Qualifying assets generally include securities of private or thinly traded public U.S. companies and cash, cash equivalents, U.S. government securities and high-quality debt investments that mature in one year or less. We intend to invest primarily in qualifying assets once we elect to become a BDC, although we may invest from time to time in non-qualifying assets on an opportunistic basis to the extent we believe doing so would be accretive to our shareholders. In addition, as a BDC, we will not be permitted to incur indebtedness unless immediately after such borrowing we have an asset coverage for total borrowings of at least 200% (i.e., the amount of debt may not exceed 50% of the value of our total assets). The 1940 Act also contains prohibitions and restrictions relating to transactions between BDCs and their directors and officers and principal underwriters and certain other related persons and requires that a majority of the directors be persons other than interested persons, as that term is defined in the 1940 Act. Additionally, the 1940 Act provides that we may not change the nature of our business so as to cease to be, or to withdraw our election as, a BDC unless approved by a majority of our outstanding voting securities. See Regulation as a Business Development Company.

We will be taxed as a C corporation for our 2014 taxable year and we intend to elect to be treated as a RIC beginning with our 2015 taxable year. As a RIC, we generally will not have to pay corporate-level federal

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income taxes on any ordinary income or capital gains that we distribute to our stockholders. Following the Reincorporation Transaction and during such time as we are taxed as a C corporation, we expect to make distributions in an amount approximately equal to our pre-tax income. We believe this will allow us to maintain a consistent distribution rate before and after electing to be treated as a RIC. We expect our quarterly distributions during our first full year of operations as a BDC to be at an annual rate equal to approximately 9%-10% of our estimated net asset value. To obtain and maintain our RIC tax treatment, we must meet specified source-of-income and asset diversification requirements and distribute annually at least 90% of our ordinary income and realized net short-term capital gains in excess of realized net long-term capital losses, if any. See Material U.S. Federal Income Tax Considerations.

Operating as an investment company and BDC involves a number of risks. See Risk Factors.

Finally, our transition to a BDC and RIC will have certain consequences on our balance sheet and net asset value, as shown in the selected financial data presented below. In particular, the primary such consequence of the BDC Election will be the reporting for certain historical consolidated operating subsidiaries as non-consolidated portfolio companies held as investments, at fair value, as shown in the above organizational structure diagram.

The following selected statements of operations and balance sheet data have been derived from the audited financial statements for each of the five years ended December 31, 2013 and the six-month unaudited period ended June 30, 2014. The historical information below may not be indicative of our future performance.

	<b>FISCAL YEARS ENDED</b>					<b>SIX MONTHS</b>
	<b>December 31,</b>	<b>December 31,</b>	<b>December 31,</b>	<b>December 31,</b>	<b>December 31,</b>	<b>ENDED</b>
	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>June 30,</b>
	<b>(In Thousands Except for Per Share Data)</b>					<b>2014</b>
<b>Operating Revenues</b>						
Electronic payment processing	\$ 69,654	\$ 80,920	\$ 82,473	\$ 85,483	\$ 89,651	\$ 44,690
Web hosting and design	18,846	19,164	19,181	18,208	17,375	8,101
Premium income	1,652	2,428	12,468	12,367	19,456	10,129
Interest income	1,735	1,903	2,629	3,422	4,838	3,129
Servicing fee income	1,625	2,568	3,101	6,862	6,565	5,283
Income from tax credits	7,837	2,380	1,390	522	113	28
Insurance commissions	811	886	1,071	1,205	1,737	801
Other income	3,551	2,470	3,026	3,061	3,858	2,054
<b>Total operating revenues</b>	<b>105,711</b>	<b>112,719</b>	<b>125,339</b>	<b>131,130</b>	<b>143,593</b>	<b>74,215</b>
<b>Net change in fair value of:</b>						
SBA loans		3,494	(5,493)	(1,013)	(1,226)	(1,147)
Warrants				(111)		
Credits in lieu of cash and notes payable in credits in lieu of cash	900	38	(131)	3	21	

Total net change in fair value	900	3,532	(5,624)	(1,121)	(1,205)	(1,147)
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	FISCAL YEARS ENDED					SIX MONTHS
	December 31,	December 31,	December 31,	December 31,	December 31,	ENDED
	2009	2010	2011	2012	2013	June 30, 2014
	(In Thousands Except for Per Share Data)					
Operating expenses:						
Electronic payment processing costs	\$ 58,312	\$ 68,187	\$ 69,389	\$ 72,183	\$ 75,761	\$ 37,937
Salaries and benefits	18,375	19,391	21,042	22,314	24,360	13,301
Interest	10,350	4,479	3,416	4,495	5,863	5,225
Depreciation and amortization	5,847	4,709	3,955	3,036	3,284	1,751
Provision for loan losses	1,833	1,909	763	810	1,322	(66)
Other general and administrative costs	15,896	16,699	19,122	17,732	20,729	10,415
Total operating expenses	110,613	115,374	117,687	120,570	131,319	68,563
Income (loss) before income taxes	(4,002)	877	2,028	9,439	11,069	4,505
Provision (benefit) for income taxes	(2,593)	(418)	(1,195)	3,882	3,918	1,760
Net income (loss)	(1,409)	1,295	3,223	5,557	7,151	2,745
Net loss attributable to non-controlling interests	980	144	112	86	377	40
Net income (loss) attributable to Newtek Business Services, Inc.	\$ (429)	\$ 1,439	\$ 3,335	\$ 5,643	\$ 7,528	\$ 2,785

	FISCAL YEARS ENDED					SIX MONTHS
	December 31,	December 31,	December 31,	December 31,	December 31,	ENDED
	2009	2010	2011	2012	2013	June 30, 2014
	(In Thousands Except for Per Share Data)					
Weighted average common shares outstanding						
Basic	35,644	35,655	35,706	35,523	35,295	35,482
Diluted	35,644	35,801	36,073	36,747	37,905	38,462
Basic income (loss) per share	\$ (0.01)	\$ 0.04	\$ 0.09	\$ 0.16	\$ 0.21	\$ 0.08
Diluted income (loss) per share	\$ (0.01)	\$ 0.04	\$ 0.09	\$ 0.15	\$ 0.20	\$ 0.07

Balance Sheet Data (at end  
of period):

Investments, at fair value		\$ 3,324	\$ 24,055	\$ 43,951	\$ 83,685	\$ 98,033
Total assets	\$ 136,082	\$ 165,015	\$ 129,795	\$ 152,742	\$ 198,612	\$ 200,896
Notes payable	\$ 16,298	\$ 28,053	\$ 13,565	\$ 39,823	\$ 41,218	\$ 43,613
Securitization notes payable	\$	\$ 15,104	\$ 26,368	\$ 22,039	\$ 60,140	\$ 54,959



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	FISCAL YEARS ENDED					SIX MONTHS
	December 31, 2009	December 31, 2010	December 31, 2011	December 31, 2012	December 31, 2013	ENDED June 30, 2014
	(In Thousands Except for Per Share Data)					
Notes payable in credits in lieu of cash	\$ 51,947	\$ 35,494	\$ 16,948	\$ 8,703	\$ 3,641	\$ 2,898
Deferred tax asset (liability)	\$ (3,634)	\$ (3,002)	\$ 170	\$ 2,318	\$ 3,606	\$ 4,171
Non-controlling interests	\$ 1,615	\$ 1,309	\$ 1,180	\$ 2,055	\$ 1,665	\$ 1,592
Stockholders' equity	\$ 54,027	\$ 55,594	\$ 59,153	\$ 68,902	\$ 77,009	\$ 80,564
Common shares outstanding at year end	35,648	35,666	35,702	35,178	35,385	35,619
Newtek Business Services, Inc. stockholders' equity per share	\$ 1.52	\$ 1.56	\$ 1.66	\$ 1.96	\$ 2.18	\$ 2.26

**The Reincorporation Transaction**

The Reincorporation Transaction, Merger Agreement and BDC Election were approved and recommended for stockholder approval at a meeting of the Board held on [ ], 2014. The terms and conditions of the Reincorporation Transaction are set forth in the Merger Agreement attached to this Proxy Statement/ Prospectus, and the summary provided herein is qualified by reference to the full text of the Merger Agreement. Upon consummation of the Reincorporation Transaction, Newtek MD will survive under the name Newtek Business Services Corp., and Newtek NY will cease to exist. The Reincorporation Transaction will change the state of incorporation of the Company, but will not result in a change in the principal offices, business, management, capitalization, assets or liabilities of Newtek NY. By operation of law, Newtek MD will succeed to all of the assets and assume all of the liabilities of Newtek NY. The officers and directors of Newtek NY will be the officers and directors of Newtek MD. Subject to approval of the NASDAQ Stock Market, the shares of Newtek MD will continue to trade on the NASDAQ Capital Market under the ticker symbol NEWT.

The Reincorporation Transaction will become effective upon the filing of the Articles of Merger with the Maryland State Department of Assessments and Taxation and the Certificate of Merger with the Secretary of State of New York, or a later date as specified by the Company. These filings are anticipated to be made immediately prior to the BDC Election, but not later than the one year anniversary of the date of this Special Meeting. Upon the effectiveness of the Reincorporation Transaction, each outstanding Share will be automatically converted into one fully paid and non-assessable share of Newtek MD.

After the Reincorporation Transaction, the rights of stockholders and the Company's corporate affairs will be governed by the MGCL and by Newtek MD's Articles of Amendment and Restatement (the Maryland Articles) and Bylaws (the Maryland Bylaws, and together with the Maryland Articles, the Maryland Charter Documents) instead of the NYBCL and Newtek NY's Restated Certificate Of Incorporation, as amended (the New York Certificate) and Bylaws (the New York Bylaws, and together with the New York Certificate, the New York Charter Documents). Material differences are discussed below under Comparison of Stockholders Rights under Maryland and New York Corporate Law and Charter Documents. The New York Charter Documents are available for inspection by stockholders of Newtek NY at the offices of the Company at 212 West 35<sup>th</sup> Street, 2<sup>nd</sup> Floor, New York, New York 10001.

Each stock certificate representing issued and outstanding Shares will continue to represent the same number of BDC Shares, and such certificates will be deemed for all corporate purposes to evidence ownership of shares of Newtek MD common stock. Newtek NY does not have any shares of preferred stock issued and outstanding, therefore no

shares of preferred stock of Newtek MD will be issued at the effective time of the Reincorporation Transaction.

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**IT IS NOT NECESSARY TO SEND IN ANY OF YOUR STOCK CERTIFICATES REPRESENTING SHARES OF THE NEW YORK CORPORATION S COMMON STOCK, AS IT WILL NOT BE NECESSARY FOR STOCKHOLDERS TO EXCHANGE THEIR EXISTING COMMON STOCK CERTIFICATES FOR MARYLAND CORPORATION COMMON STOCK CERTIFICATES.**

If, however, a stockholder wishes to acquire a certificate reciting the name Newtek Business Services Corp. and referring to Maryland as its state of incorporation, after the effective date of the Reincorporation Transaction, the stockholder may do so by surrendering his certificate to the transfer agent for the Maryland Corporation with a request for a replacement certificate accompanied by the appropriate fee. The transfer agent for Newtek NY and Newtek MD is:

American Stock Transfer and Trust Company, LLC

6201 15<sup>th</sup> Ave., Brooklyn, New York 11219

**Federal Income Tax Consequences of the Reincorporation Transaction**

The following is a summary of certain U.S. federal income tax consequences relating to the Reincorporation Transaction as of the date of this Proxy Statement/Prospectus. Except where noted, this summary deals only with a stockholder who holds common stock as a capital asset.

For purposes of this summary, a U.S. holder means a beneficial owner of common stock who is any of the following for U.S. federal income tax purposes: (1) a citizen or resident of the United States, (2) a corporation (or any other entity or arrangement treated as a corporation for U.S. federal income tax purposes) organized in or under the laws of the United States, any state thereof, or the District of Columbia, (3) an estate the income of which is subject to U.S. federal income taxation regardless of its source or (4) a trust if (a) its administration is subject to the primary supervision of a court within the United States and one or more U.S. persons have the authority to control all of its substantial decisions or (b) it has a valid election in effect under applicable U.S. Treasury regulations to be treated as a U.S. person.

If a partnership (or other entity classified as a partnership for U.S. federal income tax purposes) is the beneficial owner of common stock, the U.S. federal income tax treatment of a partner in the partnership will generally depend on the status of the partner and the activities of the partnership. Partnerships that hold common stock, and partners in such partnerships, should consult their own tax advisors regarding the U.S. federal income tax consequences of the Reincorporation.

This summary is based upon provisions of the Code, and regulations, rulings and judicial decisions as of the date of this Proxy Statement/ Prospectus. Subsequent developments in U.S. federal income tax law, including changes in law or differing interpretations, perhaps with retroactive effect, could result in U.S. federal income tax considerations different from those summarized below. This summary does not represent a detailed description of the U.S. federal income tax consequences to a stockholder in light of his, her or its particular circumstances. In addition, it does not represent a description of the U.S. federal income tax consequences to a stockholder who is subject to special treatment under the U.S. federal income tax laws and does not address the tax considerations applicable to stockholders who may be subject to special tax rules, such as: financial institutions; insurance companies; real estate investment trusts; regulated investment companies; grantor trusts; tax-exempt organizations; dealers or traders in securities or currencies; stockholders who hold common stock as part of a position in a straddle or as part of a hedging, conversion or integrated transaction for U.S. federal income tax purposes or U.S. holders that have a functional currency other than the U.S. dollar; stockholders who actually or constructively own 10% or more of our

Company's voting stock; or a non-U.S. holder who is a U.S. expatriate, controlled foreign corporation or passive foreign investment company. Moreover, this description does not address the U.S. federal estate and gift tax, alternative minimum tax or other tax consequences of the Reincorporation Transaction.

