**OFFERING MEMORANDUM**

# U.S.$500,000,000

# CEMEX, S.A.B. de C.V.

## Floating Rate Senior Secured Notes due 2018

***Unconditionally Guaranteed by***

**CEMEX México, S.A. de C.V., CEMEX Concretos, S.A. de C.V., Empresas Tolteca de México, S.A. de C.V., New Sunward Holding B.V., CEMEX España, S.A., Cemex Asia B.V., CEMEX Corp., Cemex Egyptian Investments B.V., Cemex Egyptian Investments II B.V., CEMEX France Gestion (S.A.S.), Cemex Research Group AG, Cemex Shipping B.V. and CEMEX UK**

The notes offered hereby, or the Notes, will bear interest at a floating rate equal to three-month LIBOR for deposits in U.S. dollars plus 4.75% (475 basis points). Interest on the Notes is payable on January 15, April 15, July 15 and October 15 of each year, subject to Business Day Convention (as defined herein), beginning on January 15, 2014. The Notes will mature on October 15, 2018. On or after the interest payment date immediately preceding the maturity date, we may redeem the Notes in whole, at a price equal to 100% of their principal outstanding amount, plus accrued and unpaid interest to the date of redemption, as described under "Description of Notes—Optional Redemption." We may also redeem the Notes, in whole but not in part, at a price equal to 100% of their principal outstanding amount, plus accrued and unpaid interest, if any, to the redemption date and any additional amounts payable, in the event of certain changes in tax laws, or the official interpretation of such laws, as described under "Description of Notes—Optional Redemption." If a change in control event described under "Description of Notes—Change of Control" occurs, we may be required to offer to purchase the Notes from the holders.

The Notes will be, and approximately U.S.$14.5 billion principal amount of our other obligations (as of June 30, 2013 and as adjusted to give effect to the August 2013 Refinancing (as described herein)) is, secured by a first-priority security interest over (i) substantially all the shares of CEMEX México, S.A. de C.V., Centro Distribuidor de Cemento, S.A. de C.V., Mexcement Holdings, S.A. de C.V., Corporación Gouda, S.A. de C.V., CEMEX TRADEMARKS HOLDING Ltd., New Sunward Holding B.V. and CEMEX España, S.A., or together, the Collateral, and (ii) all proceeds of such Collateral. As described herein, the Collateral securing the Notes is subject to control by our creditors under the Facilities Agreement (as defined under "Description of Notes"). The Notes will be senior obligations of CEMEX, S.A.B. de C.V. and will rank equally in right of payment with all other existing and future senior indebtedness of CEMEX, S.A.B. de C.V. The Notes will cease to be secured in accordance with the provisions of the Intercreditor Agreement (as defined under "Description of Notes"). See "Description of Notes—Security Interest" and "Description of Notes—Intercreditor Agreement.

Prior to this offering, there has been no market for the Notes. Application has been made to the Irish Stock Exchange for the approval of this offering memorandum as listing particulars (the "Listing Particulars"). Application has been made to the Irish Stock Exchange for the Notes to be admitted to trading on the Global Exchange Market, which is the exchange regulated market of the Irish Stock Exchange. The Global Exchange Market is not a regulated market for the purposes of Directive 2004/39/EC.

**Investing in the Notes involves risks. See "Risk Factors" beginning on page 14 of this offering memorandum and the sections entitled "Risk Factors" in our Annual Report on Form 20-F for the year ended December 31, 2012 and our reports on Form 6-K filed on August 5, 2013 and September 25, 2013, which are incorporated by reference into this document.**

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**The Notes and the Note Guarantees (as described herein) have not been and will not be registered under the U.S. Securities Act of 1933, as amended, or the Securities Act. Prospective purchasers that are qualified institutional buyers are hereby notified that the sellers of the Notes may be relying on an exemption from the provisions of Section 5 of the Securities Act provided by Rule 144A under the Securities Act. Outside the United States, the offering is being made in reliance on Regulation S under the Securities Act. See "Transfer Restrictions; Notice to Investors" for additional information about eligible offerees and transfer restrictions.**

