

NightHawk Radiology Holdings Inc
Form DEF 14A
March 19, 2010

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of the Securities

Exchange Act of 1934 (Amendment No.)

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 Section 240.14a-12

NightHawk Radiology Holdings, 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.

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

2) Aggregate number of securities to which transaction applies:

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1) Amount Previously Paid:

2) Form, Schedule or Registration Statement No.:

3) Filing Party:

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NIGHTHAWK RADIOLOGY HOLDINGS, INC.

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

To Be Held On April 30, 2010

To the Stockholders of NightHawk Radiology Holdings, Inc.:

NOTICE IS HEREBY GIVEN that the 2010 annual meeting of stockholders for NightHawk Radiology Holdings, Inc., a Delaware corporation (the *Company*), will be held on Friday, April 30, 2010 at 9:00 a.m., local time, at 4800 N. Scottsdale Road, Scottsdale, Arizona 85251, for the following purposes:

- 1) Elect two (2) Class I directors to the Board of Directors, each to serve a term of three (3) years;
- 2) Ratify the appointment of Deloitte & Touche LLP, as NightHawk's independent registered public accounting firm for the current fiscal year ending December 31, 2010; and

3) Transact such other business as may properly come before the Annual Meeting or any adjournment or postponement thereof. The Board of Directors has fixed the close of business on March 3, 2010, as the record date for determination of stockholders entitled to notice of and to vote at the meeting or any adjournment or postponement thereof.

This year, in accordance with new U.S. Securities and Exchange Commission rules, we are using the Internet as our primary means of furnishing proxy materials to stockholders. Consequently, most stockholders will not receive paper copies of our proxy materials. We will instead send these stockholders a notice with instructions for accessing the proxy materials and voting via the Internet. The notice also provides information on how stockholders may obtain paper copies of our proxy materials if they so choose. We believe this new rule will make the proxy distribution process more efficient, less costly and help in conserving natural resources.

Your vote is very important. We look forward to seeing you at the meeting.

Sincerely,

David M. Engert
President & Chief Executive Officer

Scottsdale, Arizona

YOUR VOTE IS IMPORTANT!

Whether You Own One Share Or Many, Your Prompt Cooperation In Voting Your

Proxy Is Greatly Appreciated.

NIGHTHAWK RADIOLOGY HOLDINGS, INC.

PROXY STATEMENT

INFORMATION CONCERNING SOLICITATION AND VOTING

The Board of Directors (the **Board**) of NightHawk Radiology Holdings, Inc. is soliciting proxies for our 2010 Annual Meeting of Stockholders (the **Annual Meeting**). This proxy statement (the **Proxy Statement**) contains important information for you to consider when deciding how to vote on the matters brought before the Annual Meeting. Please read it carefully. All references in this Proxy Statement to we, us, our, NightHawk or the Company shall mean NightHawk Radiology Holdings, Inc.

The Notice of Internet Availability, with instructions on how to access our Proxy Statement, Annual Report and Proxy Card are being distributed on or about March 19, 2010.

- Date:** Friday, April 30, 2010
- Time:** 9:00 a.m., Local Time
- Place:** 4800 N. Scottsdale Road, Scottsdale, Arizona 85251
- Purpose:**
1. Elect two (2) Class I directors to the Board of Directors, each to serve a term of three (3) years;
 2. Ratify the appointment of Deloitte & Touche LLP, as NightHawk's independent registered public accounting firm for the current fiscal year ending December 31, 2010; and
 3. Transact such other business as may properly come before the Annual Meeting or any adjournment or postponement thereof.

What is the record date for the Annual Meeting? Our Board has set March 3, 2010 as the record date for the Annual Meeting.

How many shares of NightHawk's common stock were outstanding on the record date? On March 3, 2010 approximately 23,576,167 shares of our common stock were outstanding.

Who is entitled to vote and how many votes do I have? All stockholders who owned shares of our common stock on March 3, 2010 are entitled to vote at the Annual Meeting. Every stockholder is entitled to one (1) vote for each share of common stock held.

Why did I receive a notice in the mail regarding the Internet availability of the proxy materials instead of a paper copy of the proxy materials? This year, in accordance with U.S. Securities and Exchange Commission rules, we are using the Internet as our primary means of furnishing proxy materials to stockholders. Consequently, most stockholders will receive a notice with instructions for accessing the proxy materials and voting via the Internet. The notice also provides information on how stockholders may obtain paper copies of our proxy materials if they so choose.

How do I vote? You may cast your vote by:

attending and voting in person at the annual meeting;

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accessing the Internet website specified in the Notice of Internet Availability and following the instructions provided on the website (or if printed copies of the proxy materials were requested, as specified in the printed proxy card);

calling the telephone number specified in the Notice of Internet Availability and voting by following the instructions provided on the phone line (or if copies of the proxy materials were requested, as specified in the printed proxy card); or

requesting a printed proxy card and completing, signing, dating and promptly mailing the proxy card in the envelope provided.

Can I change my vote?

You can revoke your proxy before the time of voting at the Annual Meeting in several ways:

by mailing a revised proxy dated later than the prior proxy;

by voting again at the Internet website;

by voting again using the telephone;

by voting in person at the Annual Meeting; or

by notifying our corporate secretary in writing that you are revoking your proxy. Your revocation must be received before the Annual Meeting to be effective.

What constitutes a quorum for the Annual Meeting?

At least a majority of the shares of our common stock outstanding as of the record date must be present at the Annual Meeting in person or by proxy in order to hold the Annual Meeting and conduct business. This is called a quorum. Your shares are counted as present at the Annual Meeting if you are either (i) present and vote in person at the Annual Meeting or (ii) have properly submitted a proxy via mail, Internet or telephone. Abstentions, broker non-votes and votes withheld from director nominees are considered as shares present at the Annual Meeting for the purposes of determining a quorum. A broker non-vote occurs when a broker or other nominee who holds shares for the owner of the shares does not vote on a particular proposal because the nominee does not have discretionary voting authority for that proposal and has not received voting instructions from the owner of the shares.

What is the voting requirement to approve each of the proposals?

For Proposal I, the election of directors, the two (2) individuals receiving the highest number of FOR votes will be elected. To pass, Proposal II, the ratification of the appointment of the independent registered public accounting firm, requires the affirmative FOR vote of at least a majority of the shares of our common stock present or represented by proxy at the Annual Meeting and entitled to vote.

How are votes counted?

For Proposal I, you may vote FOR all of the nominees or you may elect to have your vote WITHHELD FOR ALL with respect to the nominees. Votes that are withheld will be excluded entirely and will have no effect in the election of directors. Similarly, if you hold your shares in a brokerage account in your broker's name (this is called *street name*) and you do not vote or instruct the broker how to vote the shares, your shares will not be counted in the election of directors. See "What if I don't cast my vote?" below.

For Proposal II you may vote FOR, AGAINST or ABSTAIN. If you abstain from voting on Proposal II, it has the same effect as a vote against the proposal. If you hold your shares in a street name and you do not vote or instruct the broker how to vote the shares, or your broker does not have discretionary authority to

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vote on Proposal II, your shares will not be counted in the tally of the number of shares cast on Proposal II and therefore may have the effect of reducing the number of shares needed to approve the proposal.

Finally, if you just sign and return your Proxy Card with no further instructions, your shares will be counted as a vote FOR each director nominee and FOR the ratification of the appointment of Deloitte & Touche LLP as our independent registered public accounting firm for the current fiscal year ending December 31, 2010.

What if I don't cast my vote?

If you hold your shares in street name it is critical that you cast your vote if you want it to count in the election of Directors (Item 1 of this Proxy Statement). In the past, if you held your shares in street name and you did not indicate how you wanted your shares voted in the election of Directors, your bank or broker was allowed to vote those shares on your behalf in the election of Directors as they felt appropriate.

Recent changes in regulation were made to take away the ability of your bank or broker to vote your uninstructed shares in the election of Directors on a discretionary basis. Thus, if you hold your shares in street name and you do not instruct your bank or broker how to vote in the election of Directors, no votes will be cast on your behalf. Your bank or broker will, however, continue to have discretion to vote any uninstructed shares on the ratification of the appointment of the Company's independent registered public accounting firm (Item 2 of this Proxy Statement). If you are a shareholder of record and you do not cast your vote, no votes will be cast on your behalf on any of the items of business at the Annual Meeting.

Who is soliciting my vote and who pays for the solicitation of proxies?