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The Company expects that the Reincorporation Transaction pursuant to the Merger Agreement will be a tax-free reorganization under Section 368(a) of the Code. Accordingly, a U.S. Holder will not recognize gain or loss in respect of the U.S. Holder's common stock as a result of the Reincorporation Transaction. The U.S. Holder's basis in a BDC Share will be the same as U.S. Holder's basis in the corresponding Share held immediately prior to the Reincorporation Transaction. The U.S. Holder's holding period in a BDC Share will include the period during which the Holder held the corresponding Share prior to the Reincorporation Transaction, provided the U.S. Holder held the corresponding Share as a capital asset at the time of the Reincorporation Transaction. In addition, neither Newtek NY nor Newtek MD will recognize gain or loss as a result of the Reincorporation Transaction, and Newtek MD will generally succeed, without adjustment, to the tax attributes of Newtek NY.

Newtek NY has requested, and expects to receive prior to the Special Meeting, an opinion of counsel with respect to the federal income tax consequences of the Reincorporation under the Code. This summary is not binding on the IRS and there can be no assurance that the IRS (or a court, in the event of an IRS challenge) will agree with the conclusions stated herein. A successful IRS challenge to the reorganization status of the Reincorporation would result in a stockholder recognizing gain or loss with respect to each Share exchanged in the Reincorporation Transaction equal to the difference between the stockholder's basis in such Shares and the fair market value, as of the time of the Reincorporation Transaction, of the BDC Shares received in exchange therefor. In such event, a stockholder's aggregate basis in the BDC Shares received in the exchange would equal their fair market value on such date, and the stockholder's holding period for such shares would not include the period during which the stockholder held Shares prior to the Reincorporation Transaction.

State, local, or foreign income tax consequences to stockholders may vary from the federal tax consequences described above. Stockholders should consult their own tax advisors as to the effect of the Reincorporation Transaction under applicable federal, state, local, or foreign income tax laws.

## **Exchange of Shares**

The Reincorporation Transaction will be completed only after the Reverse Stock Split has occurred. At the effective time of the Reincorporation Transaction, shares of common stock of Newtek NY, par value \$0.02 per share, will automatically be converted on a one-for-one basis into BDC Shares of Newtek MD, par value \$0.02 per share (the Maryland common stock), at the effective time of the Merger without any action required by the stockholders.

## **Equity Compensation Plans**

Unvested awards under the Company's equity compensation plans will become fully vested in connection with the Reincorporation Transaction. All issued and outstanding option awards with an exercise price less than the value of a share immediately prior to the Merger that are not exercised before the consummation of the Reincorporation Transaction will be deemed exercised in full by means of a cashless exercise in exchange for common stock of the Company immediately prior to the Reincorporation Transaction and the common stock issued upon such cashless exercise will be converted into common stock of Newtek MD in the Reincorporation Transaction. Options with an exercise price greater than the value of a share immediately prior to the merger will be cancelled and exchanged for a nominal payment per underlying share. The Company expects to implement a new equity compensation plan to permit the Company to issue new incentive awards after it has effectuated the Reincorporation Transaction and BDC Election. See Proposal IV for a detailed discussion of our proposed equity compensation plan.

## **Accounting Treatment**

The Reincorporation Transaction will involve entities under common control and is expected to be accounted for similar to the pooling of interests method. The management of Newtek NY will be the management of Newtek MD after the Reincorporation Transaction. Because the Reincorporation Transaction will not be accounted for as a business combination no goodwill is expected to be recorded in connection therewith. The costs associated with raising capital will be accounted for as a reduction of additional paid-in capital, while any costs associated with the conversion to a BDC will be expensed as incurred.

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### **Special Dividend**

In connection with the Reincorporation Transaction, and specifically the elections to be regulated as a BDC and treated as a RIC for tax purposes, the Company will declare and pay a special dividend to its stockholders (the Special Dividend). To qualify as a RIC, we must, among other things, distribute by the end of the first taxable year that we elect to be treated as a RIC all of our accumulated earnings and profits from all taxable years that we were taxed as a C corporation. The Special Dividend is expected to allow us to satisfy this requirement. Although the Company cannot determine the amount of its accumulated C corporation earnings and profits until after the end of its 2014 taxable year, the aggregate amount of the Special Dividend will equal the amount of such accumulated C corporation earnings and profits as of such date. Following the Reincorporation Transaction, the Company expects to make distributions in an amount approximately equal to its pre-tax income. The portions of any such distributions that exceed the Company's current earnings will have the effect of reducing the amount of the Special Dividend. The timing of the payment of the Special Dividend will be determined at the discretion of the Board, but in all events, the Special Dividend will be paid no later than December 31, 2015, which is our first taxable year that we anticipate that we will qualify as RIC. At the discretion of the Board, the Special Dividend may be paid in more than one installment. In addition, at the discretion of the Board, the Special Dividend may be payable in Shares or cash at the election of shareholders subject to an aggregate minimum amount of cash payable in the distribution. If the total cash to be distributed to all shareholders electing to receive their distribution in cash would exceed the aggregate limit on cash to be distributed, each shareholder electing to receive their distribution in cash will receive a pro rata share of the cash to be distributed and will receive the remainder of their distribution in Shares. The aggregate cash to be distributed in such a distribution must be at least 20% of the aggregate distribution. For more information on the tax consequences of the Special Dividend, see Material U.S. Federal Income Tax Considerations of a BDC Taxation of the Special Dividend.

### **Regulatory Approvals**

The Reincorporation will not occur until the Company has received all required consents of governmental authorities, including the filing and acceptance of Articles of Merger with the Maryland State Department of Assessments and Taxation, and the filing and acceptance of a Certificate of Merger with the Secretary of State of New York, and satisfied applicable requirements of the NASDAQ Capital Market.

### **Description and Comparison of Capital Stock and Voting Rights**

Newtek NY's authorized capital stock consists of 54,000,000 Shares of common stock, \$0.02 par value per Share, and 1,000,000 shares of preferred stock, \$0.02 par value per share. On the Record Date, there were [35,380,888] Shares of Newtek NY outstanding and entitled to vote, without giving effect to the proposed Reverse Stock Split, constituting the only class of stock outstanding and entitled to vote at the meeting. Each Share entitles the holder thereof to one vote. On the Record Date, there were no shares of preferred stock issued and outstanding.

The Maryland Articles provide that the authorized capital stock of Newtek MD consists of 200,000,000 BDC Shares, par value of \$0.02 per BDC Share, any portion of which may be reclassified by Newtek MD's Board into preferred stock.

The Merger Agreement provides that each outstanding Share of Newtek NY's common stock will be exchanged for one BDC Share. Accordingly, the interests of the stockholders relative to one another will not be affected by the Merger.

### **Abandonment of the Reincorporation Transaction**

The Board will have the right to abandon the Merger Agreement and thus the Reincorporation Transaction and take no further action towards reincorporating the Company in Maryland at any time before the effective



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date, even after stockholder approval, if for any reason the Board determines that it is not advisable to proceed with the Reincorporation Transaction. Such a determination may be made for reasons such as, but not limited to, a change in the Company's strategic direction or altered conditions in the overall business environment. We will only complete the Reincorporation Transaction in the event that we expect to make the BDC election promptly thereafter.

**Comparison of Stockholder Rights Under Maryland and New York Corporate Law and Charter Documents**

Subject to stockholder approval, at the effective time of the Reincorporation Transaction as set forth in the Merger Agreement (the Effective Time), Newtek NY will change its jurisdiction of incorporation from New York to Maryland and will thereafter be governed by the MGCL and by the Maryland Charter Documents. Upon the filing with and acceptance by the Maryland State Department of Assessments and Taxation of the Articles of Merger in Maryland and the filing with and acceptance by the Secretary of State of New York of the Certificate of Merger in New York, Newtek NY will be merged with and into Newtek MD, and the outstanding Shares of Newtek NY will be deemed for all purposes to evidence ownership of, and to represent, BDC Shares of Newtek MD.

At the Effective Time, the Maryland Charter Documents will effectively replace the New York Charter Documents. Certain actions not permitted or contemplated under the NYBCL are allowed and/or provided for under the MGCL, as indicated below and the Maryland Charter Documents reflect such discrepancies. All changes were made to better align the Company's governing documents with those of other BDCs organized in Maryland. As explained below the MGCL contains certain provisions that the Company, and other BDCs incorporated in Maryland, believe to be better suited to the operation of a BDC. For example, a Maryland corporation may approve amendments to its charter that increase or decrease the aggregate number of shares of stock that it is authorized to issue without stockholder action. In addition, at the Effective Time, holders of common stock of Newtek NY will become holders of common stock of Newtek MD, which will result in their rights as stockholders being governed by the laws of the State of Maryland, including the MGCL.

The following is a summary of the material differences between the rights of stockholders under the New York Charter Documents and the Maryland Charter Documents.

	<b>Rights of Newtek MD Stockholders</b>	<b>Rights of Newtek NY Stockholders</b>
<b>Authorized Stock</b>	Newtek MD is authorized to issue 200,000,000 shares of stock, consisting of 200,000,000 shares of common stock, \$0.02 par value per share.	Newtek NY is authorized to issue 55,000,000 shares of stock, consisting of 54,000,000 shares of common stock, \$0.02 par value per share, and 1,000,000 shares of preferred stock, \$0.02 par value per share.
	A majority of the entire Board may amend the Maryland Articles to increase or decrease the aggregate number of shares of stock or the number of shares of stock of any class or series without stockholder	The preferred stock may be issued from time to time in one or more series. The Board may establish and designate series of the

approval.

preferred stock and to fix number of shares and the relative rights, preferences and limitations as between series.

The Board may classify any unissued shares of stock and reclassify any previously classified but unissued shares of stock of any class or series into one or more classes or series of stock, including Preferred Stock.

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	<b>Rights of Newtek MD Stockholders</b>	<b>Rights of Newtek NY Stockholders</b>
<b>Number of Directors</b>	A majority of the entire Board may increase the number of directors and fill any vacancy, provided that the number of directors will never be less than the minimum number required by the MGCL.	The Board may increase or decrease the number of directors, provided that the number of directors will never be less than three nor more than eleven.
<b>Removal of Directors</b>	Subject to the rights of holders of one or more classes or series of the Preferred Stock to elect or remove directors, any director or the entire Board may be removed from office, but only for cause and by affirmative vote of at least two-thirds of the votes entitled to be cast generally in the election of directors.	Except as otherwise provided in the New York Certificate or in the New York Bylaws, any director may be removed, either with or without cause, by the affirmative vote of a majority of the votes of the issued and outstanding shares of stock entitled to vote for the election of directors of Newtek NY given at a special meeting of the shareholders called and held for that purpose.
<b>Vacancies</b>	Pursuant to Subtitle 8 of Title 3 of the MGCL, Newtek MD has elected to provide that any vacancy may be filled only by the affirmative vote of a majority of the remaining directors in office, even if the remaining directors do not constitute a quorum, and any director elected to fill a vacancy will serve for the remainder of the full term of the class in which the vacancy occurred and until a successor is duly elected and qualifies.	Vacancies occurring in the Board for any reason (other than vacancies created by reason of the removal of directors without cause) may be filled by a majority of the directors then in office, though less than a quorum or by a sole remaining director, and the directors so chosen will hold office until the next annual election and until their successors are duly elected and shall qualify.
<b>Amendment of Bylaws</b>	The Board has the exclusive power to make, alter, amend or repeal the Maryland Bylaws.	The shareholders or the board of directors have the power to adopt, alter, amend or repeal the New York Bylaws.

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	<b>Rights of Newtek MD Stockholders</b>	<b>Rights of Newtek NY Stockholders</b>
<b>Mergers, Consolidations and Sale of Assets</b>	Newtek MD may merge, consolidate, exchange shares, sell or exchange all or substantially all of its assets, or engage in similar transactions outside the ordinary course of business only if such transaction is approved by the affirmative vote of stockholders entitled to cast at least a majority of the votes entitled to be cast on the matter, each voting as a separate class.	
<b>Dissolution</b>	Newtek MD may liquidate or dissolve, or amend the MD Articles to effect any liquidation or dissolution, only upon approval by the affirmative vote of stockholders entitled to cast at least a majority of the votes entitled to be cast on the matter, each voting as a separate class.	
<b>Appraisal Rights</b>	A Newtek MD stockholder has no appraisal rights unless the Board upon the affirmative vote of a majority of the entire Board, determines that such rights apply to all or any classes or series of stock, or any proportion of the shares thereof, to a particular transaction occurring after the date of such determination in connection with which holders of such shares would otherwise be entitled to exercise such rights.	
<b>Preemptive Rights</b>	Newtek MD does not grant preemptive rights except as may be provided the Board in setting the terms of classified or reclassified shares of stock or as otherwise provided by contracts.	



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	<b>Rights of Newtek MD Stockholders</b>	<b>Rights of Newtek NY Stockholders</b>
<b>Books and Records Inspection Rights</b>	A Newtek MD stockholder who is otherwise eligible under applicable law to inspect Newtek MD's books and records has no such right if the Board determines that such stockholder has an improper purpose for requesting such inspection.	
<b>Voting Rights and Required Vote Generally</b>	Each share of common stock entitles the holder thereof to one vote. The Board may reclassify any unissued shares of common stock into one or more classes or series of stock.	
<b>Quorum for Meeting of Stockholders</b>	The presence in person or by proxy of the holders of shares of stock of Newtek MD entitled to cast a majority of the votes entitled to be cast (without regard to class) constitutes a quorum at any meeting of the stockholders, except with respect to any such matter that, under applicable law, requires approval by a separate vote of one or more classes of stock, in which case the presence in person or by proxy of the holders of shares entitled to cast a majority of the votes entitled to be cast by each such class on such matter constitutes a quorum.	The presence in person or by proxy of the holders of a majority of the votes of the shares of stock of Newtek NY issued and outstanding and entitled to vote at the meetings of the shareholders constitutes a quorum, except when shareholders are required to vote by class, in which event the presence in person or by proxy of the holders of a majority of the issued and outstanding shares of the appropriate class constitutes a quorum.
<b>Classification of Directors</b>	The Board is divided into three classes of directors serving staggered three-year terms, with each class to be as nearly equal in number as possible as determined by the Board.	