**THE NOTES HAVE NOT BEEN AND WILL NOT BE REGISTERED WITH THE NATIONAL SECURITIES REGISTRY (*REGISTRO NACIONAL DE VALORES*), MAINTAINED BY THE MEXICAN NATIONAL BANKING AND SECURITIES COMMISSION (*COMISIÓN NACIONAL BANCARIA Y DE VALORES, OR CNBV*), AND MAY NOT BE OFFERED OR SOLD PUBLICLY IN MEXICO, EXCEPT THAT THE NOTES MAY BE OFFERED AND SOLD IN MEXICO, PURSUANT TO THE PRIVATE PLACEMENT EXEMPTION SET FORTH IN ARTICLE 8 OF THE MEXICAN SECURITIES MARKET LAW (*LEY DEL MERCADO DE VALORES*), TO INSTITUTIONAL AND QUALIFIED INVESTORS AS DEFINED UNDER MEXICAN RULES. UPON THE ISSUANCE OF THE NOTES, WE WILL NOTIFY THE CNBV OF THE ISSUANCE OF THE NOTES, INCLUDING THE PRINCIPAL CHARACTERISTICS OF THE NOTES AND THE OFFERING OF THE NOTES OUTSIDE MEXICO. SUCH NOTICE WILL BE DELIVERED TO THE CNBV TO COMPLY WITH A LEGAL REQUIREMENT AND FOR INFORMATION PURPOSES ONLY, AND THE DELIVERY TO AND THE RECEIPT BY THE CNBV OF SUCH NOTICE, DOES NOT CONSTITUTE OR IMPLY ANY CERTIFICATION AS TO THE INVESTMENT QUALITY OF THE NOTES OR OF OUR SOLVENCY, LIQUIDITY OR CREDIT QUALITY OR THE ACCURACY OR COMPLETENESS OF THE INFORMATION SET FORTH IN THIS OFFERING MEMORANDUM. THE INFORMATION CONTAINED IN THIS OFFERING MEMORANDUM IS THE EXCLUSIVE RESPONSIBILITY OF THE ISSUER AND HAS NOT BEEN REVIEWED OR AUTHORIZED BY THE CNBV.**

In making an investment decision, all investors, including any Mexican investors who may acquire Notes from time to time, must rely on their own review and examination of the Issuer. To the best of the Issuer's knowledge (having taken all reasonable care to ensure that such is the case), the information contained in this offering memorandum as of the date hereof is in accordance with the facts and does not omit anything likely to affect the import of such information.

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**Price for Notes: 100% plus accrued interest, if any, from October 2, 2013**

The Initial Purchasers expect to deliver the Notes to purchasers on or about October 2, 2013 only in book-entry form through the facilities of The Depository Trust Company, or DTC, and its participants, including Euroclear Bank S.A./N.V., or Euroclear, and Clearstream Banking, société anonyme, Luxembourg, or Clearstream.

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**Joint Bookrunners**

**BBVA** **BofA Merrill Lynch** **Citigroup** **RBS**

**October 7, 2013**

## INTRODUCTION

CEMEX, S.A.B. de C.V. is a publicly traded stock corporation with variable capital (*sociedad anónima bursátil de capital variable*) organized under the laws of the United Mexican States, or Mexico. Unless otherwise indicated or except as the context otherwise may require, references in this offering memorandum to "CEMEX," "Issuer," "we," "us" or "our" refer to CEMEX, S.A.B. de C.V. and its consolidated entities. See note 2 to our audited consolidated financial statements included in our annual report on Form 20-F for the year ended December 31, 2012 (the "2012 Annual Report"), which is incorporated by reference in this offering memorandum.

The Issuer's obligations under the Notes will be unconditionally guaranteed by CEMEX México, S.A. de C.V. ("CEMEX México"), CEMEX Concretos, S.A. de C.V. ("CEMEX Concretos"), Empresas Tolteca de México, S.A. de C.V. ("Empresas Tolteca"), New Sunward Holding B.V. ("New Sunward"), CEMEX España, S.A. ("CEMEX España"), Cemex Asia B.V. ("CEMEX Asia"), CEMEX Corp., Cemex Egyptian Investments B.V. ("CEMEX Egyptian Investments"), Cemex Egyptian Investments II B.V. ("CEMEX Egyptian Investments II"), CEMEX France Gestion (S.A.S.) ("CEMEX France"), Cemex Research Group AG ("CEMEX Research Group"), Cemex Shipping B.V. ("CEMEX Shipping") and CEMEX UK. References in this offering memorandum to (i) a "Guarantor" refers to each of CEMEX México, CEMEX Concretos, Empresas Tolteca, New Sunward, CEMEX España, CEMEX Asia, CEMEX Corp., CEMEX Egyptian Investments, CEMEX Egyptian Investments II, CEMEX France, CEMEX Research Group, CEMEX Shipping and CEMEX UK, or collectively, the "Guarantors," (ii) a "Mexican Guarantor" refers to each of CEMEX México, CEMEX Concretos and Empresas Tolteca, or collectively, "Mexican Guarantors," and (iii) a "Dutch Guarantor" refers to each of New Sunward, CEMEX Asia, CEMEX Egyptian Investments, CEMEX Egyptian Investments II and CEMEX Shipping, or collectively, "Dutch Guarantors."