This Proxy Statement is furnished in connection with the solicitation of your vote by our Board. We pay the costs of soliciting proxies from stockholders. We may reimburse brokerage firms and other persons representing beneficial owners of shares for their expenses in forwarding the voting materials to the beneficial owners. Directors, officers and regular employees may solicit proxies on our behalf personally, by telephone or by facsimile, without additional compensation.

How does the Board recommend voting on the proposals?

Our Board recommends that you vote your shares FOR each of the nominees to the Board and FOR the ratification of the appointment of Deloitte & Touche LLP as our independent registered public accounting firm for the current fiscal year ending December 31, 2010.

When are the stockholder proposals for the 2011 Annual Meeting of Stockholders due?

We anticipate holding our 2011 Annual Meeting of Stockholders on or about April 30, 2011. Stockholder proposals for our 2011 Annual Meeting of Stockholders, whether intended for inclusion in the Proxy Statement for such meeting or for presentation directly at such meeting, must be received at our principal executive offices by the close of business on November 20, 2010. In addition, notice of any stockholder proposals must be given in accordance with our bylaws and all other applicable requirements, including the rules and regulations of the United States Securities and Exchange Commission (the *SEC*). If a stockholder fails to give notice of a stockholder proposal as required by our bylaws or other applicable requirements, then the proposal will not be included in the Proxy Statement for the 2011 Annual Meeting of Stockholders and the stockholder will not be permitted to present the proposal to the stockholders for a vote at the 2011 Annual Meeting of Stockholders.

How may I obtain a set of proxy materials or Annual Report for 2009?

If you share an address with another stockholder, each stockholder may not receive a copy of the Notice of Internet Availability with instructions for accessing a copy of our Annual report and proxy materials. Stockholders who want to receive a copy of our Annual report and proxy materials should follow the instructions provided in the Notice of Internet Availability or contact us by calling our Investor Relations department at 1-866-400-4295 or writing to: NightHawk Radiology Holdings, Inc., 4900 N. Scottsdale Road, Scottsdale, Arizona 85251, Attention: Investor Relations.

Where are NightHawk's principal executive offices?

Our principal executive offices are located at 4900 N. Scottsdale Road, Scottsdale, Arizona 85251. Our telephone number is (866) 400-4295.

PROPOSAL I

ELECTION OF DIRECTORS

General

As of the date of this proxy statement, our Board of Directors is composed of five (5) directors. Our Board is divided into three classes, with the term of office of one class expiring each year. We currently have five directors with two directors in Class I and Class III and one director in Class II. The term of office of our Class I directors, Charles R. Bland and David M. Engert, will expire at the 2010 Annual Meeting. The term of office of our Class II director, Peter Y. Chung, will expire at the 2011 Annual Meeting of Stockholders. The term of office of our Class III directors, Jeff Terrill and David J. Brophy, Ph.D. will expire at the 2012 Annual Meeting of Stockholders. At the 2010 Annual Meeting, stockholders will elect two Class I directors, each for a term of three years.

Nominees for Class I Directors

The following sets forth information concerning the nominees for election as directors at the 2010 Annual Meeting, including information as to each nominee's age and business experience as of the record date.

Name of Nominee	Age	Principal Occupation During Past Five Years
David M. Engert	59	<i>David M. Engert</i> has served as our President and Chief Executive Officer since November 2008 and as a member of the board of directors of the Company since April 30, 2008. Mr. Engert also sits on the Board of Directors of Healthation, Inc., a healthcare information technology company. Mr. Engert was the founder and owner of ES3, a strategic consulting and investment company since 2007. From 2002 to 2006, Mr. Engert served as the president, chief executive officer and director of Quality Care Solutions, Inc. (QCSI), one of the nation's leading providers of advanced healthcare payer enterprise application solutions, which was acquired by Trizetto, Inc. in January 2007. Prior to 2002, Mr. Engert held a number of senior level management positions in the healthcare industry over the previous 10 years, including senior vice president & general manager at McKesson Corporation's Managed Care Division. Mr. Engert received his B.S., in Engineering from Louisiana State University.

As our Chief Executive Officer, Mr. Engert brings a wealth of experience in the areas of healthcare and information technology management to our Board of Directors. His business acumen and drive for operational excellence, evidenced during his tenure at QCSI and at McKesson, have made Mr. Engert a valuable contributor to our Board of Directors.

Name of Nominee	Age	Principal Occupation During Past Five Years
Charles R. Bland (1)(2)	61	<p><i>Charles R. Bland</i> has served as a director and as the Chairman of our Audit Committee since April 2007. During a portion of 2009, Mr. Bland served as the Chief Financial Officer of American Gaming Systems. From July 2005 to November 2007, Mr. Bland served as the Chief Financial Officer of Sirenza Microdevices, Inc. From May 2003 until July 2005, Mr. Bland served as the Chief Operating Officer of Sirenza Microdevices, Inc. Prior to joining Sirenza, Mr. Bland served as the President and Chief Executive Officer of Vari-L Company, Inc. from May 2001 until May 2003. From June 2000 until he joined Vari-L, he served as the President of Growzone, Inc., a software company focused on the horticultural industry, and from June 1999 until June 2000, he was the President of AmericasDoctors.com, an Internet health care content site. From 1998 to 1999, Mr. Bland was the Chief Operating Officer at Quark Incorporated, provider of shrink wrap and client server software for the publishing industry. For the previous 24 years, Mr. Bland worked in positions of increasing responsibility with Owens Corning Fiberglass, a high performance glass composites and building materials company, with his final assignment being President, Africa/Latin American Operations. Mr. Bland received his B.S., Accounting and Finance, degree from Ohio State University and his M.B.A. from the Sloan School, Massachusetts Institute of Technology. The Board has determined that Mr. Bland is an audit committee financial expert.</p>

Mr. Bland is an experienced financial leader with the skills necessary to lead our Audit Committee. His service as Chief Financial Officer of Sirenza Microdevices, Inc. as well as his executive experience at his previous companies make him a valuable asset, both on our Board of Directors and as the Chairman of our Audit Committee. Mr. Bland's positions have provided him with a wealth of knowledge in dealing with financial and accounting matters. In addition, as a Chief Financial Officer of a public company, Mr. Bland gained valuable experience dealing with accounting principles and financial reporting rules and regulations, evaluating financial results and generally overseeing the financial reporting process. The depth and breadth of his exposure to complex financial issues makes him a skilled advisor.

- (1) Chairman of Audit Committee
- (2) Member of Compensation Committee

Your Board Recommends That Stockholders

Vote FOR Both Nominees Listed Above.

BOARD OF DIRECTORS

The business of NightHawk is managed under the direction of a Board of Directors, which is divided into three classes, with each class as nearly equal in number of directors as possible. The Board of Directors has responsibility for establishing broad corporate policies and for the overall performance of NightHawk Radiology Holdings, Inc. It is not, however, involved in operating details on a day-to-day basis.

The Board of Directors has determined that it shall be composed of five directors. Mr. Engert and Mr. Bland are Class I directors whose terms expire at the 2010 Annual Meeting. Mr. Chung is a Class II director whose term expires at the annual stockholders meeting in 2011. Dr. Brophy and Mr. Terrill are Class III directors whose term expires at the annual stockholders meeting in 2012. Commencing with the Annual Meeting, each newly elected director shall serve for a term ending at the third annual stockholders meeting following the election of such director. Proxies may not be voted for a greater number of persons than the number of nominees named.

Continuing Directors Not Standing for Election This Year

The following individual is a Class II director:

Name	Age	Position/Principal Occupation During Past Five Years
Peter Y. Chung (1)(2)	42	<i>Peter Y. Chung</i> has served as a director since 2004. Mr. Chung is a managing director and member of various entities affiliated with Summit Partners, a private equity and venture capital firm, which he joined in August 1994. Mr. Chung also serves as a director of Sea Bright Insurance Holdings, Inc., a provider of multi-jurisdictional workers' compensation insurance, and a number of privately-held companies. Mr. Chung received an A.B. from Harvard University and an M.B.A from Stanford University.

Mr. Chung is an experienced investor in market-leading growth companies. He contributes broad-based knowledge and experience in business strategy, capital markets and the healthcare and technology industries. Mr. Chung provides valuable insight to our Board on all matters facing the company, from operational to strategic.