It is not practical to describe all of the differences between the laws of the states of Maryland and New York. The following is a summary of the significant rights of the stockholders under New York and Maryland law and under the New York and Maryland Charter Documents. This summary is qualified in its entirety by reference to the full text of such documents and laws, and stockholders should refer to the New York Charter Documents and the Maryland Charter Documents and the relevant provisions of Maryland law and New York law directly for a more thorough comparison.



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### ***Amendment of Certificate of Incorporation***

Under the NYBCL, except for certain ministerial changes to the certificate of incorporation that may be implemented by a corporation's board of directors without stockholder action, and except to the extent that a certificate of incorporation requires the vote of a higher proportion of votes than is required under the NYBCL, a certificate of incorporation may be amended only if authorized by the board of directors and by the vote of the holders of a majority of the shares of stock entitled to vote on such amendment. The NYBCL requires that if a particular class or series of stock is adversely affected by certain types of amendments, then such class or series also must authorize, by voting separately as a class or series, such amendment in order for it to become effective. The NYBCL allows a corporation to require a higher proportion of votes in order to authorize amendments to a certificate of incorporation, if so provided in the certificate.

Under the MGCL, a Maryland corporation generally cannot amend its charter unless the action is advised by its board of directors and approved by the affirmative vote of stockholders entitled to cast at least two-thirds of the votes entitled to be cast on the matter, unless a lesser percentage (but not less than a majority of all of the votes entitled to be cast on the matter) is specified in the corporation's charter. The Maryland Articles provide that most amendments to our charter require approval by a majority of all of the votes entitled to be cast on the matter.

A Maryland corporation may also provide in its charter that the board of directors, with the approval of a majority of the entire board, and without action by the stockholders, may approve amendments to the charter to increase or decrease the aggregate number of shares of stock that the corporation is authorized to issue or reclassify the number of shares of stock of any class or series that the corporation is authorized to issue. As stated above, the Maryland Articles provide the board of directors with such power, while the New York Certificate does not.

### ***Amendment of Bylaws***

Under the NYBCL, a corporation's bylaws may be amended by the vote of the holders of a majority of the votes cast with respect to such amendment (rather than a majority of the shares outstanding) or, if permitted under the corporation's certificate of incorporation or a bylaw adopted by the stockholders, by the board of directors. The New York Certificate provides that the stockholders or the board of directors may amend the New York Bylaws. The New York Bylaws provide that they may be amended at any annual or special meeting of the stockholders by a majority of the total votes of the stockholders or when stockholders are required to vote by class by a majority of the appropriate class, present in person or represented by proxy and entitled to vote on such action.

Under the MGCL, the power to adopt, alter, and repeal the bylaws of a corporation is vested in the stockholders except to the extent that the charter or bylaws vest it in the board of directors. A provision conferring upon the directors, rather than the stockholders, the power to adopt, amend or repeal the bylaws may be included in the charter or bylaws of a corporation. The Maryland Articles and Bylaws provide that the Board has the exclusive power, at any time, to adopt, alter or repeal any provision of the bylaws or make new bylaws.

### ***Who May Call Special Meetings of Stockholders***

Under the NYBCL, the board of directors or anyone authorized in the certificate of incorporation or bylaws may call a special meeting of stockholders. Currently, the New York Bylaws provide that special meetings of stockholders may be called at any time by the Board, the Chairman of the Board or the President.

Under the MGCL, the board of directors, the president or any other person authorized in the corporation's charter or bylaws may call a special meeting of stockholders. Unlike the NYBCL, the MGCL specifically empowers



stockholders to call a special meeting. The secretary of a Maryland corporation is required to call a

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special meeting of stockholders upon the written request of holders of at least 25% of the voting stock of the corporation. Such percentage may be adjusted in the bylaws or charter of a corporation, but may not exceed a majority of the voting stock of the corporation. The MGCL also permits a Maryland corporation that has a class of equity securities registered under the Exchange Act and has at least three independent directors (such as the Maryland corporation), by action of its board of directors and without stockholder approval, and notwithstanding any contrary provision of the charter or bylaws, to elect to increase the percentage to a majority by resolution of the board of directors.

The Maryland Bylaws provide that special meetings of stockholders may be called by either the Chairman of the Board, the chief executive officer, the president or the Board. In addition, a special meeting of stockholders must be called by the secretary of the corporation at the request in writing of stockholders entitled to cast not less than a majority of all the votes entitled to be cast on a matter that may be properly considered at a meeting of stockholders at such meeting.

### ***Action by Written Consent of Stockholders In Lieu of a Stockholder Meeting***

Under the NYBCL, a consent to any action may be taken without a meeting upon the written consent of the holders of all of the outstanding shares entitled to vote on such matter. Additionally, the certificate of incorporation of a corporation may permit actions taken upon the written consent 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 at which all shares entitled to vote were present and voted. Prompt notice must then be given to the stockholders that have not consented in writing.

The New York Certificate does not permit stockholder action by a written consent of less than all of the outstanding shares entitled to vote. The New York Bylaws permit stockholder action in lieu of a meeting only by unanimous written consent of those stockholders who would have been entitled to vote on a given action at a meeting.

Under the MGCL, a written consent of the holders of all outstanding shares entitled to vote on a matter may consent to any action in lieu of a stockholders meeting. Additionally, holders of any class of stock, other than common stock entitled to vote generally in the election of directors, may (unless the charter provides otherwise and provided that the corporation gives notice of such action to each holder of the class of stock within 10 days after the effective time of such action) consent to any action or take action by delivering a written consent of the stockholders entitled to cast not less than the minimum number of votes that would have been necessary to authorize or take the action at a stockholder meeting. If authorized by the charter of the corporation, the holders of common stock entitled to vote generally in the election of directors may consent to any action by delivering a written consent of the stockholders entitled to cast not less than the minimum number of votes that would have been necessary to authorize or take the action at a stockholder meeting, provided that the corporation gives notice of such action to each holder of the class of stock within 10 days after the effective time of such action.

The Maryland Charter Documents do not permit actions by the written consent of stockholders in lieu of a stockholder meeting.

### ***Notice of Stockholder Business and Nominations***

Under the NYCBL and MGCL, a corporation's charter or bylaws may require that a stockholder proposing a nominee for director, or any other matter that would be considered at a meeting of the stockholders, give advance notice to the corporation before a date or within a period of time specified in the charter or bylaws. If the advance notice requirement is not met, the proposal is not a proper subject of stockholder action at the meeting.

The New York Charter Documents do not include any provisions addressing stockholder nominations for directors or any other matter to be considered at a meeting of stockholders. Generally, the Maryland Bylaws

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allow stockholders to nominate directors and propose other business to be brought before the annual meeting of stockholders if timely written notice is given to the Secretary of the Company and such business is a proper subject for stockholder action. For notice to be timely under the Maryland Bylaws, written notice generally must be delivered to the secretary at the principal executive office of the Maryland Corporation not earlier than the 150<sup>th</sup> day nor later than 5:00 p.m., Eastern Time, on the 120<sup>th</sup> day prior to the first anniversary of the date of the proxy statement for the preceding year's annual meeting.

### ***Right of Stockholders to Inspect Stockholder List***

Under the NYBCL, a stockholder of record may inspect the list of record stockholders upon giving written demand to do so. The MGCL does not include stockholder lists among the types of corporate records generally available to stockholders. Generally, a statement of all stock and securities issued by a corporation during a specified period of not more than 12 months before the date of a request may also be inspected upon 20 days' prior notice by any stockholder. Additionally, any stockholder of record for at least six months owning at least 5% of the corporation's outstanding shares may request a statement of the corporation's current assets and liabilities and may inspect and copy the corporation's stock ledger and accounting records.

### ***Vote Required For Certain Transactions***

Under the NYBCL, a New York corporation may provide in its certificate of incorporation that the holders of a majority, rather than two-thirds, of the outstanding stock entitled to vote may approve a merger, consolidation or sale or exchange of all or substantially all of its assets. Newtek NY has not, however, adopted such a provision in the New York Certificate, so that the holders of at least two-thirds of Newtek NY's outstanding stock entitled to vote must approve such transactions.

Under the MGCL, a Maryland corporation generally cannot merge or consolidate with another entity, sell all or substantially all of its assets or engage in a share exchange unless the action is advised by the board of directors and approved by the affirmative vote of stockholders entitled to cast at least two-thirds of the votes entitled to be cast on the matter, unless a lesser percentage (but not less than a majority of all of the votes entitled to be cast on the matter) is specified in the corporation's charter. The Maryland Articles provide that any merger, consolidation, share exchange or sale or exchange of all or substantially all of the assets of Newtek MD that the MGCL requires to be approved by stockholders must be approved by the affirmative vote of the holders of shares entitled to cast at least a majority of the votes entitled to be cast on such matter.

### ***Proxies***

Unless the proxy provides for a longer period, a proxy under both the NYBCL and the MGCL can be voted or acted upon for eleven months after its date.

### ***Number of Directors***

Under both the NYBCL and the MGCL, corporations must have at least one director. Under the NYBCL, the exact number of directors is fixed either in the bylaws, by the stockholders, or, if authorized in a stockholder-adopted bylaw, by the board of directors. Under the MGCL, the exact number of directors is fixed in the charter and, subject to provisions governing the minimum number of directors, may be altered by the bylaws to a number of greater or lesser than that set in the charter unless the corporation has elected in its charter or bylaws or by resolution of its board of directors to be subject to Section 3-804(b) of the MGCL, in which case the number of directors will be fixed only by the vote of the board of directors regardless of any provisions to the contrary in the charter or the bylaws. Pursuant to

the MGCL, a corporation's bylaws may also authorize a majority of the entire board of directors to alter the number of directors set by the charter or the bylaws within specified limits, but such action may not affect the tenure of the office of any director.

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The New York Bylaws provide that the number of directors may be fixed from time to time by the vote of a majority of the entire Board and shall not be less than 3 or more than 11. The Maryland Bylaws provide that the number of directors may be fixed from time to time by the vote of a majority of the entire Board and shall not be less than 1 or more than 12.

### ***Classified Board of Directors***

Both the NYBCL and the MGCL permit classified boards of directors, which means the directors may have staggered terms that do not all expire at once. The NYBCL requires that classified boards of directors be authorized in the corporation's certificate of incorporation or in a stockholder-adopted bylaw. The NYBCL allows for as many as four different classes of directors, all as nearly equal in number as possible. The New York Charter Documents do not provide for a classified Board.

The MGCL permits the board of directors to be classified. If the directors are divided into classes, the term of office may be provided in the bylaws or in the charter, except that the term of office of a director may not be longer than five years or, except in the case of an initial or substitute director, shorter than the period between annual meetings. The term of office of at least one class must expire each year. The MGCL also permits a Maryland corporation that has a class of equity securities registered under the Exchange Act and has at least three independent directors (such as the Maryland corporation), either in its charter or by action of its board of directors and without stockholder approval, and notwithstanding any contrary provision of the charter or bylaws, to elect to be subject to certain provisions of the MGCL, including a provision that requires that the board of directors be divided into classes.

The Maryland Articles provide for a classified Board consisting of three classes of directors. Messrs. Barry Sloane and Peter Downs will serve in class I, with terms expiring at the 2015 annual meeting of stockholders; Mr. Sam Kirschner will serve in class II, with a term expiring at the 2016 annual meeting of stockholders; and Messrs. David C. Beck and Salvatore F. Mulia will serve in class III, with terms expiring at the 2017 annual meeting of stockholders.

### ***Removal of Directors by Stockholders***

Under the NYBCL, directors may be removed for cause by stockholders owning a majority of the shares entitled to vote. In addition, if provided for in the certificate of incorporation, directors can be removed by the stockholders of a New York corporation without cause or by the board of directors for cause. The New York Charter does not provide for the removal of directors by the stockholders or by the board of directors.

The MGCL provides that the stockholders of a corporation may remove any director, with or without cause, by the affirmative vote of a majority of all votes entitled to be cast generally for the election of directors, unless the charter provides otherwise or the corporation elects to be subject to certain provisions of the MGCL. Additionally, unless the charter of a corporation provides otherwise, if directors have been divided into classes, directors cannot be removed without cause.

The Maryland Articles allow for the removal of any director, subject to the rights of the holders of preferred stock, at any time only for cause by the affirmative vote of at least two-thirds of votes entitled to vote for the election of directors. This provision, when coupled with the exclusive power of the Board to fill vacancies on the Board discussed below, precludes stockholders from (i) removing incumbent directors except upon the affirmative vote of at least two-thirds of votes entitled to vote for the election of directors and (ii) filling the vacancies created by such removal with their own nominees.

### ***Board Vacancies***

Under New York law, unless the certificate of incorporation or bylaws provide otherwise, any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors. However, (i) unless the certificate of incorporation or a provision of the bylaws adopted by the stockholders provides otherwise, a vacancy occurring by removal of a director for cause may be filled only by vote of the stockholders and (ii) unless the certificate of incorporation or bylaws provide otherwise, whenever a certain class

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of stockholders is allowed to elect one or more directors, any vacancy shall be filled by a majority of the directors elected by such class, or, if no such director is in office, then according to the same rules described above. A director elected to fill a vacancy, unless elected by the stockholders, shall hold office until the next meeting of stockholders at which the election of directors is in the regular order of business, and until his successor has been elected and qualified. The New York Bylaws provide that any vacancy occurring on the Board may be filled by a majority of directors remaining in office.