This offering memorandum has been prepared by us solely for use in connection with the proposed offering of the Notes and for application to the Irish Stock Exchange for the approval of this offering memorandum as Listing Particulars. This offering memorandum is personal to each offeree and does not constitute an offer to any other person or to the public generally to subscribe for or otherwise acquire Notes. You are authorized to use this offering memorandum solely for the purpose of considering the purchase of the Notes.

In making an investment decision, prospective investors must rely on their own examination of the Issuer and the terms of the offering, including the merits and risks involved. Prospective investors should not construe anything in this offering memorandum as legal, business or tax advice. Each prospective investor should consult its own advisors as needed to make its investment decision and to determine whether it is legally permitted to purchase the Notes under applicable securities or similar laws or regulations.

We have furnished the information in this offering memorandum. You acknowledge and agree that the Initial Purchasers make no representation or warranty, express or implied, as to the accuracy or completeness of such information, and nothing contained in this offering memorandum is, or shall be relied upon as, a promise or representation by the Initial Purchasers. This offering memorandum contains summaries believed to be accurate with respect to certain documents, but reference is made to the actual documents for complete information. All such summaries are qualified in their entirety by such reference. Copies of documents referred to herein will be made available to prospective investors upon request to us.

The distribution of this offering memorandum and the offering and sale of the Notes in certain jurisdictions may be restricted by law. We and the Initial Purchasers require persons into whose possession this offering memorandum comes to inform themselves about and to observe any such restrictions. This offering memorandum does not constitute an offer of, or an invitation to purchase, any of the Notes in any jurisdiction in which such offer or sale would be unlawful.

## CONTEMPORANEOUS OFFERINGS

Contemporaneous with this offering, the Issuer is offering U.S.$1,000,000,000 aggregate principal amount of 7.250% Senior Secured Notes due 2021 (the "Other Notes"), pursuant to a separate offering memorandum. The Other Notes will have substantially the same terms as the Notes, other than interest rate, tenor and other pricing related terms, and will share in the same security and benefit from the same guarantee structure as the Notes. Neither the offering of the Notes nor the offering of the Other Notes is contingent upon the successful offering of the other. References herein to "the offerings" refer to the offering of the Notes and the Other Notes.

## NOTICE TO PROSPECTIVE INVESTORS IN THE UNITED STATES

Neither the Securities and Exchange Commission, or the SEC, nor any state securities commission has approved or disapproved of these securities or determined if this offering memorandum is truthful or complete. Any representation to the contrary is a criminal offense.

The Notes are subject to restrictions on transferability and resale and may not be transferred or resold except as permitted under the Securities Act and the applicable state securities laws pursuant to registration or exemption therefrom. As a prospective purchaser, you should be aware that you may be required to bear the financial risks of this investment for an indefinite period of time. Please refer to the sections in this offering memorandum entitled "Plan of Distribution" and "Book-Entry; Delivery and Form."