- (1) Chairman of the Nominating & Governance Committee
- (2) Member of the Compensation Committee

The following individuals are Class III directors:

Name	Age	Position/Principal Occupation During Past Five Years
David J. Brophy, Ph.D. (1)(2)(4)	73	<p><i>David J. Brophy, Ph.D.</i> has served as a director since 2004. Dr. Brophy is the Director of the Office for the Study of Private Equity and an Associate Professor of Finance at the University of Michigan, Ross School of Business, where he has been employed since 1966. Dr. Brophy also serves as a director of Munder Funds, an investment management firm. Dr. Brophy received a B.A. and a B.Comm. from St. Francis Xavier University, an M.B.A. from the University of Detroit and a Ph.D. from the Ohio State University.</p> <p>With his experience as a professor at a leading business school, Dr. Brophy brings to our Board a unique perspective. His extensive knowledge and research into how companies develop and thrive in evolving markets gives him an insight into a number of issues facing NightHawk.</p>
Jeff Terrill (2)(4)	47	<p><i>Mr. Terrill</i> has served as a director since June 2009. Mr. Terrill is an experienced healthcare executive, having served in several executive and senior leadership positions in the healthcare industry. From 2005 to the present, Mr. Terrill has served as CIGNA Healthcare's Regional Vice President, Western Region. From 2000 to 2005, Mr. Terrill served as the President and General Manager of CIGNA Healthcare of Arizona. Prior to joining CIGNA, from 1996 to 2000, Mr. Terrill served as President and Chief Executive Officer of Scottsdale Healthcare's PHO, an affiliation of more than 500 primary care and multi-specialty physicians and hospitals. Mr. Terrill received a bachelor of science degree in business from the University of Colorado.</p> <p>With his years of experience in the healthcare industry, both at CIGNA and at Scottsdale Healthcare, Mr. Terrill brings to the Board of Directors demonstrated knowledge and experience throughout all segments of the healthcare marketplace. These experiences give Mr. Terrill critical insights into the market in which we operate and the strategic opportunities and challenges that we face.</p>

- (1) Chairman of the Compensation Committee
- (2) Member of Nominating & Governance Committee
- (3) Member of the Compensation Committee
- (4) Member of Audit Committee

There are no family relationships among any of our directors or executive officers.

Overview of Board Selection Process and Qualifications; Corporate Governance Guidelines

Overall Philosophy of Board Composition

Our Board of Directors, acting through our Nominating & Governance Committee, is responsible for assembling for shareholder consideration a group of nominees that, taken together, have the experience, qualifications, attributes, and skills appropriate for functioning effectively as a board. The Nominating & Governance Committee regularly reviews the composition of our Board of Directors in light of the company's changing requirements, its assessment of the board's performance, and the inputs of shareholders and other key constituencies.

The Nominating & Governance Committee looks for certain characteristics common to all board members, including integrity, strong professional reputation and record of achievement, constructive and collegial personal attributes, and the ability and commitment to devote sufficient time and energy to board service.

In addition, the Nominating & Governance Committee seeks to include on the board a complementary mix of individuals with diverse backgrounds and skills reflecting the broad set of challenges that the board confronts. These individual qualities can include experience as a health care provider or experience in the health care services industry, health care regulatory experience, finance and capital markets experience and software and technology experience.

Director Qualifications

Based upon the overarching goals of creating a well-balanced and experienced Board of Directors, our Nominating & Governance Committee will evaluate and recommend candidates for membership on the Board with qualifications that are consistent with the objectives described above. Although our Nominating & Governance Committee has not formally established any specific, minimum qualifications that must be met by each candidate for the Board or specific qualities or skills that are necessary for one or more of the members of the Board to possess, when considering a potential non-incumbent candidate, the Nominating & Governance Committee will factor into its determination that candidate's professional experience, educational background, knowledge of our business, integrity, professional reputation, independence, wisdom, and ability to represent the best interests of our stockholders. In addition, the Nominating & Governance Committee will consider whether the person is a current or former CEO or CFO of a public company or the head of a division of a large international organization.

Identification and Evaluation of Nominees for Directors

Our Nominating & Governance Committee uses a variety of methods for identifying and evaluating nominees for director and regularly assesses the appropriate size and composition of the Board, the needs of the Board and the respective committees of the Board and the qualifications of candidates in light of these needs. Candidates may come to the attention of the Nominating & Governance Committee through stockholders, management, current members of the Board or search firms. The evaluation of these candidates may be based solely upon information provided to the committee or may also include discussions with persons familiar with the candidate, an interview of the candidate or other actions the committee deems appropriate, including the use of third parties to review candidates.

Diversity in Identifying Nominees to the Board of Directors

As described above, our Nominating & Governance Committee has not formally established any specific criteria against which each of our directors is measured. Instead, our Nominating & Governance Committee and Board of Directors attempt to collect a group of individuals that, together, can operate effectively as a board. As part of its evaluation of a candidate or the identification of potential candidates, the Nominating & Governance Committee considers diversity as one of the relevant factors. In its evaluation of the diversity a potential candidate might bring to the Board include the candidate's diversity in viewpoint, professional experience, education and skill, as well as race, gender and/or national origin. All are considered important factors in identifying and evaluating candidates.

Board Leadership Structure

From the beginning of 2009 through June 2009, our Board of Directors was led by our Chairman and founder, Dr. Paul Berger. Dr. Berger had served as our President and Chief Executive Officer since our inception in 2001 through November 2008, at which time he stepped down as an officer and remained as our Chairman. In June 2009, Dr. Berger stepped down from the Board of Directors citing differences of opinion with the new management. After Dr. Berger's resignation, the Board concluded that no Chairman would be appointed at that time. However, since June 2009, Mr. Bland has been performing many of the functions that a chairman would typically perform. The Board has concluded that, in light of the present circumstances, this arrangement best suits our current needs due to Mr. Bland's independence, his familiarity with our Board and committee processes given his membership with the Board since 2007, and his proven leadership and expertise in governance matters.

Although we believe our current board leadership structure is most appropriate for our current situation, our Board anticipates appointing a chairman in the coming months. Although our Board of Directors has not identified the individual who might be appointed as Chairman, we believe it will be a director who is independent under the rules of the SEC and the Nasdaq Global Market.

Our Board's Role in Risk Oversight

Our Board of Directors oversees a company-wide approach to risk management that supports the achievement of organizational objectives, including strategic objectives, to improve long-term organizational performance and enhance shareholder value. A fundamental part of risk management is not only understanding the risks a company faces and what steps management is taking to manage those risks, but also understanding what level of risk is appropriate for the company. The involvement of the full Board of Directors in setting our business strategy plays a key role in the Board's assessment of what constitutes an appropriate level of risk for the company.

While our Board has the ultimate responsibility for risk management and oversight, various committees of the Board also support the Board in its fulfillment of this responsibility. In particular, as more fully discussed below, the Audit Committee focuses on our overall financial risk by evaluating our internal controls and disclosure policies as well as ensuring the integrity of our financial statements and periodic reports. Similarly, in setting compensation, the Compensation Committee strives to create incentives that encourage a level of risk-taking behavior consistent with the Company's business strategy. And, finally, the Nominating & Governance Committee oversees the Company's legal and regulatory compliance efforts and ensures that our governance policies and procedures are appropriate in light of the risks we face.

Corporate Governance Guidelines

We have had formal corporate governance guidelines in place since May 2005. We have reviewed internally and with the Board the provisions of the Sarbanes-Oxley Act of 2002, the rules of the SEC and the Nasdaq Global Market's corporate governance listing standards regarding corporate governance policies and processes, and we believe that we are in compliance with the rules and listing standards. You can access our committee charters for our Audit Committee, Compensation Committee and Nominating & Governance Committee free of charge on our website at www.nighthawkrad.net or by writing to us at NightHawk Radiology Holdings, Inc., 4900 N. Scottsdale Road, Scottsdale, Arizona 85251, Attention: Investor Relations. We encourage, but do not require, our Board members to attend the annual meeting of stockholders. All of our directors serving on the Board as of our 2009 annual meeting of stockholders attended that meeting. We have adopted the following standards for director independence in compliance with the Nasdaq Global Market corporate governance listing standards:

No director qualifies as independent if such person has a relationship which, in the opinion of the Board, would interfere with exercise of independent judgment in carrying out the responsibilities of a director;

A director who is an officer or employee of us or our subsidiaries, or one whose immediate family member is an executive officer of us or our subsidiaries is not independent until three years after the end of such employment relationship;

A director who accepts, or whose immediate family member accepts, more than \$120,000 in compensation from us or any of our subsidiaries during any period of 12 consecutive months within the three years preceding the determination of independence, other than certain permitted payments such as compensation for Board or Board committee service, payments arising solely from investments in our securities, compensation paid to a family member who is a non-executive employee of us or a subsidiary of ours, or benefits under a tax-qualified retirement plan, is not independent until three years after he or she ceases to accept more than \$120,000 during any period of 12 consecutive months within the three years preceding the determination of independence;

A director who is, or who has a family member who is, a partner in, or a controlling stockholder or an executive officer of, any organization to which we made, or from which we received, payments for property or services that exceed 5% of the recipient's consolidated gross revenues for that year, or \$200,000, whichever is more, is not independent until three years after falling below such threshold;

A director who is employed, or one whose immediate family member is employed, as an executive officer of another company where any of our or any of our subsidiaries' present executives serve on that company's compensation committee is not independent until three years after the end of such service or employment relationship; and

A director who is, or who has a family member who is, a current partner of our independent registered public accounting firm, Deloitte & Touche LLP, or was a partner or employee of Deloitte & Touche LLP who worked on our audit is not independent until three years after the end of such affiliation or employment relationship.