The MGCL allows a corporation to elect to be subject to a provision that states that, subject to the terms of any class or series of preferred stock, vacancies on a board of directors may be filled only by a majority of the remaining directors, even if the remaining directors do not constitute a quorum, and any director elected to fill a vacancy will hold office for the remainder of the full term of the directorship in which the vacancy occurred and until his or her successor is duly elected and qualifies. The Maryland Articles provide that, at such time as we are eligible to make such election (which we expect will be upon the closing of the Reincorporation Transaction), we elect to be subject to such MGCL provision.

### ***Limitation of Directors Liability***

Under the NYBCL, the certificate of incorporation may contain a provision eliminating or limiting the personal liability of directors to the corporation or its stockholders for any breach of duty. However, no provision can eliminate or limit:

the liability of any director if a judgment or other final adjudication adverse to the director establishes that the director acted in bad faith or engaged in intentional misconduct or a knowing violation of law, personally gained a financial profit to which the director was not legally entitled, or violated certain provisions of the NYBCL; or

the liability of any director for any act or omission prior to the adoption of such provision in the certificate of incorporation or bylaws.

The New York Certificate contains a provision limiting the personal liability of directors.

The MGCL permits a Maryland corporation to include in its charter a provision limiting the liability of its directors and officers to the corporation and its stockholders for money damages except for liability resulting from actual receipt of an improper benefit or profit in money, property or services or active and deliberate dishonesty that is established by a final judgment and is material to the cause of action. The Maryland Articles contain a provision that eliminates the liability of our directors and officers to the maximum extent permitted by Maryland law.

The MGCL requires corporations (unless the Maryland Articles provide otherwise, which the Maryland Articles do not) to indemnify a director or officer who has been successful, on the merits or otherwise, in the defense of any proceeding to which he or she is made a party by reason of his or her service in that capacity. The MGCL permits a corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made or threatened to be made a party by reason of their service in those or other capacities unless it is established that:



the act or omission of the director or officer was material to the matter giving rise to the proceeding and (i) was committed in bad faith or (ii) was the result of active and deliberate dishonesty;

the director or officer actually received an improper personal benefit in money, property or services; or

in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful.

Under the MGCL, the Maryland Corporation may not indemnify a director or officer in a suit by or on behalf of the Maryland Corporation in which the director or officer was adjudged liable to the Maryland

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Corporation or in a suit in which the director or officer was adjudged liable on the basis that personal benefit was improperly received. A court may order indemnification if it determines that the director or officer is fairly and reasonably entitled to indemnification, even though the director or officer did not meet the prescribed standard of conduct or was adjudged liable on the basis that personal benefit was improperly received. However, indemnification for an adverse judgment in a suit by or on behalf of the Maryland Corporation, or for a judgment of liability on the basis that personal benefit was improperly received, is limited to expenses.

In addition, the MGCL permits the Maryland Corporation to advance reasonable expenses to a director or officer upon receipt of:

a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by the Maryland Corporation; and

a written undertaking by the director or officer or on the director's or officer's behalf to repay the amount paid or reimbursed by the corporation if it is ultimately determined that the director or officer did not meet the standard of conduct.

The Maryland Articles provide that the Maryland Corporation shall, to the maximum extent permitted by Maryland law in effect from time to time, indemnify and, to pay or reimburse reasonable expenses in advance of final disposition of a proceeding to:

any present or former director or officer of the Maryland Corporation; or

any individual who, while a director or officer of the Maryland Corporation and at the request of the Maryland Corporation, serves or has served as a director, officer, partner, or trustee of another corporation, real estate investment trust, partnership, joint venture, trust, employee benefit plan or any other enterprise.

The Maryland Articles also permit the Maryland Corporation to indemnify and advance expenses to any person who served a predecessor of the Maryland Corporation in any of the capacities described above and any employee or agent of the company or a predecessor of the Maryland Corporation.

## ***Loans To, And Guarantees of Obligations Of, Directors***

Under the NYBCL, a corporation may not lend money to, or guarantee the obligation of, a director unless the disinterested stockholders of such corporation approve the transaction. For purposes of the stockholder approval, the holders of a majority of the votes of the shares entitled to vote constitute a quorum, but shares held by directors who are benefited by the loan or guarantee are not included in the quorum.

Under the MGCL, a board of directors may authorize loans by the corporation to, and guarantees by the corporation of any obligations of, any director, officer or other employee of the corporation whenever, in the judgment of the board of directors, such loan or guarantee may reasonably be expected to benefit the corporation.

Notwithstanding the MGCL, the Company has not made and does not intend to make any personal loans to, or guarantees for the benefit of, any of its directors or officers in violation of Section 13(k) of the Exchange Act.

***Transactions with Interested Directors***

Under the NYBCL, a corporation may establish the validity of transactions between it and its interested directors through one of several methods, including the approval of a majority of the disinterested directors who are not involved in the transaction.

Under the MGCL, with respect to actions by directors of registered investment companies, Maryland adopts the definition of interested person that provides that a person is not interested solely because such person is a director, owner of securities or a family member of an owner of securities or a director. The MGCL provides that

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no transaction or contract will be void or voidable solely because of common directorship or interest, or because a director with a financial interest in a matter is present at a meeting during which the matter is ratified or votes for such matter at the meeting, if: (i) the material facts are known to stockholders and such matter is approved by a majority of votes of disinterested stockholders, (ii) the material facts are known to the other directors and such matter is approved by a majority of disinterested directors although less than a quorum, or (iii) such matter is fair and reasonable under Maryland law to the corporation.

### ***Dividends; Redemption of Stock***

Subject to its certificate of incorporation, under both the NYBCL and the MGCL a corporation may generally pay dividends, redeem shares of its stock or make other distributions to stockholders if the corporation is solvent and would not become insolvent because of the dividend, redemption or distribution.

Under the NYBCL, dividends may be paid or distributions made out of surplus, so that the net assets of the corporation remaining after such payment or distribution shall be at least equal to the amount of its stated capital. If there is no surplus, dividends may be declared and paid out of the corporation's net profits for the year in which the dividend is declared and/or the preceding fiscal year. The NYBCL defines surplus as the excess of net assets over stated capital and permits the board of directors to adjust stated capital.

In general, with certain restrictions, the NYBCL permits a corporation to provide in its certificate of incorporation for redemption (at the option of the corporation or the stockholder or in certain other circumstances) of one or more classes or series of its shares. One such restriction provides that common stock may be issued or redeemed, with certain exceptions, only when the corporation has an outstanding class of common shares that is not subject to redemption.

The MGCL provides that dividends and other distributions may be declared and paid on the corporation's capital stock as authorized by the board and subject to any restrictions contained in the corporation's charter, provided that no dividends may be paid if, after giving effect to the dividend or other distribution: (i) the corporation would not be able to pay its debts as they become due in the usual course of business; or (ii) the corporation's total assets would be less than the sum of its total liabilities plus, unless the charter permits otherwise, any amount required to be paid to holders of preferred stock in the event of a liquidation of the corporation. Notwithstanding clause (ii) in the immediately preceding sentence, a corporation may make a dividend or other distribution from: (a) the net earnings of the corporation for the fiscal year in which the dividend or other distribution is made; (b) the net earnings of the corporation for the preceding fiscal year; or (c) the sum of the net earnings of the corporation for the preceding eight fiscal quarters.

In general, the MGCL permits a corporation to provide in its charter for redemption (at the option of the corporation or the stockholder or in certain other circumstances) of any specified class of its stock, including common stock.

Neither the New York Charter Documents nor the Maryland Charter Documents modify the respective provisions of the NYBCL or the MGCL concerning the payment of dividends. The New York Charter Documents grant the Board the ability to determine redemption rights with respect to preferred stock issued by Newtek NY, while the Maryland Charter Documents grant the Board the ability to determine redemption rights with respect to any stock issued by Newtek MD.

### ***Appraisal Rights***

The NYBCL generally provides that a dissenting stockholder has the right to receive the fair value of his shares if he complies with certain procedures and objects to: (i) certain mergers and consolidations; (ii) certain dispositions of assets requiring stockholder approval; (iii) certain share exchanges; or (iv) certain amendments to the certificate of incorporation which adversely affect the rights of such stockholder. The MGCL generally provides that a stockholder has appraisal rights in the event of: (i) a merger or consolidation; (ii) a share exchange; (iii) certain dispositions of assets requiring stockholder approval; (iv) a charter amendment altering contract rights of outstanding stock (unless the right to do so is reserved in the charter); or (v) certain business combinations.

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The NYBCL provides that dissenting stockholders have no appraisal rights if their shares are listed on a national securities exchange or designated as a market system security on an interdealer quotation system by the Financial Industry Regulatory Authority, Inc. Appraisal rights may also be unavailable under the NYBCL in a merger between a parent corporation and its subsidiary where only one of them is a New York corporation, or in a merger between a parent and subsidiary where both are New York corporations, and the parent owns at least 90% of the subsidiary. Also, appraisal rights are available to stockholders who are not allowed to vote on a merger or consolidation and whose shares will be canceled or exchanged for cash or something else of value other than shares of the surviving corporation or another corporation. When appraisal rights are available, the stockholder may have to request the appraisal and follow certain required procedures as set forth in the NYBCL.

Similar to the NYBCL, the MGCL provides that stockholders have no appraisal rights if (i) the stock is listed on a national securities exchange (unless the transactions falls under certain conditions), (ii) the stock received is that of the successor in the merger, unless the merger alters the contract rights of the stock as expressly set forth in the charter and the charter does not reserve the right to do so, or the stock is to be changed or converted in whole or in part in the merger into something other than either stock in the successor, cash, scrip or other rights or interests out of provisions for the treatment of fractional shares of stock in the successor, (iii) the stock is not entitled to be voted on the transaction or the stockholder did not own the shares of stock on the record date for determining stockholders entitled to vote on the transaction or (iv) the charter provides that the holders of the stock are not entitled to exercise the rights of an objecting stockholder.

The Maryland Articles provide that stockholders will not be entitled to exercise appraisal rights unless a majority of the Board shall determine such rights apply.

***Business Combinations with Interested Stockholders***

Provisions in both the NYBCL and the MGCL may help to prevent or delay changes of corporate control. In particular, both the NYBCL and the MGCL restrict or prohibit an interested stockholder from entering into certain types of business combinations unless the board of directors approves the transaction in advance. The two laws define these two terms differently.

Under the NYBCL, an interested stockholder is generally prohibited from entering into certain types of business combinations with a New York corporation for a period of five years after becoming an interested stockholder, unless before such date the board of directors approves either the business combination or the acquisition of stock by the interested stockholder before the interested stockholder acquires his or her shares. An interested stockholder under the NYBCL is generally a beneficial owner of at least 20% of the corporation's outstanding voting stock. Business combinations under the NYBCL include mergers and consolidations between corporations or with an interested stockholder or its affiliate or associate; sales, leases, mortgages, pledges, transfers or other dispositions to or with an interested stockholder of assets with an aggregate market value which either equals 10% or more of the corporation's consolidated assets or outstanding stock, or represents 10% or more of the consolidated earning power or net income of the corporation; issues and transfers to an interested stockholder of stock from the corporation or any of its subsidiaries with an aggregate market value of at least 5% of the aggregate market value of the outstanding stock of the corporation; liquidation or dissolution of the corporation proposed by or in connection with an interested stockholder; reclassification or recapitalization of stock that would increase the proportionate stock ownership of an interested stockholder; and the receipt by an interested stockholder or any affiliate or associate of any benefit from loans, guarantees, advances, pledges or other financial assistance or tax benefits provided by the corporation.

After a five-year period, the NYBCL allows such business combination if it is approved by a majority of the voting stock not owned by the interested stockholder or by an affiliate or associate of the interested stockholder. Business

combinations are also permitted when certain statutory fair price requirements are met and in certain other circumstances.

Under the MGCL, business combinations between a Maryland corporation and an interested stockholder or an affiliate of an interested stockholder are prohibited for five years after the most recent date on which the

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interested stockholder becomes an interested stockholder. Business combinations are defined as a merger, consolidation, share exchange or, in circumstances specified in the statute, an asset transfer or issuance or reclassification of equity securities. An interested stockholder is defined as:

any person who beneficially owns 10% or more of the voting power of the corporation's outstanding voting stock; or

an affiliate or associate of the corporation who, at any time within the two-year period prior to the date in question, was the beneficial owner of 10% or more of the voting power of the then outstanding voting stock of the corporation.

A person is not an interested stockholder under this statute if the board of directors approved in advance the transaction by which the stockholder otherwise would have become an interested stockholder. However, in approving a transaction, the board of directors may provide that its approval is subject to compliance, at or after the time of approval, with any terms and conditions determined by the board.

After the five-year prohibition, any business combination between the Maryland corporation and an interested stockholder generally must be recommended by the board of directors of the corporation and approved by the affirmative vote of at least:

80% of the votes entitled to be cast by holders of outstanding shares of voting stock of the corporation; and

two-thirds of the votes entitled to be cast by holders of voting stock of the corporation other than shares held by the interested stockholder with whom or with whose affiliate the business combination is to be effected or held by an affiliate or associate of the interested stockholder.

These super-majority vote requirements do not apply if the corporation's common stockholders receive a minimum price, as defined under the MGCL, for their shares in the form of cash or other consideration in the same form as previously paid by the interested stockholder for its shares.

The statute permits various exemptions from its provisions, including business combinations that are exempted by the board of directors before the time that the interested stockholder becomes an interested stockholder.