## NOTICE TO NEW HAMPSHIRE RESIDENTS ONLY

NEITHER THE FACT THAT A REGISTRATION STATEMENT OR AN APPLICATION FOR A LICENSE HAS BEEN FILED UNDER CHAPTER 421-B OF THE NEW HAMPSHIRE REVISED STATUTES ("RSA") WITH THE STATE OF NEW HAMPSHIRE NOR THE FACT THAT A SECURITY IS EFFECTIVELY REGISTERED OR A PERSON IS LICENSED IN THE STATE OF NEW HAMPSHIRE IMPLIES THAT ANY DOCUMENT FILED UNDER RSA 421-B IS TRUE, COMPLETE AND NOT MISLEADING. NEITHER ANY SUCH FACT NOR THE FACT THAT ANY EXEMPTION OR EXCEPTION IS AVAILABLE FOR A SECURITY OR A TRANSACTION MEANS THAT THE SECRETARY OF STATE HAS PASSED IN ANY WAY UPON THE MERITS OR QUALIFICATIONS OF, OR RECOMMENDED OR GIVEN APPROVAL TO, ANY PERSON, SECURITY OR TRANSACTION. IT IS UNLAWFUL TO MAKE, OR CAUSE TO BE MADE, TO ANY PROSPECTIVE PURCHASER, CUSTOMER OR CLIENT ANY REPRESENTATION INCONSISTENT WITH THE PROVISIONS OF THIS PARAGRAPH.

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## NOTICE TO PROSPECTIVE INVESTORS IN THE UNITED KINGDOM

This offering memorandum is only being distributed to, and is only directed at, persons in the United Kingdom that are qualified investors within the meaning of Article 2(1)(e) of the Prospectus Directive that are also (i) investment professionals falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the "Order") or (ii) high net worth entities, and other persons to whom it may lawfully be communicated, falling within Article 49(2)(a) to (d) of the Order (each such person being referred to as a "relevant person"). This offering memorandum and its contents should not be distributed, published or reproduced (in whole or in part) or disclosed by recipients to any other persons in the United Kingdom. Any person in the United Kingdom that is not a relevant person should not act or rely on this document or any of its contents.

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## ENFORCEABILITY OF CIVIL LIABILITIES

CEMEX, S.A.B. de C.V. is a publicly listed variable capital stock corporation (*sociedad anónima bursátil de capital variable*) organized under the laws of Mexico. Substantially all of its directors and officers and some of the persons named in this offering memorandum reside in Mexico, and all or a significant portion of the assets of those persons may be, and the majority of our assets are, located outside the United States. As a result, it may not be possible for you to effect service of process within the United States upon such persons or to enforce against them or against us in U.S. courts judgments predicated upon the civil liability provisions of the federal securities laws of the United States. There is doubt as to the enforceability in Mexico, either in original actions or in actions for enforcement of judgments of U.S. courts, of civil liabilities predicated on the U.S. federal securities laws.

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The information in this offering memorandum also includes statistical data regarding the production, distribution, marketing and sale of cement, ready-mix concrete, clinker and aggregates. We generated some of this data internally, and some were obtained from independent industry publications and reports that we believe to be reliable sources. We have not independently verified the data obtained from external sources nor sought the consent of any organizations to refer to their reports in this offering memorandum. We believe that we have accurately reproduced this data, and as far as we are aware and able to ascertain from such independent industry publications and reports, no facts have been omitted which would render the reproduced information inaccurate or misleading.

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Certain information contained herein was extracted from information published by various official sources as identified herein. This information includes several reported rates of inflation, exchange rates and information relating to certain of the countries in which we operate. We have not participated in the preparation or compilation of any of such information and accept no responsibility therefor except that we confirm that this information has been accurately reproduced, and as far as we are aware and are able to ascertain from the published information, no facts have been omitted which would render the reproduced information inaccurate or misleading.

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Other than as disclosed or incorporated by reference in this offering memorandum, the Issuer is not involved, and has not been involved in any governmental, legal or arbitration proceeding which may have or has had during the previous 12 months, a material effect on the Issuer's financial condition or profitability and, so far as the Issuer is aware, no such governmental, legal or arbitration proceeding is pending or threatened.

## CERTAIN TECHNICAL TERMS

When used herein, the terms set forth below mean the following:

- **Aggregates** are sand and gravel, which are mined from quarries. They give ready-mix concrete its necessary volume and add to its overall strength. Under normal circumstances, one cubic meter of fresh concrete contains two metric tons of gravel and sand.
- **Billion** means one thousand million.
- **Clinker** is an intermediate cement product made by sintering limestone, clay, and iron oxide in a kiln at around 1,450 degrees Celsius. One metric ton of clinker is used to make approximately 1.1 metric tons of gray Portland cement.
- **Gray cement**, used for construction purposes, is a hydraulic binding agent with a composition by weight of at least 95% clinker and 0% to 5% of a minor component (usually calcium sulfate) which, when mixed with sand, stone or other aggregates and water, produces either concrete or mortar.
- **Ready-mix concrete** is a mixture of cement, aggregates, and water.
- **Tons** means metric tons. One metric ton equals 1.102 short tons.
- **White cement** is a specialty cement used primarily for decorative purposes.