The Board has determined that Dr. Brophy and Messrs. Chung, Bland and Terrill, representing a majority of our board, are independent directors as defined under the rules of the Nasdaq.

Board Meetings and Committees

Our Board held a total of eight (8) meetings and acted by written consent three (3) times during the calendar year ended December 31, 2009. Each director attended 75% or more of the aggregate number of meetings of the Board of Directors and meetings of committees on which he served during fiscal 2009. During such period, the Board had a standing Audit Committee, Compensation Committee and Nominating & Governance Committee meeting. The Company's Audit Committee Charter, Compensation Committee Charter and Nominating & Governance Committee Charter, each as adopted by the Board of Directors, are posted on our website at <http://www.nighthawkrad.net> under the caption Investor Relations.

Audit Committee

Our Audit Committee currently consists of three directors: Mr. Bland, who serves as the Audit Committee's Chairman and our audit committee financial expert and Dr. Brophy and Mr. Terrill. During 2009, Mr. Bland and Dr. Brophy, served on the Audit Committee for the entire year. In addition, from the beginning of 2009 until June 2009, Mr. Chung also served on our Audit Committee. And, from June 2009 through the remainder of 2009 and through until the present, Mr. Terrill has served on the Audit Committee. Each member of our Audit Committee was a non-employee, independent member of our Board during his service on the Audit Committee. As referenced above, Mr. Bland served as the chairman of our Audit Committee throughout 2009 and was determined by our Board to (i) qualify as our audit committee financial expert as defined in the SEC rules and (ii) satisfy the financial sophistication requirements of the Nasdaq. Also, in connection with the appointment of each member of the Audit Committee, our Board determined that each member met the requirements for independence and financial literacy under the rules and regulations of the Nasdaq and SEC rules and regulations. The Audit Committee is responsible for, among other things:

selecting and hiring our independent auditors and approving the audit and non-audit services to be performed by our independent auditors;

evaluating the qualifications, performance and independence of our independent auditors;

monitoring the integrity of our financial statements and our compliance with legal and regulatory requirements as they relate to financial statements or accounting matters;

reviewing the adequacy and effectiveness of our internal control policies and procedures;

acting as our qualified legal compliance committee; and

preparing the audit committee report that the SEC requires in our annual proxy statement.

A more detailed description of the Audit Committee's functions can be found in our Audit Committee Charter. The Audit Committee met six (6) times during the fiscal year ended December 31, 2009.

Compensation Committee

Dr. Brophy, Mr. Chung, and Mr. Bland, each of whom is a non-employee member of our Board, comprise our Compensation Committee. Dr. Brophy is the chairman of our Compensation Committee. Our Board has determined that each member of our Compensation Committee meets the requirements for independence under the rules of the Nasdaq. The Compensation Committee is responsible for, among other things:

reviewing and approving our chief executive officer and other executive officers' annual base salaries, annual incentive bonuses, including the specific goals and amount, equity compensation, employment agreements, severance arrangements and change in control agreements/provisions, and any other benefits, compensation or arrangements;

evaluating and recommending to the Board incentive compensation plans; and

making recommendations to the Board with respect to outside director compensation.

A more detailed description of the Compensation Committee's functions can be found in our Compensation Committee Charter. The Compensation Committee met eight (8) times and acted by written consent two (2) times during the fiscal year ended December 31, 2009. The Compensation Committee generally seeks input from the other outside directors who are not members of the committee. Although most deliberations and decisions regarding executive compensation are made without the presence of the executive management team, the Compensation Committee encourages a thoughtful and thorough conversation between our Board and management regarding the amount and composition of executive compensation and welcomes input from each member of the executive management team.

Nominating & Governance Committee

Mr. Chung, Dr. Brophy and Mr. Terrill each of whom is a non-employee member of our Board, comprise our Nominating & Governance Committee. Mr. Chung is the chairman of our Nominating & Governance Committee. Our Board has determined that each member of our Nominating & Governance Committee meets current SEC and Nasdaq requirements for independence. The Nominating & Governance Committee is responsible for, among other things:

assisting our board of directors in identifying prospective director nominees and recommending to the board director nominees for each annual meeting of stockholders;

developing and recommending to our board of directors governance principles applicable to us;

overseeing the evaluation of our board of directors; and

recommending to our board of directors members for each board committee.

A more detailed description of the Nominating & Governance Committee's functions can be found in our Nominating & Governance Committee Charter. The Nominating & Governance Committee met five (5) times during the fiscal year ended December 31, 2009.

Consideration of Director Nominees

Stockholder Recommendations and Nominees

The policy of our Nominating & Governance Committee is to consider properly submitted recommendations for candidates to the Board from stockholders. In evaluating such recommendations, the Nominating & Governance Committee seeks to achieve a balance of experience, knowledge, integrity, and capability on the Board and to address the membership criteria set forth under "Director Qualifications" below. Any stockholder recommendations for consideration by the Nominating & Governance Committee should include the candidate's name, biographical information required by the SEC, information regarding any relationships between the candidate and NightHawk within the last three years, a statement of recommendation of the candidate from the stockholder, a description of the shares of NightHawk beneficially owned by the stockholder, a description of all arrangements between the candidate and the recommending stockholder and any other person pursuant to which the candidate is being recommended, a written indication of the candidate's willingness to serve on the board and a written indication to provide such other information as the Nominating & Governance Committee may reasonably request. Stockholder recommendations to the board of directors should be sent to Paul E. Cartee, Corporate Secretary, NightHawk Radiology Holdings, Inc., 4900 N. Scottsdale Road, 6th Floor, Scottsdale, Arizona 85251.

In addition, our bylaws permit stockholders to nominate directors for consideration at an annual meeting. For a description of the process for nominating directors in accordance with our bylaws, see "Information Concerning Solicitation and Voting." When are the stockholder proposals for the 2011 Annual Meeting of Stockholders due?

Stockholders' Communications Process

Any of our stockholders who wish to communicate with the Board, a committee of the Board, the non-management directors as a group or any individual member of the Board, may send correspondence to Paul E. Cartee, Corporate Secretary, NightHawk Radiology Holdings, Inc., 4900 N. Scottsdale Road, 6th Floor, Scottsdale, Arizona 85251. The Corporate Secretary will compile and submit on a periodic basis all stockholder correspondence to the entire Board or, if designated in the communication, to a committee of the Board, the non-management directors as a group or an individual Board member. The independent directors of the Board review and approve the stockholders' communications process periodically to ensure effective communication with stockholders.

Compensation Committee Interlocks and Insider Participation

None of the members of our Compensation Committee is an officer or employee of our Company. None of our executive officers currently serves, or in the past year has served, as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving on our Board or Compensation Committee.