The Maryland Corporation will adopt a resolution that any business combination between it and any other person is exempted from the provisions of the MGCL, provided that the business combination is first approved by its Board, including a majority of the directors who are not interested persons as defined in the 1940 Act. This resolution may be altered or repealed in whole or in part at any time; however, the Board will adopt resolutions so as to make the Maryland Corporation subject to such provisions of the MGCL only if the Board determines that it would be in the Maryland Corporation's best interests and if the SEC staff does not object to the Maryland Corporation's determination that it being subject to such provisions of the MGCL does not conflict with the 1940 Act. If this resolution is repealed, or the board of directors does not otherwise approve a business combination, the statute may discourage others from trying to acquire control of the Maryland Corporation and increase the difficulty of consummating any offer.

## **Regulation as a Business Development Company**



A BDC is a unique kind of investment company that primarily focuses on investing in or lending to private companies and making managerial assistance available to them. A BDC provides stockholders with the ability to retain the liquidity of a publicly-traded stock, while sharing in the possible benefits of investing in emerging-growth or expansion-stage privately-owned companies. The 1940 Act contains prohibitions and restrictions relating to transactions between BDCs and their directors and officers and principal underwriters and certain other related persons and requires that a majority of the directors be persons other than interested persons, as that term is defined in the 1940 Act. In addition, the 1940 Act provides that we may not change the nature of our business so as to cease to be, or to withdraw our election as, a BDC unless approved by a majority of our

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outstanding voting securities. A majority of the outstanding voting securities of a company is defined under the 1940 Act as the lesser of: (i) 67% or more of such company's shares present at a meeting if more than 50% of the outstanding shares of such company are present or represented by proxy, or (ii) more than 50% of the outstanding shares of such company. See Operating as a BDC.

### ***Qualifying Assets***

Under the 1940 Act, a BDC may not acquire any asset other than assets of the type listed in Section 55(a) of the 1940 Act, which are referred to as qualifying assets, unless, at the time the acquisition is made, qualifying assets represent at least 70% of the company's total assets. The principal categories of qualifying assets relevant to our proposed business are the following:

- (1) Securities purchased in transactions not involving any public offering from the issuer of such securities, which issuer (subject to certain limited exceptions) is an eligible portfolio company, or from any person who is, or has been during the preceding 13 months, an affiliated person of an eligible portfolio company, or from any other person, subject to such rules as may be prescribed by the SEC. An eligible portfolio company is defined in the 1940 Act as any issuer which:
  - (a) is organized under the laws of, and has its principal place of business in, the United States;
  - (b) is not an investment company (other than a small business investment company wholly owned by the business development company) or a company that would be an investment company but for certain exclusions under the 1940 Act; and
  - (c) does not have any class of securities listed on a national securities exchange; or if it has securities listed on a national securities exchange such company has a market capitalization of less than \$250 million; is controlled by the business development company and has an affiliate of a business development company on its board of directors; or meets such other criteria as may be established by the SEC.
- (2) Securities purchased in a private transaction from a U.S. issuer that is not an investment company or from an affiliated person of the issuer, or in transactions incident thereto, if the issuer is in bankruptcy and subject to reorganization or if the issuer, immediately prior to the purchase of its securities was unable to meet its obligations as they came due without material assistance other than conventional lending or financing arrangements.
- (3) Securities of an eligible portfolio company purchased from any person in a private transaction if there is no ready market for such securities and we already own 60% of the outstanding equity of the eligible portfolio company.

(4) Securities received in exchange for or distributed on or with respect to securities described in (1) through (3) above, or pursuant to the exercise of warrants or rights relating to such securities.

(5) Cash, cash equivalents, U.S. Government securities or high-quality debt securities maturing in one year or less from the time of investment.

Control, as defined by the 1940 Act, is presumed to exist where a BDC beneficially owns more than 25% of the outstanding voting securities of the portfolio company.

We do not intend to acquire securities issued by any investment company that exceed the limits imposed by the 1940 Act. Under these limits, we generally cannot acquire more than 3% of the voting stock of any investment company (as defined in the 1940 Act), invest more than 5% of the value of our total assets in the securities of one such investment company or invest more than 10% of the value of our total assets in the securities of such investment companies in the aggregate. With regard to that portion of our portfolio invested in securities issued by investment companies, it should be noted that such investments might subject our stockholders to additional expenses.

As a BDC, we may make investments that are not considered qualifying assets under section 55(a) of the 1940 Act in an amount up to 30% of our total assets, but do not expect such investments will comprise a material

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portion of our portfolio. Such investments may include, but are not limited to, investments in the debt or equity of securitization vehicles, in each case that have more attractive risk-adjusted returns than qualifying assets at that time. We intend to invest primarily in qualifying assets once we elect to become a BDC, although we may invest from time to time in non-qualifying assets on an opportunistic basis to the extent we believe doing so would be accretive to our shareholders.

***Significant Managerial Assistance***

A BDC must have been organized and have its principal place of business in the United States and must be operated for the purpose of making investments in the types of securities described above. However, in order to count portfolio securities as qualifying assets for the purpose of the 70% test, the BDC must either control the issuer of the securities or must offer to make available to the issuer of the securities (other than small and solvent companies described above) significant managerial assistance; except that, where the BDC purchases such securities in conjunction with one or more other persons acting together, one of the other persons in the group may make available such managerial assistance. Making available significant managerial assistance means, among other things, any arrangement whereby the BDC, through its directors, officers or employees, offers to provide, and, if accepted, does so provide, significant guidance and counsel concerning the management, operations or business objectives and policies of a portfolio company through monitoring of portfolio company operations, selective participation in board and management meetings, consulting with and advising a portfolio company's officers or other organizational or financial guidance.

We have historically provided significant operating and managerial assistance to our controlled portfolio companies. This assistance typically involves, among other things, monitoring the operations and financial performance of such companies, participating in board and management meetings, consulting with and advising officers of portfolio companies and providing other organizational and financial assistance. For some portfolio companies we may participate as officers of those companies, assist with legal, financial, risk management, information technology and accounting matters, assist with marketing and advertising programs and coordinate benefit and personnel matters. The extent of our assistance varies depending on the needs of the portfolio company. Most of our portfolio investments are loans made through our small business finance platform. Each investment is assigned a staff member who monitors the performance of the company and the credit relationship. If the need arises, we may provide counseling on such matters as debt restructure or refinance, internal cost control and reduction and other aspects of business operations. All of this is provided by our senior management staff or others within our company or NSBF.

***Temporary Investments***

Pending investment in other types of qualifying assets, as described above, our investments as a BDC may consist of cash, cash equivalents, U.S. government securities or high quality debt securities maturing in one year or less from the time of investment, which we refer to, collectively, as temporary investments, so that 70% of our assets are qualifying assets. Typically, we will invest in U.S. treasury bills or in repurchase agreements, provided that such agreements are fully collateralized by cash or securities issued by the U.S. government or its agencies. A repurchase agreement involves the purchase by an investor, such as us, of a specified security and the simultaneous agreement by the seller to repurchase it at an agreed upon future date and at a price which is greater than the purchase price by an amount that reflects an agreed-upon interest rate. There is no percentage restriction on the proportion of our assets that may be invested in such repurchase agreements. However, if more than 25% of our total assets constitute repurchase agreements from a single counterparty, we would not meet the diversification tests imposed on us by the Code in order to qualify as a RIC for federal income tax purposes. Thus, we do not intend to enter into repurchase agreements with a single counterparty in excess of this limit. We will monitor the creditworthiness of the counterparties with which we enter into repurchase agreement transactions.

***Warrants and Options***

Under the 1940 Act, a BDC is subject to restrictions on the amount of warrants, options, restricted stock or rights to purchase shares of capital stock that it may have outstanding at any time. In particular, the amount of

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capital stock that would result from the conversion or exercise of all outstanding warrants, options or rights to purchase capital stock cannot exceed 25% of the BDC's total outstanding shares of capital stock. This amount is reduced to 20% of the BDC's total outstanding shares of capital stock if the amount of warrants, options or rights issued pursuant to an executive compensation plan would exceed 15% of the BDC's total outstanding shares of capital stock.

### ***Senior Securities; Coverage Ratio***

We will be permitted, under specified conditions, to issue multiple classes of indebtedness and one class of stock senior to our common stock if our asset coverage, as defined in the 1940 Act, is at least equal to 200% immediately after each such issuance. In addition, we may not be permitted to declare any cash dividend or other distribution on our outstanding common shares, or purchase any such shares, unless, at the time of such declaration or purchase, we have asset coverage of at least 200% after deducting the amount of such dividend, distribution, or purchase price. We may also borrow amounts up to 5% of the value of our total assets for temporary or emergency purposes.

### ***Code of Ethics***

BDCs are required to adopt a code of ethics pursuant to Rule 17j-1 under the 1940 Act that establishes procedures for personal investments and restricts certain transactions by personnel. Our code of ethics will generally not permit investments by our employees in securities that may be purchased or held by us.

### ***Compliance Policies and Procedures***

We will adopt and implement written policies and procedures reasonably designed to detect and prevent violation of the federal securities laws and will be required to review these compliance policies and procedures annually for their adequacy and the effectiveness of their implementation and designate a chief compliance officer to be responsible for administering the policies and procedures.

### ***Equity Compensation Plans***

BDCs are generally prohibited from issuing equity compensation to their officers and directors absent regulatory and/or stockholder approval. See Proposal IV Approval of a New Equity Compensation Plan of this proxy statement for additional detail on the equity compensation plan that Newtek MD seeks to adopt.

In connection with the BDC Election, we may file a request with the SEC for exemptive relief to allow us to take certain actions that would otherwise be prohibited by the 1940 Act, as applicable to BDCs. Specifically, although we cannot provide any assurance that we will receive any such exemptive relief, we intend to request that the SEC permit us to adopt a new equity compensation plan that provides for the issuance of (i) restricted stock awards to our officers, employees and directors pursuant to Section 23(a)(i) of the 1940 Act and (ii) stock options to our non-employee directors pursuant to Section 61(a)(3)(B)(i) of the 1940 Act.

### ***Other***

As a BDC, we will be periodically examined by the SEC for compliance with the Exchange Act and the 1940 Act.

As a BDC, we will be required to provide and maintain a bond issued by a reputable fidelity insurance company to protect us against larceny and embezzlement. Furthermore, we will be prohibited from protecting any director or officer against any liability to our stockholders arising from willful misfeasance, bad faith, gross negligence or

reckless disregard of the duties involved in the conduct of such person's office.

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**Material U.S. Federal Income Tax Considerations of a BDC and RIC Election**

The following discussion is a general summary of the material U.S. federal income tax considerations applicable to BDCs and to an investment in BDC Shares. This summary does not purport to be a complete description of the income tax considerations applicable to such an investment. For example, we have not described tax consequences that may be relevant to certain types of holders subject to special treatment under U.S. federal income tax laws, including stockholders subject to the alternative minimum tax, tax-exempt organizations, insurance companies, dealers in securities, a trader in securities that elects to use a market-to-market method of accounting for its securities holdings, pension plans and trusts, and financial institutions. This summary assumes that investors hold Newtek MD's common stock as capital assets (within the meaning of the Code). The discussion is based upon the Code, Treasury regulations, and administrative and judicial interpretations, each as of the date of this proxy statement and all of which are subject to change, possibly retroactively, which could affect the continuing validity of this discussion. We have not sought and will not seek any ruling from the IRS regarding the BDC Election and subsequent offering of BDC Shares. This summary does not discuss any aspects of U.S. estate or gift tax or foreign, state or local tax. It does not discuss the special treatment under U.S. federal income tax laws that could result if we invested in tax-exempt securities or certain other investment assets.

A U.S. stockholder generally will be a beneficial owner of BDC Shares who is for U.S. federal income tax purposes:

A citizen or individual resident of the United States;

A corporation or other entity treated as a corporation, for U.S. federal income tax purposes, created or organized in or under the laws of the United States or any political subdivision thereof;

A trust if a court within the United States is asked to exercise primary supervision over the administration of the trust and one or more United States persons have the authority to control all substantive decisions of the trust; or

An estate, the income of which is subject to U.S. federal income taxation regardless of its source.

A Non-U.S. stockholder generally will be a beneficial owner of BDC Shares who is not a U.S. stockholder. If a partnership (including an entity treated as a partnership for U.S. federal income tax purposes) holds BDC Shares, the tax treatment of a partner in the partnership will generally depend upon the status of the partner and the activities of the partnership. A prospective stockholder that is a partner of a partnership that will hold BDC Shares should consult his, her or its tax advisers with respect to the purchase, ownership and disposition of BDC Shares.

Tax matters are very complicated and the tax consequences to an investor of an investment in BDC Shares will depend on the facts of his, her or its particular situation. We encourage investors to consult their own tax advisers regarding the specific consequences of such an investment, including tax reporting requirements, the applicability of federal, state, local and foreign tax laws, eligibility for the benefits of any applicable tax treaty and the effect of any possible changes in the tax laws.

Newtek NY has requested, and expects to receive prior to the Special Meeting, an opinion of counsel with respect to the federal income tax consequences of the Reincorporation under the Code. This summary is not binding on the IRS



and there can be no assurance that the IRS (or a court, in the event of an IRS challenge) will agree with the conclusions stated herein. A successful IRS challenge to the reorganization status of the Reincorporation Transaction would result in a stockholder recognizing gain or loss with respect to each share exchanged in the Reincorporation Transaction equal to the difference between the stockholder's basis in such shares and the fair market value, as of the time of the Reincorporation Transaction, of the BDC Shares received in exchange therefor. In such event, a stockholder's aggregate basis in the BDC Shares received in the exchange would equal their fair market value on such date, and the stockholder's holding period for such shares would not include the period during which the stockholder held shares prior to the Reincorporation Transaction.

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**Table of Contents*****Taxation as a C Corporation***

Prior to the effective date of our election to be taxed as a RIC, which we currently anticipate will be January 1, 2015, we will continue to be taxable as an ordinary corporation under subchapter C of the Code (a C Corporation). While we are a C Corporation, we will be subject to U.S. federal income tax on all of our income at regular corporate rates (currently up to 35%). In addition, we will not be required to make any distributions to shareholders. Following the Reincorporation Transaction and during such time as we are taxed as a C corporation, we expect to make distributions in an amount approximately equal to our pre-tax income. We believe this will allow us to maintain a consistent distribution rate before and after electing to be treated as a RIC.