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## AVAILABLE INFORMATION

CEMEX, S.A.B. de C.V. is a "foreign private issuer" within the meaning of the rules of the SEC. CEMEX, S.A.B. de C.V. files periodic reports and other information with the SEC consistent with the requirements for a foreign private issuer. This information can be inspected and copied, and copies can be obtained at prescribed rates, at the public reference facilities maintained by the SEC at 100 F Street, N.E., Washington, D.C. 20549.

In reviewing the agreements included as exhibits to our SEC filings, please remember they are included to provide you with information regarding their terms and are not intended to provide any other factual or disclosed information about us or the other parties to the agreements.

The agreements may contain representations and warranties by each of the parties to the applicable agreement. These representations and warranties have been made solely for the benefit of the other parties to the applicable agreement and:

- should not in all instances be treated as categorical statements of fact, but rather as a way of allocating the risk to one of the parties if those statements prove to be inaccurate;
- have been qualified by disclosures that were made to the other party in connection with the negotiation of the applicable agreement, which disclosures are not necessarily reflected in the agreement;
- may apply standards of materiality in a way that is different from what may be viewed as material to you or other investors; and
- were made only as of the date of the applicable agreement or such other date or dates as may be specified in the agreement and are subject to more recent developments.

Accordingly, these representations and warranties may not describe the actual state of affairs as of the date they were made or at any other time.

At all times when CEMEX, S.A.B. de C.V. is required to file any financial statements or reports with the SEC, CEMEX, S.A.B. de C.V. will use its best efforts to file all required statements or reports in a timely manner in accordance with the rules and regulations of the SEC. In addition, at any time when CEMEX, S.A.B. de C.V. is not subject to or is not current in its reporting obligations under Section 13 or Section 15(d) of the U.S. Securities Exchange Act of 1934, as amended (the "Exchange Act"), or is exempt from the registration requirements of Section 12(g) of the Exchange Act pursuant to Rule 12g3-2(b) thereunder and any Notes remain outstanding (or if otherwise required with respect to the Guarantors), CEMEX, S.A.B. de C.V. will make available, upon request, to any holder and any prospective purchaser of Notes that are "restricted securities" under the Securities Act, the information referred to in Rule 144A(d)(4) under the Securities Act in order to permit resale of the Notes in compliance with Rule 144A.

In addition, for so long as the Notes are listed on the Global Exchange Market of the Irish Stock Exchange, copies of the following items will be available in physical form at Avenida Ricardo Margáin Zozaya # 325, Colonia Valle del Campestre, San Pedro Garza García, Nuevo León, 66265 México:

- these Listing Particulars;
- a copy of the *estatutos sociales* (by-laws) of the Issuer;
- the consolidated audited financial statements of CEMEX, S.A.B. de C.V. for the periods ended December 31, 2012 and 2011; and
- a copy of the indenture governing the Notes.

## INCORPORATION OF DOCUMENTS BY REFERENCE

We incorporate by reference into this offering memorandum certain information CEMEX, S.A.B. de C.V. files with the SEC, which means that we can disclose important information to you by referring to another document filed separately with the SEC. We incorporate by reference into this offering memorandum our 2012 Annual Report, filed with the SEC on April 24, 2013. In addition, we incorporate by reference into this offering memorandum our reports on Form 6-K filed with the SEC on May 22, 2013 (the "May 6-K"), August 5, 2013 (the "August 6-K") relating to certain information disclosed in connection with our August 2013 Notes Offering (as defined herein) (with respect only to the sections titled "Risk Factors," "Recent Developments—Recent Developments Relating to Regulatory Matters and Legal Proceedings," "Recent Developments—Recent Developments Relating to Our Operations" and "Recent Developments—Recent Developments Relating to Our Major Shareholders") and September 25, 2013 (the "September 6-K").

Any statement contained in our 2012 Annual Report and any other document incorporated by reference into this offering memorandum, shall be considered to be modified or superseded for purposes of this offering memorandum to the extent that a statement contained in this offering memorandum or the other reports incorporated by reference herein modifies or supersedes such statement. Any statement that is modified or superseded shall not, except as so modified or superseded, constitute a part of this offering memorandum.