Director Compensation

In July 2009, the disinterested members of our Board amended our compensation program for our outside directors. Pursuant to this program, each non-employee director will receive the following equity and cash compensation for board services, as applicable:

Equity Compensation:

Initial Equity Grant. Upon joining the board of directors, each outside director will receive an initial stock option or restricted stock unit grant (as shall be determined by the board of directors) (the "Initial Grant") with a fair value at the time of grant equal to approximately \$125,000 (with the number of underlying shares and/or the exercise price to be determined in accordance with the company's equity

grant policies). For option grants, one-third (1/3) of the shares subject to the Initial Grant will vest on the one-year anniversary of vesting start date, with 1/36 of the total shares subject to the Initial Grant vesting monthly over the next two years, such that the Initial Grant will be fully vested three (3) years following the vesting start date, subject to the outside director continuing his or her service on such dates. For restricted stock unit grants, one-third (1/3) of the shares subject to the Initial Grant will vest on each of the first three anniversaries of the vesting start date, such that the Initial Grant will be fully vested three (3) years following the vesting start date, subject to the outside director continuing his or her service on such dates.

Annual Equity Grant. At each annual meeting after the first year of service on the board of directors, each outside director will receive an additional option or restricted stock unit grant (as shall be determined by the board of directors) with a fair value at the time of grant anticipated to be approximately \$125,000 (with the number of shares and the exercise price to be determined in accordance with the company's equity grant policies) (the Annual Grant). The vesting time period for Annual Grants will be the same as those for Initial Grants.

Cash Compensation:

Quarterly Cash Compensation. Each outside director will receive \$4,000 per quarter for service as a director.

Meeting Attendance. Each outside director will receive \$1,000 for each board meeting attended in person (\$500 for meetings attended by telephone) and \$1,000 for each committee meeting attended in person (\$500 for meetings attended by telephone).

Compensation for Committee Chairs. In addition to the amounts described above, the chairman of the Audit Committee will receive \$5,000 per quarter; the chairman of the Compensation Committee will receive \$1,000 per quarter; and the chairman of the Nominating & Governance Committee will receive \$1,000 per quarter.

In the event of certain change of control transactions, including our merger with or into another corporation or the sale of substantially all of our assets, the vesting of all shares subject to the equity grants described above will accelerate fully.

Code of Ethics

On November 28, 2005, the Company adopted a Code of Business Conduct and Ethics for all directors, officers and employees. A copy of the code of ethics is available on our website at <http://www.nighthawkrad.net> under the caption Investor Relations.

We intend to post on our website any amendment to, or waiver from, a provision of our codes of ethics within four business days following the date of such amendment or waiver.

DIRECTOR COMPENSATION

The following table sets forth a summary of the compensation we paid to our non-employee directors in 2009:

Name	Fees Earned or Paid in Cash	Stock Awards (1)(4)	Option Awards (2)(4)	Non-Equity Incentive Plan Compensation	Change in Pension Value and Non-Qualified Deferred Compensation Earnings	All Other Compensation	Total
Peter Y. Chung	\$ 40,500	\$ 125,000					\$ 165,500
David J. Brophy	\$ 42,500	\$ 125,000					\$ 167,500
Charles R. Bland	\$ 58,000	\$ 125,000					\$ 183,000
Jeffrey S. Terrill	\$ 16,659	\$ 125,000					\$ 141,659
Paul E. Berger, M.D. (3)	\$ 11,533	\$ 125,000					\$ 136,533

- (1) The value of the stock awards presented in this table equals the grant date fair value based upon the Company's stock price at the grant date.
- (2) There were no options granted to directors in 2009.
- (3) Dr. Paul Berger served on the board of directors until June 8, 2009.
- (4) The following option and stock awards were outstanding as of December 31, 2009:

Name	Year of Grant	Shares Subject to Outstanding Option Award	Exercise Price	All Other Stock Awards: Number of Shares of Stock or Units
Peter Y. Chung	2004	36,000	\$ 1.56	
	2007	21,603	\$ 17.70	
	2008	40,199	\$ 7.64	
	2009			34,722
David J. Brophy	2004	36,000	\$	
	2007	21,603	\$ 1.56	
	2008	40,199	\$ 40.00%	
		150.00	50.00%	\$15.00
	154.00	54.00%	\$15.40	54.00%
	160.00	60.00%	\$16.00	60.00%

- (1) This is the hypothetical Threshold Value.
- (2) The hypothetical Starting Value of 100 used in these examples has been chosen for illustrative purposes only, and does not represent a likely actual Starting Value for the Market Measure.
- (3) This amount represents the sum of the principal amount and the Step Up Payment of \$3.50.
- (4) This is the hypothetical Step Up Value.

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Redemption Amount Calculation Examples

Example 1

The Ending Value is 70.00, or 70.00% of the
Starting Value:

Starting Value: 100.00

Threshold Value: 85.00

Ending Value: 70.00

Redemption Amount per unit

Example 2

The Ending Value is 95.00, or 95.00% of the
Starting Value:

Starting Value: 100.00

Threshold Value: 85.00

Ending Value: 95.00

Redemption Amount per unit = \$10.00, the principal amount, since the Ending Value is less than the Starting Value, but is equal to or greater than the Threshold Value.

Example 3

The Ending Value is 110.00, or 110.00% of the
Starting Value:

Starting Value: 100.00

Step Up Value: 135.00

Ending Value: 110.00

Redemption Amount per unit, the principal amount plus the Step Up Payment, since the Ending Value is equal to or greater than the Starting Value, but less than the Step Up Value.

Example 4

The Ending Value is 154.00, or 154.00% of the
Starting Value:

Starting Value: 100.00

Step Up Value: 135.00

Ending Value: 154.00

Redemption Amount per unit

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Risk Factors

There are important differences between the notes and a conventional debt security. An investment in the notes involves significant risks, including those listed below. You should carefully review the more detailed explanation of risks relating to the notes in the “Risk Factors” sections beginning on page PS-7 of product supplement EQUITY INDICES SUN-1, page PS-3 of the prospectus supplement and page 2 of the prospectus addendum identified above. We also urge you to consult your investment, legal, tax, accounting, and other advisors before you invest in the notes.

§ If the notes are not automatically called, depending on the performance of the Index as measured shortly before the maturity date, your investment may result in a loss; there is no guaranteed return of principal.

§ Your return on the notes may be less than the yield you could earn by owning a conventional fixed or floating rate debt security of comparable maturity.

§ Payments on the notes are subject to our credit risk, and actual or perceived changes in our creditworthiness are expected to affect the value of the notes. If we become insolvent or are unable to pay our obligations, you may lose your entire investment.

§ The notes may be written down to zero, be converted into equity or other instruments or become subject to other Resolution Measures. You may lose some or all of your investment if any such measure becomes applicable to us. The imposition of any Resolution Measure does not constitute a default or an event of default under the notes, the senior indenture or for the purpose of the Trust Indenture Act of 1939 or give you any other right to accelerate or terminate the notes. You may have limited or circumscribed rights to challenge any decision of our competent resolution authority to impose any Resolution Measure. Please see “Consent to Potential Imposition of Resolution Measures” in this term sheet and the “Risk Factors” on page 2 of the accompanying prospectus addendum for more information.

§ If the notes are called, your investment return is limited to the return represented by the applicable Call Premium.

§ Your investment return may be less than a comparable investment directly in the stocks included in the Index.

§ The initial estimated value of the notes is an estimate only, determined as of a particular point in time by reference to an internal funding rate and our pricing models. The internal funding rate is typically lower than the rate we would pay when we issue conventional debt securities of comparable maturity. As a result of this difference, the initial estimated value of the notes would likely be lower if it were based on the rate we would pay when we issue conventional debt securities of comparable maturity. This difference in funding rate, as well as the underwriting discount and the estimated cost of hedging our obligations under the notes (which includes the hedging related charge described below), reduces the economic terms of the notes to you.

§ Our internal pricing models consider relevant parameter inputs such as expected interest rates and mid-market levels of price and volatility of the assets underlying the notes or any futures, options or swaps related to such underlying assets. Our pricing models are proprietary and rely in part on certain forecasts about future events, which may prove to be incorrect. Because our pricing models may differ from other financial institutions’ valuation models, and because funding rates taken into account by other financial institutions (including those with similar creditworthiness) may vary materially from the internal funding rate used by us, our initial estimated value of the notes may not be comparable to the initial estimated values of similar notes of other financial institutions.

§ The public offering price you pay for the notes will exceed the initial estimated value. The difference is due to the inclusion in the public offering price of the underwriting discount and the estimated cost of hedging our obligations under the notes (which includes the hedging related charge described below), all as further described in “Structuring the Notes” on page TS-14. These factors are expected to reduce the price at which you may be able to sell the notes in any secondary market and, together with various credit, market and economic factors over the term of the notes, including changes in the level of the Index, will affect the value of the notes in complex and unpredictable ways.