***Taxation of U.S. Holders***

To the extent that we make distributions at a time when we do not qualify as a RIC, U.S. Holders would be required to include such distributions their taxable income as dividends to the extent of our current and accumulated earnings and profits. Provided that certain holding periods and other requirements were met, any such distributions would generally qualify for treatment as qualified dividend income eligible for the 20% maximum rate applicable to non-corporate U.S. Holders. Subject to certain limitations under the Code, corporate distributees would be eligible for the dividends-received deduction. Distributions in excess of our current and accumulated earnings and profits would be treated first as a return of capital to the extent of the U.S. Holder's tax basis in our shares, and any remaining distributions would be treated as a capital gain.

If a U.S. Holder sells its shares, such U.S. Holder generally will recognize taxable gain or loss from such sale based on the amount realized on such sale and the U.S. Holder's adjusted basis in the shares sold. Any gain arising from such sale or disposition generally will be treated as long-term capital gain or loss if the U.S. Holder has held his, her or its shares for more than one year. Otherwise, it will be classified as short-term capital gain or loss. In general, individual U.S. Holders are currently subject to a maximum federal income tax rate of 20% on their net capital gain, i.e., the excess of realized net long-term capital gain over realized net short-term capital loss for a taxable year, including a long-term capital gain derived from an investment in our shares. Such rate is lower than the maximum rate on ordinary income currently payable by individuals. In addition, individuals with income in excess of \$200,000 (\$250,000 in the case of married individuals filing jointly) and certain estates and trusts are subject to an additional 3.8% tax on their net investment income, which generally includes net income from interest, dividends, annuities, royalties, and rents, and net capital gains (other than certain amounts earned from trades or businesses). Corporate U.S. Holders currently are subject to federal income tax on net capital gain at the maximum 35% rate also applied to ordinary income. Non-corporate U.S. Holders with net capital losses for a year (i.e., capital losses in excess of capital gains) generally may deduct up to \$3,000 of such losses against their ordinary income each year; any net capital losses of a non-corporate stockholder in excess of \$3,000 generally may be carried forward and used in subsequent years as provided in the Code. Corporate U.S. Holders generally may not deduct any net capital losses for a year, but may carry back such losses for three years or carry forward such losses for five years.

***Taxation of Non-U.S. Holders***

Whether an investment in our Shares is appropriate for a Non-U.S. Holder will depend upon that person's particular circumstances. An investment in our Shares by a Non-U.S. Holder may have adverse tax consequences. Non-U.S. Holders should consult their tax advisors before investing in our Shares.

Non-U.S. Holders generally will not be subject to U.S. federal income tax on our distributions unless such income is effectively connected with a U.S. trade or business of such Non-U.S. Holder (and if a treaty applies, attributable to a permanent establishment in the U.S.), but such distributions will be subject to U.S. federal withholding tax at a 30%

rate (or lower rate provided by an applicable treaty) to the extent of our current and accumulated earnings and profits. If such a distribution is effectively connected to a U.S. trade or business conducted by the Non-U.S. Holder (and if a treaty applies, is attributable to a permanent establishment in the

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U.S.), such Non-U.S. Holder will generally be subject to U.S. federal income tax on such distribution as if such holder were a U.S. Holder. In such case, we (or the applicable withholding agent) will not be required to withhold federal tax if the Non-U.S. Holder complies with applicable certification and disclosure requirements. Special certification requirements apply to a Non-U.S. Holder that is a foreign partnership or a foreign trust, and such entities are urged to consult their own tax advisors.

Any gains realized by a Non-U.S. Holder upon the sale of our common stock, will not be subject to federal withholding tax and generally will not be subject to federal income tax unless the distributions or gains, as the case may be, are effectively connected with a U.S. trade or business of the Non-U.S. Holder and, if an income tax treaty applies, are attributable to a permanent establishment maintained by the Non-U.S. Holder in the United States. Any gains realized by a Non-U.S. Holder upon the sale of our common stock will be subject to U.S. federal income tax to the extent such gains are effectively connected to a U.S. trade or business conducted by the Non-U.S. Holder (and if a treaty applies, are attributable to a permanent establishment in the U.S.).

For a corporate Non-U.S. Holder, distributions (both actual and deemed), and gains realized upon the sale of our common stock that are effectively connected with a U.S. trade or business may, under certain circumstances, be subject to an additional branch profits tax at a 30% rate (or at a lower rate if provided for by an applicable treaty). Any capital gain realized by a nonresident alien who is physically present in the United States for 183 days or more in the taxable year may be subject to tax at a 30% rate.

A Non-U.S. Holder who is a non-resident alien individual, and who is otherwise subject to withholding of federal income tax, may be subject to information reporting and backup withholding of federal income tax on dividends unless the Non-U.S. Holder provides us or the dividend paying agent with an Internal Revenue Service Form W-8BEN or Form W-8BEN-E (or an acceptable substitute form) or otherwise meets documentary evidence requirements for establishing that it is a Non-U.S. Holder or the Non-U.S. Holder otherwise establishes an exemption from backup withholding.

Legislation generally referred to as the Foreign Account Tax Compliance Act generally imposes a 30% withholding tax on payments of certain types of income to foreign financial institutions that fail to enter into an agreement with the U.S. Treasury to report certain required information with respect to accounts held by U.S. persons (or held by foreign entities that have U.S. persons as substantial owners). The types of income subject to the tax include U.S. source interest and dividends paid after June 30, 2014, and the gross proceeds from the sale of any property that could produce U.S. source interest or dividends paid after December 31, 2016. The information required to be reported includes the identity and taxpayer identification number of each account holder that is a U.S. person and transaction activity within the holder's account. In addition, subject to certain exceptions, this legislation also imposes a 30% withholding on payments to foreign entities that are not financial institutions unless the foreign entity certifies that it does not have a greater than 10% U.S. owner or provides the withholding agent with identifying information on each greater than 10% U.S. owner. When these provisions become effective, depending on the status of a Non-U.S. Holder and the status of the intermediaries through which they hold their BDC Shares, Non-U.S. Holders could be subject to this 30% withholding tax with respect to distributions on their BDC Shares and proceeds from the sale of their BDC Shares. Under certain circumstances, a Non-U.S. Holder might be eligible for refunds or credits of such taxes.

Non-U.S. Holders should consult their own tax advisors with respect to the U.S. federal income tax and withholding tax, and state, local and foreign tax consequences of an investment in our Shares.

***Election to be Taxed as a RIC***

As a BDC, we intend to elect to be treated, and qualify annually thereafter, as a RIC under Subchapter M of the Code, beginning with our 2015 taxable year. As a RIC, we generally will not have to pay corporate-level U.S. federal income taxes on any income that we distribute to our stockholders as dividends. To qualify as a RIC, we must, among other things, meet certain source-of-income and asset diversification requirements (as described

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below). In addition, to qualify for RIC tax treatment we must distribute to our stockholders, for each taxable year, at least 90% of our investment company taxable income, which is generally our ordinary income plus the excess of our realized net short-term capital gains over our realized net long-term capital losses (the Annual Distribution Requirement). Although it is currently our intention to do so, at the present time, we cannot assure you whether we will elect to be treated as a RIC for our 2015 taxable year. If we opt not to do so or are unable to qualify, we will continue to be taxed as a C corporation under the Code for our 2015 taxable year. See Material U.S. Federal Income Tax Considerations of the Special Dividend.

***Taxation as a RIC***

For any taxable year in which we:

qualify as a RIC; and

satisfy the Annual Distribution Requirement, we generally will not be subject to U.S. federal income tax on the portion of our income we distribute (or are deemed to distribute) to stockholders. We will be subject to U.S. federal income tax at the regular corporate rates on any income or capital gains not distributed (or deemed distributed) to our stockholders.

We will be subject to a 4% nondeductible U.S. federal excise tax on certain undistributed income unless we distribute in a timely manner an amount at least equal to the sum of (1) 98% of our net ordinary income for each calendar year, (2) 98.2% of our capital gain net income for the one-year period ending October 31 in that calendar year and (3) any income recognized, but not distributed, in preceding years and on which we paid no corporate-level income tax (the Excise Tax Avoidance Requirement). We generally will endeavor in each taxable year to make sufficient distributions to our stockholders to avoid any U.S. federal excise tax on our earnings.

In order to qualify as a RIC for U.S. federal income tax purposes, we must, among other things:

qualify as a BDC under the 1940 Act at all times during each taxable year;

distribute all of our earnings and profits accumulated for all years prior to the first taxable year that we qualify as a RIC no later than the last day of such taxable year;

derive in each taxable year at least 90% of our gross income from dividends, interest, payments with respect to loans of certain securities, gains from the sale of stock or other securities, net income from certain qualified publicly traded partnerships, or other income derived with respect to our business of investing in such stock or securities (the 90% Income Test); and

diversify our holdings so that at the end of each quarter of the taxable year:

at least 50% of the value of our assets consists of cash, cash equivalents, U.S. Government securities, securities of other RICs, and other securities if such other securities of any one issuer do not represent more than 5% of the value of our assets or more than 10% of the outstanding voting securities of the issuer; and

no more than 25% of the value of our assets is invested in the securities, other than U.S. government securities or securities of other RICs, of one issuer, of two or more issuers that are controlled, as determined under applicable Code rules, by us and that are engaged in the same or similar or related trades or businesses or of certain qualified publicly traded partnerships (the Diversification Tests ).

Qualified earnings may exclude such income as management fees received in connection with our subsidiaries or other potential outside managed funds and certain other fees.

We may be required to recognize taxable income in circumstances in which we do not receive cash. For example, if we hold debt obligations that are treated under applicable tax rules as having original issue discount

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(such as debt instruments with payment in kind (PIK) interest or, in certain cases, increasing interest rates or issued with warrants), we must include in income each year a portion of the original issue discount that accrues over the life of the obligation, regardless of whether cash representing such income is received by us in the same taxable year. We may also have to include in income other amounts that we have not yet received in cash, such as PIK interest, deferred loan origination fees that are paid after origination of the loan or are paid in non-cash compensation such as warrants or stock, or certain income with respect to equity investments in foreign corporations. Because any original issue discount or other amounts accrued will be included in our investment company taxable income for the year of accrual, we may be required to make a distribution to our stockholders in order to satisfy the Annual Distribution Requirement, even though we will not have received any corresponding cash amount.

Although we do not presently expect to do so, we will be authorized to borrow funds and to sell assets in order to satisfy distribution requirements. However, under the 1940 Act, we will not be permitted to make distributions to our stockholders while our debt obligations and other senior securities are outstanding unless certain asset coverage tests are met. Moreover, our ability to dispose of assets to meet our distribution requirements may be limited by (1) the illiquid nature of our portfolio and/or (2) other requirements relating to our status as a RIC, including the Diversification Tests. If we dispose of assets in order to meet the Annual Distribution Requirement or the Excise Tax Avoidance Requirement, we may make such dispositions at times that, from an investment standpoint, are not advantageous. If we are prohibited from making distributions or are unable to obtain cash from other sources to make the distributions, we may fail to qualify as a RIC, which would result in us becoming subject to corporate-level federal income tax.

In addition, we will be partially dependent on our subsidiaries for cash distributions to enable us to meet the RIC distribution requirements. Some of our subsidiaries may be limited by the Small Business Investment Act of 1958, and SBA regulations, from making certain distributions to us that may be necessary to maintain our status as a RIC. We may have to request a waiver of the SBA's restrictions for our subsidiaries to make certain distributions to maintain our RIC status. We cannot assure you that the SBA will grant such waiver. If our subsidiaries are unable to obtain a waiver, compliance with the SBA regulations may cause us to fail to qualify as a RIC, which would result in us becoming subject to corporate-level federal income tax.

The remainder of this discussion assumes that we qualify as a RIC and have satisfied the Annual Distribution Requirement.

Any transactions in options, futures contracts, constructive sales, hedging, straddle, conversion or similar transactions, and forward contracts will be subject to special tax rules, the effect of which may be to accelerate income to us, defer losses, cause adjustments to the holding periods of our investments, convert long-term capital gains into short-term capital gains, convert short-term capital losses into long-term capital losses or have other tax consequences. These rules could affect the amount, timing and character of distributions to stockholders. We do not currently intend to engage in these types of transactions.

A RIC is limited in its ability to deduct expenses in excess of its investment company taxable income (which is, generally, ordinary income plus net realized short-term capital gains in excess of net realized long-term capital losses). If our expenses in a given year exceed gross taxable income (e.g., as the result of large amounts of equity-based compensation), we would experience a net operating loss for that year. However, a RIC is not permitted to carry forward net operating losses to subsequent years. In addition, expenses can be used only to offset investment company taxable income, not net capital gain. Due to these limits on the deductibility of expenses, we may for tax purposes have aggregate taxable income for several years that we are required to distribute and that is taxable to our stockholders even if such income is greater than the aggregate net income we actually earned during those years. Such required distributions may be made from our cash assets or by liquidation of investments, if necessary. We may



realize gains or losses from such liquidations. In the event we realize net capital gains from such transactions, you may receive a larger capital gain distribution than you would have received in the absence of such transactions.

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Investment income received from sources within foreign countries, or capital gains earned by investing in securities of foreign issuers, may be subject to foreign income taxes withheld at the source. In this regard, withholding tax rates in countries with which the United States does not have a tax treaty are often as high as 35% or more. The United States has entered into tax treaties with many foreign countries that may entitle us to a reduced rate of tax or exemption from tax on this related income and gains. The effective rate of foreign tax cannot be determined at this time since the amount of our assets to be invested within various countries is not now known. We do not anticipate being eligible for the special election that allows a RIC to treat foreign income taxes paid by such RIC as paid by its stockholders.