In addition, any future reports on Form 6-K filed by us with the SEC after the date of this offering memorandum and until the closing of this offering, which are identified in such Forms 6-K as being incorporated into this offering memorandum, shall be considered to be incorporated in this offering memorandum by reference and shall be considered a part of this offering memorandum from the date of filing of such documents. Provided, however, any such future filings will not form a part of this offering memorandum for purposes of listing on the Irish Stock Exchange.

You may request a copy of our 2012 Annual Report and other incorporated documents, other than exhibits, and our *estatutos sociales* (by-laws), at no cost, by writing or telephoning us at the following:

CEMEX, S.A.B. de C.V.
Investor Relations
Avenida Ricardo Margáin Zozaya # 325
Colonia Valle del Campestre
San Pedro Garza García, Nuevo León, 66265
México
Tel: +5281-8888-4292

## SUMMARY

*This summary highlights information contained elsewhere in this offering memorandum. This summary may not contain all the information you should consider before making a decision whether to invest in the Notes. You should read the entire offering memorandum carefully, including the section entitled "Risk Factors." Unless the context otherwise requires, references in this offering memorandum to our sales and assets, including percentages, for a country or region are calculated before eliminations resulting from consolidation, and thus include intercompany balances between countries and regions. These intercompany balances are eliminated when calculated on a consolidated basis. References in this offering memorandum to "U.S.$" and "Dollars" are to U.S. Dollars, references to "€" are to Euros, references to "£" and "Pounds" are to British Pounds, and, unless otherwise indicated, references to "Ps," "Mexican Pesos" and "Pesos" are to Mexican Pesos.*

## CEMEX

Founded in 1906, CEMEX is one of the largest cement companies in the world, based on annual installed cement production capacity as of December 31, 2012 of approximately 94.8 million tons. We are the largest ready-mix concrete company in the world with annual sales volumes of approximately 55 million cubic meters and one of the largest aggregates companies in the world with annual sales volumes of approximately 159 million tons, in each case based on our annual sales volumes in 2012. We are also one of the world's largest traders of cement and clinker, having traded approximately 8.8 million tons of cement and clinker in 2012. CEMEX, S.A.B. de C.V. is a holding company primarily engaged, through our operating subsidiaries, in the production, distribution, marketing and sale of cement, ready-mix concrete, aggregates, clinker and other construction materials throughout the world, and that provides reliable construction-related services to customers and communities in more than 50 countries throughout the world.

We operate globally, with operations in Mexico, the United States, Northern Europe, the Mediterranean, South America and the Caribbean and Asia. We had total assets of approximately Ps479 billion (U.S.$37 billion) as of December 31, 2012, and an equity market capitalization of approximately Ps171,754 million (U.S.$13,397 million) as of September 23, 2013.

As of December 31, 2012, our main cement production facilities were located in Mexico, the United States, Spain, Egypt, Germany, Colombia, the Philippines, Poland, the Dominican Republic, the United Kingdom, Croatia, Panama, Latvia, Puerto Rico, Thailand, Costa Rica and Nicaragua. As of December 31, 2012, our assets (after eliminations), cement plants and installed capacity, on an unconsolidated basis by region, were as set forth below. Installed capacity, which refers to theoretical annual production capacity, represents gray cement equivalent capacity, which counts each ton of white cement capacity as approximately two tons of gray cement capacity, and includes installed capacity of cement plants that have been temporarily closed.

| | As of December 31, 2012 | | |
|---|---|---|---|
| | Assets After Eliminations (in Billions of Mexican Pesos) | Number of Cement Plants | Installed Cement Production Capacity (Millions of Tons Per Annum) |
| Mexico[1] | 79 | 15 | 29.3 |
| United States[2] | 208 | 13 | 17.1 |
| Northern Europe | | | |
| United Kingdom | 29 | 2 | 2.4 |
| Germany | 13 | 2 | 4.9 |
| France | 14 | — | — |
| Rest of Northern Europe[3] | 18 | 3 | 4.6 |
| The Mediterranean | | | |
| Spain[4] | 22 | 8 | 11.0 |
| Egypt | 7 | 1 | 5.4 |
| Rest of the Mediterranean[5] | 10 | 3 | 2.4 |
| South America and the Caribbean | | | |
| Colombia | 16 | 2 | 4.0 |
| Rest of South America and the Caribbean[6] | 17 | 5 | 8.0 |
| Asia | | | |
| Philippines | 8 | 2 | 4.5 |
| Rest of Asia[7] | 3 | 1 | 1.2 |
| Corporate and Other Operations | 35 | — | — |
| Total | 479 | 57 | 94.8 |

The above table includes our proportional interest in the installed capacity of companies in which we hold a non-controlling interest.