§ The initial estimated value of the notes on the pricing date does not represent the price at which we, MLPF&S, or any of our respective affiliates would be willing to purchase your notes in the secondary market at any time. Assuming no changes in market conditions or our creditworthiness and other relevant factors, the price, if any, at which we, MLPF&S, or any of our respective affiliates would be willing to purchase the notes from you in secondary market transactions, if at all, would generally be lower than both the public offering price and the initial estimated value of the notes on the pricing date. MLPF&S has advised us that any repurchases by them or their affiliates will be made at prices determined by reference to their pricing models and at their discretion. These prices will include MLPF&S’s trading commissions and mark-ups and may differ materially from the initial estimated value of the notes determined by reference to our internal funding rate and pricing models.

§ A trading market is not expected to develop for the notes. None of us, MLPF&S, or any of our respective affiliates is obligated to make a market for, or to repurchase, the notes. There is no assurance that any party will be willing to purchase your notes at any price in any secondary market.

§ Our business, hedging and trading activities, and those of MLPF&S and our respective affiliates (including trading in securities of companies included in the Index), and any hedging and trading activities we, MLPF&S or our respective affiliates engage in for our clients’ accounts, may affect the market value and return of the notes and may create conflicts of interest with you. Our economic interests in determining the initial estimated value of the notes on the pricing date and the price, if any, at which we

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or our affiliates would be willing to purchase the notes from you in secondary market transactions, are potentially adverse to your interests as an investor in the notes.

§ The Index sponsor may adjust the Index in a way that affects its level, and has no obligation to consider your interests.

§ You will have no rights of a holder of the securities represented by the Index, and you will not be entitled to receive securities or dividends or other distributions by the issuers of those securities.

§ While we, MLPF&S or our respective affiliates may from time to time own securities of companies included in the Index, we, MLPF&S and our respective affiliates do not control any company included in the Index, and are not responsible for any disclosure made by any company.

§ Your return on the notes and the value of the notes may be affected by exchange rate movements and factors affecting the international securities markets, specifically changes within an emerging market.

§ There may be potential conflicts of interest involving the calculation agent. We have the right to appoint and remove the calculation agent.

§ The U.S. federal income tax consequences of an investment in the notes are uncertain, and may be adverse to you. See “Summary Tax Consequences” below and “U.S. Federal Income Tax Consequences” beginning on page PS-28 of product supplement EQUITY INDICES SUN-1.

Additional Risk Factors

An investment in the notes will involve risks that are associated with investments that are linked to the equity securities of issuers from emerging markets.

Many of the issuers included in the Index are based in nations that are undergoing rapid institutional change, including the restructuring of economic, political, financial, and legal systems. Such far-reaching changes have resulted in constitutional and social tensions and, in some cases, instability and reaction against market reforms has occurred. The regulatory and tax environments in these nations may be subject to change without review or appeal, and many emerging markets suffer from underdevelopment of their capital markets and their tax systems. In addition, in some of these nations, issuers of the relevant securities face the threat of expropriation of their assets, and/or nationalization of their businesses. It may be more difficult for an investor in these markets to monitor investments in these companies, because these companies may be subject to fewer disclosure requirements than companies in developed markets, and economic and financial data about some of these countries may be unreliable. Political or economic instability could affect the value of the securities and the amount payable to you on the notes.

Other Terms of the Notes

Market Measure Business Day

The following definition shall supersede and replace the definition of a “Market Measure Business Day” set forth in product supplement EQUITY INDICES SUN-1.

A “Market Measure Business Day” means a day on which:

(A) the London Stock Exchange, the Hong Kong Stock Exchange, the São Paulo Stock Exchange, and the Korea Stock Exchange (or any successor to the foregoing exchanges) are open for trading; and

(B) the Index or any successor thereto is calculated and published.

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The Index

We have derived all information contained in this term sheet regarding the Index, including, without limitation, its make-up, method of calculation and changes in its components, from publicly available sources. That information reflects the policies of and is subject to change by, MSCI Inc. (“MSCI” or “Index sponsor”). MSCI is under no obligation to continue to publish, and may discontinue the publication of the Index at any time. The consequences of MSCI discontinuing the publication of the Index are discussed in the section entitled “Description of the Notes - Discontinuance of an Index” beginning on page PS-22 of product supplement EQUITY INDICES SUN-1. None of us, the calculation agent, or MLPF&S accepts any responsibility for the calculation, maintenance or publication of the Index or any successor index.

Description of the Index

The Index is a free float-adjusted market capitalization index that is designed to measure equity market performance of global emerging markets. The Index is calculated daily in U.S. dollars and published in real time every 60 seconds during market trading hours. As of the date of this term sheet, the Index consists of the following emerging market country indices: Brazil, Chile, China, Colombia, Czech Republic, Egypt, Greece, Hungary, India, Indonesia, Korea, Malaysia, Mexico, Peru, Philippines, Poland, Qatar, Russia, South Africa, Taiwan, Thailand, Turkey and the United Arab Emirates.

The Index includes components from all countries covered by the MSCI International Equity Indices that are designated by MSCI as Emerging Markets (“EMs”). Each of the emerging markets component country indices is a sampling of equity securities across industry groups in such country’s equity markets. In order to maintain the representativeness of the Index, structural changes to the Index as a whole may be made by adding or deleting emerging markets component country indices and the related emerging markets component securities.

Constructing the Index

The Index is a member of the MSCI Global Investable Market Index family, calculated, maintained and published by MSCI. The current index calculation methodology used to formulate the Index (the “MSCI Global Investable Market Indices Methodology”) was implemented as of June 1, 2008. The MSCI Global Investable Market Indices Methodology involves the following steps:

(i) Defining the Equity Universe. MSCI begins with securities listed in countries included in the MSCI Global Investable Market Indices. As of the date of this term sheet, 23 countries are classified as emerging markets. All listed equity securities, including real estate investment trusts and certain income trusts in Canada are eligible for inclusion in the equity universe. Limited partnerships, limited liability companies, and business trusts, which are listed in the U.S. and are not structured to be taxed as limited partnerships, are likewise eligible for inclusion in the equity universe. Conversely, mutual funds, ETFs, equity derivatives and most investment trusts are not eligible for inclusion in the equity universe. Each company and its securities are classified in only one country.

(ii) Determining the Market Investable Equity Universe for Each Market. The equity universe in each market is derived by applying certain investability screens, such as minimum market capitalization, free float, liquidity, permitted foreign holding, length of trading and, for securities subject to a foreign ownership limit, proportion of shares still available to foreign investors relative to the maximum allowed (referred to as “foreign room”), to individual companies and securities in the equity universe of that market. Some investability requirements are applied at the

individual security level and some at the overall company level, represented by the aggregation of individual securities of the company. As a result, the inclusion or exclusion of one security does not imply the automatic inclusion or exclusion of other securities of the same company. MSCI announced on January 15, 2015 that, effective with the November 2015 semi-annual index review, securities traded outside of their issuer's country of classification (i.e., "foreign listings") may become eligible for inclusion in certain MSCI Country Investable Market Indices within the MSCI Global Investable Market Indices. A MSCI Country Investable Market Index is eligible to include foreign listings if it meets the Foreign Listing Materiality Requirement. To meet the "Foreign Listing Materiality Requirement," the aggregate market capitalization of all securities represented by foreign listings should represent at least (i) 5% of the free float-adjusted market capitalization of the relevant MSCI Country Investable Market Index and (ii) 0.05% of the free-float adjusted market capitalization of the MSCI All Country World Index Investable Market Index. MSCI expects that for the November 2015 semi-annual index review, China, Peru and Russia (but only selected listings in London and New York), which are covered by the MSCI Emerging Markets Index, will meet the Foreign Listing Materiality Requirement.

(iii) Determining Market Capitalization Size-Segments for Each Market. In each market, MSCI creates an Investable Market Index, Standard Index, Large Cap Index, Mid Cap Index and Small Cap Index (the "Size-Segment Indices"). The Standard Index is the aggregation of the Large Cap Index and the Mid Cap Index. The Investable Market Index is the aggregation of the Standard Index and the Small Cap Index. In order to create size components that can be meaningfully aggregated into composites, individual market size segments balance the following two objectives:

(a) Achieving global size integrity by ensuring that companies of comparable and relevant sizes are included in a given size segment across all markets in the composite universe.

(b) Achieving consistent market coverage by ensuring that each market's size segment is represented in its proportional weight in the composite universe.