If we acquire stock in certain foreign corporations that receive at least 75% of their annual gross income from passive sources (such as interest, dividends, rents, royalties or capital gain) or hold at least 50% of their total assets in investments producing such passive income ( passive foreign investment companies ), we could be subject to federal income tax and additional interest charges on excess distributions received from such companies or gain from the sale of stock in such companies, even if all income or gain actually received by us is timely distributed to our stockholders. We would not be able to pass through to our stockholders any credit or deduction for such a tax. Certain elections may, if available, ameliorate these adverse tax consequences, but any such election requires us to recognize taxable income or gain without the concurrent receipt of cash. We intend to limit and/or manage our holdings in passive foreign investment companies to minimize our tax liability.

Foreign exchange gains and losses realized by us in connection with certain transactions involving non-dollar debt securities, certain foreign currency futures contracts, foreign currency option contracts, foreign currency forward contracts, foreign currencies, or payables or receivables denominated in a foreign currency are subject to Code provisions that generally treat such gains and losses as ordinary income and losses and may affect the amount, timing and character of distributions to our stockholders. Any such transactions that are not directly related to our investment in securities (possibly including speculative currency positions or currency derivatives not used for hedging purposes) could, under future Treasury regulations, produce income not among the types of qualifying income from which a RIC must derive at least 90% of its annual gross income.

***Built-In Gains Tax.*** We anticipate that certain of our assets will have built-in gain (i.e., assets whose fair market value exceeds our tax basis at the time we acquire them) as of the beginning of 2015, which is the beginning of first year that we expect to qualify as a RIC. To the extent such gain is recognized by us upon a sale or other disposition of such assets during the ten-year period (or shorter applicable period) following the beginning of such taxable year, we will be required to pay a corporate-level tax on the net amount of any such built-in gains. Alternatively, we may make a special election to cause the gain to be recognized as of the beginning of such taxable year. In that event, we would be required to recognize such built-in gain as such assets were sold as of the beginning of such taxable year. We do not anticipate making this election at this time. Any corporate-level built-in gains tax is payable at the time the built-in gains are recognized (which generally will be the years in which the built-in gain assets are sold in a taxable transaction). The amount of this tax will vary depending on the assets that are actually sold by us in this 10-year period (or shorter applicable period), the actual amount of net built-in gain or loss present in those assets as of the beginning of such taxable year and effective tax rates. The payment of any such corporate-level tax on built-in gains will be a company expense that will be borne by all stockholders and will reduce the amount available for distribution to stockholders. In addition, we will be required to distribute such gain (net of any corporate-level tax) to our stockholders in order to eliminate our liability for corporate-level U.S. federal income tax on such gain and possibly to maintain our qualification as a RIC.

***Taxation of U.S. Holders***

Distributions by us generally will be taxable to U.S. Holders as ordinary income or capital gains. Distributions of our investment company taxable income (which will generally equal our net ordinary income plus realized net short-term

capital gains in excess of realized net long-term capital losses) will be taxable as ordinary income to U.S. Holders to the extent of our current or accumulated earnings and profits, whether paid in

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cash or reinvested in additional common stock. To the extent such distributions paid by us to non-corporate stockholders (including individuals) are attributable to dividends from U.S. corporations and certain qualified foreign corporations, such distributions ( Qualifying Dividends ) may be eligible for a maximum tax rate of 20%, provided holding period and other requirements are met at both the stockholder and company levels. Distributions of our net capital gains (which will generally equal our realized net long-term capital gains in excess of realized net short-term capital losses) properly reported by us as capital gain dividends in written statements furnished to our stockholders will be taxable to a U.S. Holder as long-term capital gains that are currently taxable at a maximum rate of 20% in the case of individuals, trusts or estates, regardless of the U.S. Holder's holding period for his, her or its common stock and regardless of whether paid in cash or reinvested in additional common stock. Distributions in excess of our earnings and profits first will reduce a U.S. Holder's adjusted tax basis in such U.S. Holder's common stock and, after the adjusted basis is reduced to zero, will constitute capital gains to such U.S. Holder.

We may retain some or all of our realized net long-term capital gains in excess of realized net short-term capital losses, but designate the retained net capital gain as a deemed distribution. In that case, among other consequences, we will pay tax on the retained amount, each U.S. Holder will be required to include his, her or its share of the deemed distribution in income as if it had been actually distributed to the U.S. Holder, and the U.S. Holder will be entitled to claim a credit equal to his, her or its allocable share of the tax paid thereon by us. Because we expect to pay tax on any retained capital gains at our regular corporate tax rate, and because that rate is in excess of the maximum rate currently payable by individuals on long-term capital gains, the amount of tax that individual U.S. Holder will be treated as having paid will exceed the tax they owe on the capital gain distribution and such excess generally may be refunded or claimed as a credit against the U.S. Holder's other U.S. federal income tax obligations or may be refunded to the extent it exceeds a stockholder's liability for federal income tax. A stockholder that is not subject to federal income tax or otherwise required to file a federal income tax return would be required to file a federal income tax return on the appropriate form in order to claim a refund for the taxes we paid. The amount of the deemed distribution net of such tax will be added to the U.S. stockholder's cost basis for his, her or its common stock. In order to utilize the deemed distribution approach, we must provide written notice to our stockholders prior to the expiration of 60 days after the close of the relevant taxable year. We cannot treat any of our investment company taxable income as a deemed distribution.

In accordance with certain applicable Treasury regulations and private letter rulings issued by the IRS, a RIC may treat a distribution of its own stock as fulfilling its RIC distribution requirements if each stockholder may elect to receive his or her entire distribution in either cash or stock of the RIC, subject to a limitation that the aggregate amount of cash to be distributed to all stockholders must be at least 20% of the aggregate declared distribution. If too many stockholders elect to receive cash, each stockholder electing to receive cash must receive a pro rata amount of cash (with the balance of the distribution paid in stock). In no event will any stockholder, electing to receive cash, receive less than 20% of his or her entire distribution in cash. If these and certain other requirements are met, for U.S. federal income tax purposes, the amount of the dividend paid in stock will be equal to the amount of cash that could have been received instead of stock. Other than in connection with the Special Dividend, we have no current intention of paying dividends in shares of our stock in connection with fulfilling RIC distribution requirements.

For purposes of determining (1) whether the Annual Distribution Requirement is satisfied for any year and (2) the amount of the deduction for ordinary income and capital gain dividends paid for that year, we may, under certain circumstances, elect to treat a dividend that is paid during the following taxable year as if it had been paid during the taxable year in question. If we make such an election, the U.S. Holder will still be treated as receiving the dividend in the taxable year in which the distribution is made. However, any dividend declared by us in October, November or December of any calendar year, payable to stockholders of record on a specified date in such a month and actually paid during January of the following year, will be treated as if it had been received by our U.S. stockholders on December 31<sup>st</sup> of the year in which the dividend was declared.



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If an investor purchases BDC Shares shortly before the record date of a distribution, the price of the BDC Shares will include the value of the distribution and the investor will be subject to tax on the distribution even though economically it may represent a return of his, her or its investment.

A U.S. Holder generally will recognize taxable gain or loss if the U.S. Holder sells or otherwise disposes of his, her or its BDC Shares. The amount of gain or loss will be measured by the difference between such U.S. Holder's adjusted tax basis in the common stock sold and the amount of the proceeds received in exchange. Any gain arising from such sale or disposition generally will be treated as long-term capital gain or loss if the U.S. Holder has held his, her or its shares for more than one year. Otherwise, it will be classified as short-term capital gain or loss. However, any capital loss arising from the sale or disposition of BDC Shares held for six months or less will be treated as long-term capital loss to the extent of the amount of capital gain dividends received, or undistributed capital gain deemed received, with respect to such shares. In addition, all or a portion of any loss recognized upon a disposition of BDC Shares may be disallowed if other BDC Shares are purchased (whether through reinvestment of distributions or otherwise) within 30 days before or after the disposition. In such a case, the basis of the newly purchased shares will be adjusted to reflect the disallowed loss.

In general, U.S. Holders taxed at individual rates currently are subject to a maximum U.S. federal income tax rate of 20% on their net capital gain (i.e., the excess of realized net long-term capital gains over realized net short-term capital losses), including any long-term capital gain derived from an investment in BDC Shares. Such rate is lower than the maximum rate on ordinary income currently payable by such U.S. Holders. In addition, individuals with income in excess of \$200,000 (\$250,000 in the case of married individuals filing jointly) and certain estates and trusts are subject to an additional 3.8% tax on their net investment income, which generally includes net income from interest, dividends, annuities, royalties, and rents, and net capital gains (other than certain amounts earned from trades or businesses). Corporate U.S. Holders currently are subject to U.S. federal income tax on net capital gain at the maximum 35% rate also applied to ordinary income. Non-corporate U.S. Holders with net capital losses for a year (i.e., capital losses in excess of capital gains) generally may deduct up to \$3,000 of such losses against their ordinary income each year any net capital losses of a non-corporate U.S. Holder in excess of \$3,000 generally may be carried forward and used in subsequent years as provided in the Code. Corporate U.S. stockholders generally may not deduct any net capital losses for a year, but may carry back such losses for three years or carry forward such losses for five years.

We (or the applicable withholding agent) will send to each of our U.S. Holders, as promptly as possible after the end of each calendar year, a notice reporting, on a per share and per distribution basis, the amounts includible in such U.S. Holder's taxable income for such year as ordinary income and as long-term capital gain. In addition, the federal tax status of each year's distributions generally will be reported to the IRS (including the amount of dividends, if any, eligible for the 20% maximum rate). Distributions may also be subject to additional state, local and foreign taxes depending on a U.S. Holder's particular situation.

In some taxable years, we may be subject to the alternative minimum tax (AMT). If we have tax items that are treated differently for AMT purposes than for regular tax purposes, we may apportion those items between us and our stockholders, and this may affect our stockholder's AMT liabilities. Although regulations explaining the precise method of apportionment have not yet been issued by the IRS, we may apportion these items in the same proportion that dividends paid to each stockholder bear to our taxable income (determined without regard to the dividends paid deduction), unless we determine that a different method for a particular item is warranted under the circumstances. You should consult your own tax advisor to determine how an investment in Newtek MD's stock could affect your AMT liability.

We may be required to withhold U.S. federal income tax ( backup withholding ) from all distributions to any U.S. Holder (other than a stockholder that otherwise qualifies for an exemption) (1) who fails to furnish us with a correct taxpayer identification number or a certificate that such stockholder is exempt from backup withholding or (2) with respect to whom the IRS notifies us that such stockholder has failed to properly report certain interest and dividend income to the IRS and to respond to notices to that effect. An individual s taxpayer

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identification number is his or her social security number. Any amount withheld under backup withholding is allowed as a credit against the U.S. Holder's federal income tax liability, provided that proper information is provided to the IRS.

U.S. Holders that hold their common stock through foreign accounts or intermediaries will be subject to U.S. withholding tax at a rate of 30% on dividends after June 30, 2014, and proceeds of sale of our common stock paid after December 31, 2016 if certain disclosure requirements related to U.S. accounts are not satisfied.

***Dividend Reinvestment Plan.*** We intend to adopt a dividend reinvestment plan following the BDC Election through which all dividend distributions are paid to our stockholders in the form of additional BDC Shares, unless a stockholder elects to receive cash in accordance with the terms of the plan. Any distributions made to a U.S. stockholder that are reinvested under the plan will nevertheless remain taxable to the U.S. stockholder. The U.S. stockholder will have an adjusted tax basis in the additional BDC Shares purchased through the plan equal to the amount of the reinvested distribution. The additional BDC Shares will have a new holding period commencing on the day following the day on which the BDC Shares are credited to the U.S. Holder's account.

***Taxation of Non-U.S. Holders***

Whether an investment in BDC Shares is appropriate for a Non-U.S. Holder will depend upon that person's particular circumstances. An investment in the BDC Shares by a Non-U.S. stockholder may have adverse tax consequences. Non-U.S. Holders should consult their tax advisers.

Distributions of our investment company taxable income to Non-U.S. Holders (including interest income and realized net short-term capital gains in excess of realized long-term capital losses, which generally would be free of withholding if paid to Non-U.S. Holders directly) will be subject to withholding of federal tax at a 30% rate (or lower rate provided by an applicable treaty) to the extent of our current and accumulated earnings and profits unless an applicable exception applies. If the distributions are effectively connected with a U.S. trade or business of the Non-U.S. Holder, we will not be required to withhold federal tax if the Non-U.S. Holder complies with applicable certification and disclosure requirements, although the distributions will be subject to U.S. federal income tax at the rates applicable to U.S. persons. (Special certification requirements apply to a Non-U.S. stockholder that is a foreign partnership or a foreign trust, and such entities are urged to consult their own tax advisers).

However, for taxable years beginning before January 1, 2014, no withholding was required with respect to certain distributions if (i) the distributions were properly reported to our stockholders as interest-related dividends or short-term capital gain dividends in written statements to our stockholders, (ii) the distributions were derived from sources specified in the Code for such dividends and (iii) certain other requirements were satisfied. Currently, we do not anticipate that any significant amount of our distributions would be reported as eligible for this exemption from withholding. No assurance can be provided that this exemption will be extended for tax years beginning after December 31, 2013.

Actual or deemed distributions of our net capital gains to a Non-U.S. stockholder, and gains realized by a Non-U.S. Holder upon the sale of our common stock, will not be subject to federal withholding tax and generally will not be subject to federal income tax unless the distributions or gains, as the case may be, are effectively connected with a U.S. trade or business of the Non-U.S. Holder.