(iv) Applying Final Size-Segment Investability Requirements. In order to enhance the replicability of Size-Segment Indices, additional size-segment investability requirements are set for the Investable Market Indices and the Standard Indices. These investability

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requirements include minimum free float market capitalization and minimum foreign room. Companies that do not meet these investability screens are not included in any of the indices within the MSCI Global Investable Market Index family.

(v) Applying Index Continuity Rules for the Standard Index. In order to achieve index continuity, as well as provide some basic level of diversification within a market index, notwithstanding the effect of other index construction rules, a minimum number of five constituents will be maintained for a developed market Standard Index and a minimum number of three constituents will be maintained for an emerging market Standard Index.

The Index is market capitalization weighted adjusted by free float, meaning that each component security is included in the Index are at the value of their free public float, as measured based on its foreign inclusion factor (the “Foreign Inclusion Factor”). In cases where other foreign investment restrictions exist that materially limit the ability of international investors to freely invest in a particular equity market, sector or security, a limited investability factor may also be applied to the free float to insure that the investability objectives of the indices can be achieved.

MSCI defines the Foreign Inclusion Factor of a security as the proportion of shares outstanding that are deemed to be available for purchase in the public equity markets by international investors. To determine the Foreign Inclusion Factor of a security, MSCI considers the limitations on the investment opportunities for international investors including: strategic stakes in a company held by private or public shareholders whose investment objective indicates that the shares held are not likely to be available in the market, limits on the proportion of a security’s share capital authorized for purchase by non-domestic investors or other foreign investment restrictions which materially limit the ability of foreign investors to freely invest in a particular equity market, sector or security.

A component security’s Foreign Inclusion Factor is (i) rounded up to the closest 5% for component securities with free float equal to or exceeding 15% or (ii) rounded up to the closest 1% for component securities with free float less than 15%. For example, a component security with a free float of 23.2% will be included in the index at 25% of its market capitalization. Typically, securities with a Foreign Inclusion Factor of 15% or less will not be eligible for inclusion in MSCI’s indices.

For a security that is subject to a foreign ownership limit to be included in an MSCI index at its entire free-float adjusted market capitalization, the proportion of shares still available to foreign investors relative to the maximum allowed, the foreign room, must be at least 25%. If a security’s foreign room is less than 25% and equal to or higher than 15%, the foreign inclusion factor for that security will be adjusted downward. Securities will not be eligible for inclusion in the equity universe if the foreign room is less than 15%.

Once the Foreign Inclusion Factor has been determined for a security, the security’s total market capitalization is then adjusted by such Foreign Inclusion Factor, resulting in the free float-adjusted market capitalization figure for the security. Market capitalization weighting, combined with a consistent target of capturing 99% of free float-adjusted market capitalization, aims to ensure that each country's weight in the Index approximates its weight in the total universe of developed markets and emerging markets.

Index Maintenance

The MSCI Global Investable Market Indices are maintained with the objective of reflecting, on a timely basis, the evolution of the underlying equity markets. In maintaining the MSCI Global Investable Market Indices, emphasis is also placed on its continuity, replicability and minimizing index turnover. Among other things, maintaining the MSCI

Global Investable Market Indices involves making: additions to and deletions from the index, changes in number of shares and changes in Foreign Inclusion Factors as a result of updated free float estimates.

MSCI classifies index maintenance in three broad categories. The first consists of ongoing event-related changes, such as mergers and acquisitions, which are generally implemented in the indices at the time of event. The second category consists of quarterly index reviews, aimed at promptly reflecting other significant market events. The third category consists of semi-annual full index reviews that systematically re-assess the various dimensions of the equity universe for all markets simultaneously and are conducted on a fixed semi-annual timetable.

Ongoing event-related changes to the indices are the result of mergers, acquisitions, spin-offs, bankruptcies, reorganizations and other similar corporate events. They can also result from capital reorganizations in the form of rights issues, bonus issues, public placements and other similar corporate actions that take place on a continuing basis. These changes are reflected in the MSCI Global Investable Market Indices at the time of the event. All changes resulting from corporate events are announced prior to their implementation, provided all necessary information on the event is available.

The quarterly index review process is designed to ensure that the indices continue to be an accurate reflection of evolving equity markets. This is achieved by a timely reflection of significant market driven changes that were not captured in the index at the time of their actual occurrence but are significant enough to be reflected before the next semi-annual index review. Quarterly index reviews may result in additions or deletions due to migration to another Size Segment Index, additions of new investable companies to the Standard Index, deletions of companies from the Investable Market Indices due to low liquidity and changes in Foreign Inclusion Factor and in number of shares. Changes in the number of shares are generally small and result from, for example, exercise of options or warrants, conversion of convertible bonds or other instruments or share buybacks. The implementation of changes resulting from quarterly index reviews occurs as of the close of the last business day of each February and August. The results of the quarterly index reviews are announced at least two weeks prior to their implementation.

The objective of the semi-annual index review is to systematically reassess the various dimensions of the equity universe for all markets simultaneously. During each semi-annual index review, the equity universe is updated and the minimum size guidelines are

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recalculated for each segment market. Then, the following index maintenance activities are undertaken for each market: updating the market investable equity universe; recalculating the global minimum size references and global minimum size ranges; reassessing the number of companies in each segment and the market size-segment cutoffs; assigning companies to the size-segments; and assessing conformity with the final size-segment investability requirements. The results of the semi-annual index reviews are announced at least two weeks in advance of their effective implementation dates as of the close of the last business day of May and November.

Market Reclassifications

During an annual market classification review, MSCI analyzes and seeks feedback on those markets it has placed under review for potential market reclassification, based on extensive discussions with the investment community. MSCI examines each country's economic development, size, liquidity and market accessibility in order to be classified in a given investment market (i.e. stand-alone, frontier, emerging or developed market). Each June, MSCI communicates its conclusions from discussions with the investment community on the list of countries under review and announces the new list of countries, if any, under review for potential market reclassification in the upcoming cycle.

The following graph shows the daily historical performance of the Index in the period from January 2008 through April 2015. We obtained this historical data from Bloomberg L.P. We have not independently verified the accuracy or completeness of the information obtained from Bloomberg L.P. On May 7, 2015, the closing level of the Index was 1,024.91.

Historical Performance of the Index

This historical data on the Index is not necessarily indicative of the future performance of the Index or what the value of the notes may be. Any historical upward or downward trend in the level of the Index during any period set forth above is not an indication that the level of the Index is more or less likely to increase or decrease at any time over the term of the notes.

Before investing in the notes, you should consult publicly available sources for the levels and trading pattern of the Index.

License Agreement

We have entered into an agreement with MSCI, providing us and certain of our affiliates or subsidiaries with a non-exclusive license and, for a fee, with the right to use the Index, which is owned and published by MSCI, in connection with certain securities, including these notes offered by Deutsche Bank. The general terms of such licensor agreement are as follows:

THE NOTES ARE NOT SPONSORED, ENDORSED, SOLD, OR PROMOTED BY MSCI, ANY OF ITS AFFILIATES, ANY OF ITS INFORMATION PROVIDERS, OR ANY OTHER THIRD PARTY INVOLVED IN, OR RELATED TO, COMPILING, COMPUTING, OR CREATING THE INDEX (COLLECTIVELY, THE "MSCI PARTIES"). THE INDEX IS THE EXCLUSIVE PROPERTY OF MSCI. MSCI AND THE NAME OF THE INDEX ARE SERVICE MARKS OF MSCI OR ITS AFFILIATES AND HAVE BEEN LICENSED TO US FOR USE FOR CERTAIN PURPOSES. THE NOTES HAVE NOT BEEN PASSED ON BY ANY OF THE MSCI PARTIES AS TO

THEIR LEGALITY OR SUITABILITY WITH RESPECT TO ANY PERSON OR ENTITY AND NONE OF THE MSCI PARTIES MAKES ANY WARRANTIES OR BEARS ANY LIABILITY WITH RESPECT TO THE NOTES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NONE OF THE MSCI PARTIES MAKES ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, TO US OR OWNERS OF THE NOTES OR ANY OTHER PERSON OR ENTITY REGARDING THE ADVISABILITY OF INVESTING IN ANY SECURITIES GENERALLY OR IN THIS OFFERING PARTICULARLY OR THE ABILITY OF THE INDEX TO TRACK CORRESPONDING STOCK MARKET PERFORMANCE. MSCI OR ITS AFFILIATES ARE THE LICENSORS OF CERTAIN TRADEMARKS, SERVICE MARKS, AND TRADE NAMES AND OF THE INDEX, WHICH ARE DETERMINED, COMPOSED, AND

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Supplement to the Plan of Distribution

Under our distribution agreement with MLPF&S, MLPF&S will purchase the notes from us as principal at the public offering price indicated on the cover of this term sheet, less the indicated underwriting discount.

We may deliver the notes against payment therefor in New York, New York on a date that is greater than three business days following the pricing date. Under Rule 15c6-1 of the Securities Exchange Act of 1934, trades in the secondary market generally are required to settle in three business days, unless the parties to any such trade expressly agree otherwise. Accordingly, if the initial settlement of the notes occurs more than three business days from the pricing date, purchasers who wish to trade the notes more than three business days prior to the original issue date will be required to specify alternative settlement arrangements to prevent a failed settlement.

The notes will not be listed on any securities exchange. In the original offering of the notes, the notes will be sold in minimum investment amounts of 100 units. If you place an order to purchase the notes, you are consenting to MLPF&S acting as a principal in effecting the transaction for your account.

MLPF&S will not receive an underwriting discount for notes sold to certain fee-based trusts and fee-based discretionary accounts managed by U.S. Trust operating through Bank of America, N.A.

MLPF&S has advised us that they or their affiliates may repurchase and resell the notes, with repurchases and resales being made at prices related to then-prevailing market prices or at negotiated prices, and these prices will include MLPF&S's trading commissions and mark-ups. MLPF&S may act as principal or agent in these market-making transactions; however, it is not obligated to engage in any such transactions. At MLPF&S's discretion, for a short, undetermined initial period after the issuance of the notes, MLPF&S may offer to buy the notes in the secondary market at a price that may exceed the estimated value of the notes at the time of repurchase. Any price offered by MLPF&S for the notes will be based on then-prevailing market conditions and other considerations, including the performance of the Index, the remaining term of the notes, and our creditworthiness. However, none of us, MLPF&S, or any of our respective affiliates is obligated to purchase your notes at any price or at any time, and we cannot assure you that we, MLPF&S, or any of our respective affiliates will purchase your notes at a price that equals or exceeds the estimated value of the notes at the time of repurchase.

MLPF&S has also advised us that, if you hold your notes in a MLPF&S account, the value of the notes shown on your account statement will be based on MLPF&S's estimate of the value of the notes if MLPF&S or another of its affiliates were to make a market in the notes, which it is not obligated to do. That estimate will be based upon the price that MLPF&S may pay for the notes in light of then-prevailing market conditions and other considerations, as mentioned above, and will include transaction costs. This price may be higher than or lower than the initial estimated value of the notes.

The distribution of the Note Prospectus in connection with these offers or sales will be solely for the purpose of providing investors with the description of the terms of the notes that was made available to investors in connection with their initial offering. Secondary market investors should not, and will not be authorized to, rely on the Note Prospectus for information regarding Deutsche Bank or for any purpose other than that described in the immediately preceding sentence.

Structuring the Notes

The notes are our debt securities, the return on which is linked to the performance of the Index. As is the case for all of our debt securities, including our market-linked notes, the economic terms of the notes reflect our actual or perceived creditworthiness at the time of pricing. The internal funding rate we use in pricing the market-linked note is typically lower than the rate we would pay when we issue conventional debt securities of comparable maturity. This generally relatively lower internal funding rate, which is reflected in the economic terms of the notes, along with the fees and charges associated with market-linked notes, typically results in the initial estimated value of the notes on the pricing date being less than their public offering price.

Payments on the notes, including the amount you receive at maturity or upon an automatic call, will be calculated based on the \$10 principal amount per unit and will depend on the performance of the Index. In order to meet these payment obligations, at the time we issue the notes, we expect to enter into certain hedging arrangements (which may include call options, put options or other derivatives) with MLPF&S or one of its affiliates. The terms of these hedging arrangements are determined by seeking bids from market participants, which may include us, MLPF&S and one of our respective affiliates, and take into account a number of factors, including our creditworthiness, interest rate movements, the volatility of the Index, the tenor of the notes and the tenor of the hedging arrangements. The economic terms of the notes and their initial estimated value depend in part on the terms of these hedging arrangements.

MLPF&S has advised us that the hedging arrangements will include a hedging related charge of approximately \$0.075 per unit, reflecting an estimated profit to be credited to MLPF&S from these transactions. Since hedging entails risk and may be influenced by unpredictable market forces, additional profits and losses from these hedging arrangements may be realized by us, MLPF&S or any other hedge providers.

For further information, see “Risk Factors—General Risks Relating to the Notes” beginning on page PS-7 and “Use of Proceeds and Hedging” on page PS-17 of product supplement EQUITY INDICES SUN-1.

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Summary Tax Consequences

In the opinion of our special tax counsel, Davis Polk & Wardwell LLP, which is based on prevailing market conditions, it is more likely than not that the notes will be treated for U.S. federal income tax purposes as prepaid financial contracts that are not debt. Generally, if this treatment is respected, (i) you should not recognize taxable income or loss prior to the taxable disposition of your notes (including at maturity or pursuant to a call) and (ii) the gain or loss on your notes should be capital gain or loss and should be long-term capital gain or loss if you have held the notes for more than one year. The Internal Revenue Service (the “IRS”) or a court might not agree with this treatment, however, in which case the timing and character of income or loss on your notes could be materially and adversely affected.

In 2007, the U.S. Treasury Department and the IRS released a notice requesting comments on various issues regarding the U.S. federal income tax treatment of “prepaid forward contracts” and similar instruments. The notice focuses in particular on whether beneficial owners of these instruments should be required to accrue income over the term of their investment. It also asks for comments on a number of related topics, including the character of income or loss with respect to these instruments; the relevance of factors such as the nature of the underlying property to which the instruments are linked; the degree, if any, to which income (including any mandated accruals) realized by non-U.S. persons should be subject to withholding tax; and whether these instruments are or should be subject to the “constructive ownership” regime, which very generally can operate to recharacterize certain long-term capital gain as ordinary income and impose a notional interest charge. While the notice requests comments on appropriate transition rules and effective dates, any Treasury regulations or other guidance promulgated after consideration of these issues could materially and adversely affect the tax consequences of an investment in the notes, possibly with retroactive effect.

You should review carefully the section of the accompanying product supplement entitled “U.S. Federal Income Tax Consequences.” The preceding discussion, when read in combination with that section, constitutes the full opinion of our special tax counsel regarding the material U.S. federal income tax consequences of owning and disposing of the notes.

Under current law, the United Kingdom will not impose withholding tax on payments made with respect to the notes.

For a discussion of certain German tax considerations relating to the notes, you should refer to the section in the accompanying prospectus supplement entitled “Taxation by Germany of Non-Resident Holders.”

You should consult your tax advisor regarding the U.S. federal tax consequences of an investment in the notes (including possible alternative treatments and the issues presented by the 2007 notice), as well as tax consequences arising under the laws of any state, local or non-U.S. taxing jurisdiction.

Where You Can Find More Information

We have filed a registration statement (including a product supplement, a prospectus supplement, a prospectus and a prospectus addendum) with the SEC for the offering to which this term sheet relates. Before you invest, you should read the Note Prospectus, including this term sheet, and the other documents that we have filed with the SEC, for more complete information about us and this offering. You may get these documents without cost by visiting EDGAR on the SEC website at www.sec.gov. Alternatively, we, any agent, or any dealer participating in this offering

will arrange to send you these documents if you so request by calling MLPF&S toll-free at 1-800-294-1322.

Market-Linked Investments Classification

MLPF&S has advised us that it classifies certain market-linked investments (the “Market-Linked Investments”) into categories, each with different investment characteristics. The following description is meant solely for informational purposes and is not intended to represent any particular Enhanced Return Market-Linked Investment or guarantee any performance.

Enhanced Return Market-Linked Investments are short- to medium-term investments that offer you a way to enhance exposure to a particular market view without taking on a similarly enhanced level of market downside risk. They can be especially effective in a flat to moderately positive market (or, in the case of bearish investments, a flat to moderately negative market). In exchange for the potential to receive better-than market returns on the linked asset, you must generally accept market downside risk and capped upside potential. As these investments are not market downside protected, and do not assure full repayment of principal at maturity, you need to be prepared for the possibility that you may lose all or part of your investment.

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