The tax consequences to Non-U.S. Holders entitled to claim the benefits of an applicable tax treaty or that are individuals that are present in the United States for 183 days or more during a taxable year may be different from those described herein. Non-U.S. Holders are urged to consult their tax advisers with respect to the procedure for



claiming the benefit of a lower treaty rate and the applicability of foreign taxes.

If we distribute our net capital gains in the form of deemed rather than actual distributions, a Non-U.S. Holder will be entitled to a U.S. federal income tax credit or tax refund equal to the stockholder's allocable share

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of the tax we pay on the capital gains deemed to have been distributed. In order to obtain the refund, the Non-U.S. Holder must obtain a U.S. taxpayer identification number and file a U.S. federal income tax return even if the Non-U.S. Holder would not otherwise be required to obtain a U.S. taxpayer identification number or file a U.S. federal income tax return. For a corporate Non-U.S. Holder, distributions (both actual and deemed), and gains realized upon the sale of our common stock that are effectively connected to a U.S. trade or business may, under certain circumstances, be subject to an additional branch profits tax at a 30% rate (or at a lower rate if provided for by an applicable treaty). Accordingly, investment in BDC Shares may not be appropriate for a Non-U.S. Holder.

A Non-U.S. Holder who is a non-resident alien individual, and who is otherwise subject to withholding of federal tax, may be subject to information reporting and backup withholding of U.S. federal income tax on dividends unless the Non-U.S. Holder provides us or the dividend paying agent with an IRS Form W-8BEN or Form W-8BEN-E (or an acceptable substitute form) or otherwise meets documentary evidence requirements for establishing that it is a Non-U.S. Holder or otherwise establishes an exemption from backup withholding.

Legislation generally referred to as the Foreign Account Tax Compliance Act imposes a 30% withholding tax on payments of certain types of income to foreign financial institutions that fail to enter into an agreement with the U.S. Treasury to report certain required information with respect to accounts held by U.S. persons (or held by foreign entities that have U.S. persons as substantial owners). The types of income subject to the tax include U.S. source interest and dividends paid after June 30, 2014 and the gross proceeds from the sale of any property that could produce U.S.-source interest or dividends paid after December 31, 2016. The information required to be reported includes the identity and taxpayer identification number of each account holder that is a U.S. person and transaction activity within the holder's account. In addition, subject to certain exceptions, this legislation also imposes a 30% withholding on payments to foreign entities that are not financial institutions unless the foreign entity certifies that it does not have a greater than 10% U.S. owner or provides the withholding agent with identifying information on each greater than 10% U.S. owner. When these provisions become effective, depending on the status of a Non-U.S. Holder and the status of the intermediaries through which they hold their BDC Shares, Non-U.S. Holders could be subject to this 30% withholding tax with respect to distributions on their BDC Shares and proceeds from the sale of their BDC Shares. Under certain circumstances, a Non-U.S. Holder might be eligible for refunds or credits of such taxes.

Non-U.S. persons should consult their own tax advisers with respect to the U.S. federal income tax and withholding tax, and state, local and foreign tax consequences of an investment in the shares.

***Failure to Qualify as a RIC***

If we fail to satisfy the 90% Income Test or the Diversification Tests for any taxable year, we may nevertheless qualify as a RIC for such year if certain relief provisions are applicable (which may, among other things, require us to pay certain corporate-level federal taxes or to dispose of certain assets).

If we were unable to qualify for treatment as a RIC and the foregoing relief provisions are not applicable, we would be subject to tax on all of our taxable income at regular corporate rates, regardless of whether we make any distributions to our stockholders. Distributions would not be required, and any distributions would be taxable to our stockholders as ordinary dividend income to the extent of our current and accumulated earnings and profits and, subject to certain limitations, may be eligible for the 20% maximum rate for noncorporate taxpayers provided certain holding period and other requirements were met. Subject to certain limitations under the Code, corporate distributees would be eligible for the dividends-received deduction. Distributions in excess of our current and accumulated earnings and profits would be treated first as a return of capital to the extent of the stockholder's tax basis, and any remaining distributions would be treated as a capital gain. To requalify as a RIC in a subsequent taxable year, we would be required to satisfy the RIC qualification requirements for that year and dispose of any earnings and profits from any

year in which we failed to qualify as a RIC. Subject to a limited exception applicable to RICs that qualified as such under Subchapter M of the Code for at least one year prior to disqualification and that

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requalify as a RIC no later than the second year following the nonqualifying year, we could be subject to tax on any unrealized net built-in gains in the assets held by us during the period in which we failed to qualify as a RIC that are recognized within the subsequent 10 years (or shorter applicable period), unless we made a special election to pay corporate-level tax on such built-in gain at the time of our requalification as a RIC.

***Taxation of the Special Dividend***

***Reasons for Special Dividend.*** As discussed above, if we undertake the Reincorporation Transaction and elect to qualify as a BDC, we also intend to elect to be treated as a RIC under subchapter M of the Code beginning with our 2015 taxable year. To qualify as a RIC, we must, among other things, distribute by the end of the first taxable year that we elect to be treated as a RIC all of our accumulated earnings and profits from all taxable years that we were taxed as a C corporation. We intend to satisfy this requirement through the payment of the Special Dividend. Although the Company cannot determine the amount of its accumulated C corporation earnings and profits until after the end of its 2014 taxable year, the aggregate amount of the Special Dividend will equal the amount of such accumulated C corporation earnings and profits as of such date. Following the Reincorporation Transaction, the Company expects to make distributions in an amount approximately equal to its pre-tax income. The portions of any such distributions that exceed the Company's current earnings will have the effect of reducing the amount of the Special Dividend. The timing of the payment of the Special Dividend will be determined at the discretion of the Board, but in all events, the Special Dividend will be paid no later than December 31, 2015, which is our first taxable year that we anticipate that we will qualify as RIC. At the discretion of the Board, the Special Dividend may be paid in more than one installment.

At the discretion of the Board, the Special Dividend may be payable in cash or BDC Shares at the election of stockholders. In accordance with certain applicable Treasury regulations and private letter rulings issued by the IRS, a RIC may treat a distribution of its own stock as fulfilling its RIC distribution requirements if each stockholder may elect to receive his or her entire distribution in either cash or stock of the RIC, subject to a limitation that the aggregate amount of cash to be distributed to all stockholders must be at least 20% of the aggregate declared distribution. If too many stockholders elect to receive cash, each stockholder electing to receive cash must receive a pro rata amount of cash (with the balance of the distribution paid in stock). In no event will any stockholder, electing to receive cash, receive less than 20% of his or her entire distribution in cash. If these and certain other requirements are met, for U.S. federal income tax purposes, the entire amount of the distribution, including the portion amount of the Special Dividend paid in stock, will be treated as a taxable distribution that will satisfy the requirement to distribute all of our earnings and profits accumulated in all taxable years prior to our qualification as a RIC.

***Special Dividend: Taxation of U.S. Holders.*** Each U.S. Holder must include the sum of the value of the our stock and the amount of cash, if any, received pursuant to the Special Dividend in his, her, or its gross income as dividend income. The Treasury regulations and IRS private letter rulings noted above confirm that, for this purpose, the amount of the dividend paid in stock will be equal to the amount of cash that could have been received instead of the stock. A stockholder that receives our stock pursuant to the Special Dividend would have a tax basis in such stock equal to the amount of cash that could have been received instead of such stock as described above, and the holding period in such stock would begin on the day following the payment date for the dividend.

Subject to certain holding period and other requirements, the Special Dividend will be eligible for the reduced maximum tax rates applicable to qualified dividends for non-corporate stockholders. If the Special Dividend is paid prior to effective date of our election to be taxable as a RIC, which is expected to be January 1, 2015, such dividend generally will be eligible for the dividends received deduction available to U.S. stockholders that are domestic corporations but not S corporations. However, if the Special Dividend is paid after the effective date of our election to become a RIC, it is uncertain whether such distribution will be eligible for the dividends received deduction.



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We may be required to withhold U.S. federal income tax ( backup withholding ) from all distributions to any U.S. stockholder (other than a stockholder that otherwise qualifies for an exemption) (1) who fails to furnish us with a correct taxpayer identification number or a certificate that such stockholder is exempt from backup withholding or (2) with respect to whom the IRS notifies us that such stockholder has failed to properly report certain interest and dividend income to the IRS and to respond to notices to that effect. An individual s taxpayer identification number is his or her social security number. Any amount withheld under backup withholding is allowed as a credit against the U. S. stockholder s federal income tax liability, provided that proper information is provided to the IRS.

U.S. Holders are urged to consult their own tax advisors to determine the federal, state, and local income tax consequences of the Special Dividend in light of their unique circumstances.

***Special Dividend: Taxation of Non-U.S. Holders.*** For non-U.S. Holders, the dividend will be subject to withholding of U.S. Federal withholding tax on a gross basis at a 30% rate (or such lower rate as may be specified by an applicable income tax treaty), unless it is treated as effectively connected with the conduct by the non-U.S. Holder of a United States trade or business. Certain certification and disclosure requirements must be satisfied for the stockholder to be exempt from withholding under the effectively connected income exemption or to qualify for a reduced rate of withholding under an applicable treaty. If the dividend is effectively connected with a non-U.S. Holder s U.S. trade or business, such non-U.S. Holder will be subject to tax on the dividend on a net basis (that is, after allowance of deductions) at graduated rates and generally will not be subject to withholding. A non-U.S. Holder that is a corporation may also be subject to an additional branch profits tax on the dividend at a 30% rate or such lower rate as may be specified by an applicable income tax treaty.

Generally, information reporting will apply to the payment of the dividend, and backup withholding may apply, unless the payee certifies that it is not a U.S. person or otherwise establishes an exemption.

Legislation referred to as the Foreign Account Tax Compliance Act generally imposes a 30% withholding tax on payments of certain types of income to foreign financial institutions that fail to enter into an agreement with the U.S. Treasury to report certain required information with respect to accounts held by U.S. persons (or held by foreign entities that have U.S. persons as substantial owners). The types of income subject to the tax include U.S. source dividends paid after June 30, 2014. The information required to be reported includes the identity and taxpayer identification number of each account holder that is a U.S. person and transaction activity within the holder s account. In addition, subject to certain exceptions, this legislation also imposes a 30% withholding on payments to foreign entities that are not financial institutions unless the foreign entity certifies that it does not have a greater than 10% U.S. owner or provides the withholding agent with identifying information on each greater than 10% U.S. owner.

Non-U.S. stockholders should consult their own tax advisers with respect to the U.S. federal income tax and withholding tax, and state, local and foreign tax consequences of the Special Dividend.

**Required Vote**

The approval of the Reincorporation Transaction will require the affirmative vote of a majority of the outstanding Shares entitled to vote at the Special Meeting. Abstentions and Broker Non-Votes will have the effect of a vote against this proposal.

**THE BOARD BELIEVES THAT A VOTE FOR PROPOSAL I TO APPROVE THE REINCORPORATION TRANSACTION AS DESCRIBED ABOVE IS IN THE BEST INTERESTS OF OUR STOCKHOLDERS AND RECOMMENDS A VOTE FOR PROPOSAL I.**



**Table of Contents****SELECTED FINANCIAL AND OTHER DATA**

The following selected statements of operations and balance sheet data have been derived from the audited financial statements for each of the five years ended December 31, 2013 and the six-month unaudited period ended June 30, 2014. The Consolidated Financial Statements for the four years ended December 31, 2012 have been audited by CohnReznick LLP. The Consolidated Financial Statements for the year ended December 31, 2013 have been audited by McGladrey LLP. The selected financial data set forth below should be read in conjunction with, and is qualified by reference to, Management's Discussion and Analysis of Financial Condition and Results of Operations and our Consolidated Financial Statements, including the Notes thereto, available at [www.sec.gov](http://www.sec.gov).

	FISCAL YEARS ENDED					SIX MONTHS
	December 31, 2009	December 31, 2010	December 31, 2011	December 31, 2012	December 31, 2013	ENDED June 30, 2014
(In Thousands Except for Per Share Data)						
<b>Operating Revenues</b>						
Electronic payment processing	\$ 69,654	\$ 80,920	\$ 82,473	\$ 85,483	\$ 89,651	\$ 44,690
Web hosting and design	18,846	19,164	19,181	18,208	17,375	8,101
Premium income	1,652	2,428	12,468	12,367	19,456	10,129
Interest income	1,735	1,903	2,629	3,422	4,838	3,129
Servicing fee income	1,625	2,568	3,101	6,862	6,565	5,283
Income from tax credits	7,837	2,380	1,390	522	113	28
Insurance commissions	811	886	1,071	1,205	1,737	801
Other income	3,551	2,470	3,026	3,061	3,858	2,054
<b>Total operating revenues</b>	<b>105,711</b>	<b>112,719</b>	<b>125,339</b>	<b>131,130</b>	<b>143,593</b>	<b>74,215</b>
<b>Net change in fair value of:</b>						
SBA loans		3,494	(5,493)	(1,013)	(1,226)	(1,147)
Warrants				(111)		
Credits in lieu of cash and notes payable in lieu of cash	900	38	(131)	3	21	
<b>Total net change in fair value</b>	<b>900</b>	<b>3,532</b>	<b>(5,624)</b>	<b>(1,121)</b>	<b>(1,205)</b>	<b>(1,147)</b>
<b>Operating expenses:</b>						
Electronic payment processing costs	58,312	68,187	69,389	72,183	75,761	37,937
Salaries and benefits	18,375	19,391	21,042	22,314	24,360	13,301
Interest	10,350	4,479	3,416	4,495	5,863	5,225
Depreciation and amortization	5,847	4,709	3,955	3,036	3,284	1,751



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Provision for loan losses	1,833	1,909	763	810	1,322	(66)
Other general and administrative costs	15,896	16,699	19,122	17,732	20,729	10,415
Total operating expenses	110,613	115,374	117,687	120,570	131,319	68,563