(1) "Number of cement plants" and "installed cement production capacity" includes two cement plants that have been temporarily closed with an aggregate annual installed capacity of 2.7 million tons of cement.

(2) "Number of cement plans" and "installed cement production capacity" includes two cement plants that have been temporarily closed with an aggregate annual installed capacity of 2.1 million tons of cement.

(3) Refers primarily to our operations in Ireland, the Czech Republic, Austria, Poland, Hungary and Latvia, as well as trading activities in Scandinavia and Finland. For purposes of the columns labeled "Assets after eliminations" and "Installed cement production capacity," includes our approximate 33% interest, as of December 31, 2012, in a Lithuanian cement producer that operated one cement plant with an annual installed capacity of 1.3 million tons of cement as of December 31, 2012. For purposes of "number of cement plants" and "installed cement production capacity" includes one cement plant that has been temporarily closed with an aggregate annual installed capacity of 1.5 million tons of cement.

(4) For purposes of "number of cement plants" and "installed cement production capacity" includes one cement plant that has been temporarily closed with an aggregate annual installed capacity of 0.1 million tons of cement.

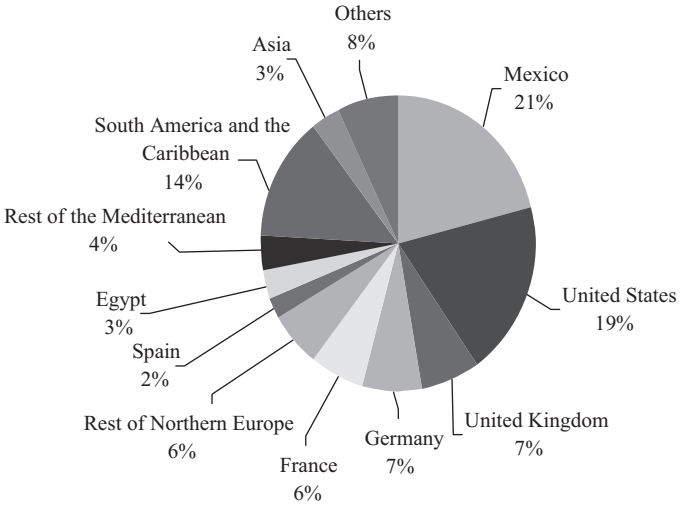
(5) Refers primarily to our operations in Croatia, the UAE and Israel.

(6) Includes our operations in Costa Rica, Panama, Puerto Rico, the Dominican Republic, Nicaragua, Peru, Jamaica and other countries in the Caribbean, Guatemala and small ready-mix concrete operations in Argentina.

(7) Includes our operations in Thailand, Bangladesh, China and Malaysia.

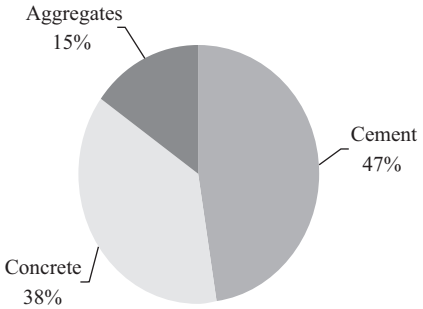
**Geographic Breakdown of Net Sales for the Year Ended December 31, 2012**

The following chart indicates the geographic breakdown of our net sales, before eliminations resulting from consolidation, for the year ended December 31, 2012:




**Breakdown of Net Sales by Product For the Year Ended December 31, 2012**

The following chart indicates the breakdown of our net sales by product, after eliminations resulting from consolidation, for the year ended December 31, 2012:




**Financial Ratios**

| | For the Year Ended December 31, | | | For the Six Months Ended June 30, |
|---|---|---|---|---|
| | 2010 | 2011 | 2012 | 2013 |
| Ratio of Operating EBITDA to interest expense[(1)] . . . . . | 2.0 | 1.8 | 1.9 | 1.7 |
| Ratio of earnings to combined fixed charges[(2)] . . . . . | 0.3 | 0.3 | 0.7 | 0.2 |

(1) Operating EBITDA equals operating earnings before other expenses, net, amortization and depreciation expenses. Operating EBITDA and the ratio of Operating EBITDA to interest expense are presented because we believe that they are widely accepted as financial indicators of our ability to internally fund capital expenditures and service or incur debt. Operating EBITDA and such ratios should not be considered as indicators of our financial performance, as alternatives to cash flow, as measures of liquidity or as being

comparable to other similarly titled measures of other companies. Operating EBITDA differs from Consolidated EBITDA, as such term is defined in the indenture governing the Notes, or the Indenture. See "Description of Notes." Under International Financial Reporting Standards, or IFRS, while there are line items that are customarily included in statements of operations prepared pursuant to IFRS, such as net sales, operating costs and expenses and financial revenues and expenses, among others, the inclusion of certain subtotals, such as operating earnings before other expenses, net, and the display of such statement of operations varies significantly by industry and company according to specific needs. Operating EBITDA is reconciled below to operating earnings before other expenses, net, as reported in the statements of operations, and to net cash flows provided by operating activities before interest and income taxes paid in cash, as reported in the statement of cash flows. Interest expense presented in this chart differs from the definition of Consolidated Interest Expense as such term is defined in the Indenture. See "Description of Notes." Interest expense under IFRS does not include coupon payments and issuance costs of the Perpetual Debentures (as defined under "Capitalization of CEMEX" elsewhere in this offering memorandum) issued by consolidated entities of approximately Ps1,624 million for 2010, approximately Ps1,010 million for 2011, approximately Ps453 million for 2012, as described in note 20D to our audited consolidated financial statements included in our 2012 Annual Report, which is incorporated by reference in this offering memorandum, and approximately Ps217 million for the six months ended June 30, 2013.

| | For the Year Ended December 31, | | | For the Six Months Ended June 30, |
|---|---|---|---|---|
| | 2010 | 2011 | 2012 | 2013 |
| | (in millions of Mexican Pesos) | | | |
| **Reconciliation of operating EBITDA to net cash flows provided by operating activities before interest and income taxes paid in cash** | | | | |
| Operating EBITDA | Ps 29,844 | Ps 29,600 | Ps 34,384 | Ps 15,803 |
| Less: | | | | |
| Operating depreciation and amortization expense | 19,108 | 17,536 | 17,184 | 7,086 |
| Operating earnings before other expenses, net | 10,736 | 12,064 | 17,200 | 8,717 |
| Plus / minus: | | | | |
| Changes in working capital excluding income taxes | (623) | (727) | (2,048) | (6,714) |
| Depreciation and amortization expense | 19,108 | 17,536 | 17,184 | 7,086 |
| Other items, net | (3,269) | (5,257) | (2,439) | (714) |
| Net cash flows provided by operating activities before interest and income taxes paid in cash | Ps 25,952 | Ps 23,616 | Ps 29,897 | Ps 8,375 |

(2) For purposes of determining the ratio of earnings to combined fixed charges, (a) earnings consist of pre-tax income from continuing operations before adjustment for non-controlling interests in consolidated subsidiaries or income or loss from equity investees, fixed charges, amortization of capitalized interest, distributed income of equity investees, and our share of pre-tax losses of equity investees for which charges arising from guarantees are included in fixed charges, less interest capitalized and the non-controlling interest in pre-tax income of subsidiaries that have not incurred fixed charges and (b) fixed charges consist of interest expensed and capitalized, amortized premiums, discounts and capitalized expenses related to indebtedness and our estimate of the interest within rental expense. The denominator of this ratio under IFRS does not include coupon payments and issuance costs of the Perpetual Debentures issued by consolidated entities of approximately Ps1,624 million for 2010, approximately Ps1,010 million for 2011 and approximately Ps453 million for 2012, as described in note 20D to our audited consolidated financial statements included in our 2012 Annual Report, which is incorporated by reference in this offering memorandum, and approximately Ps217 million for the six months ended June 30, 2013.

## RECENT DEVELOPMENTS

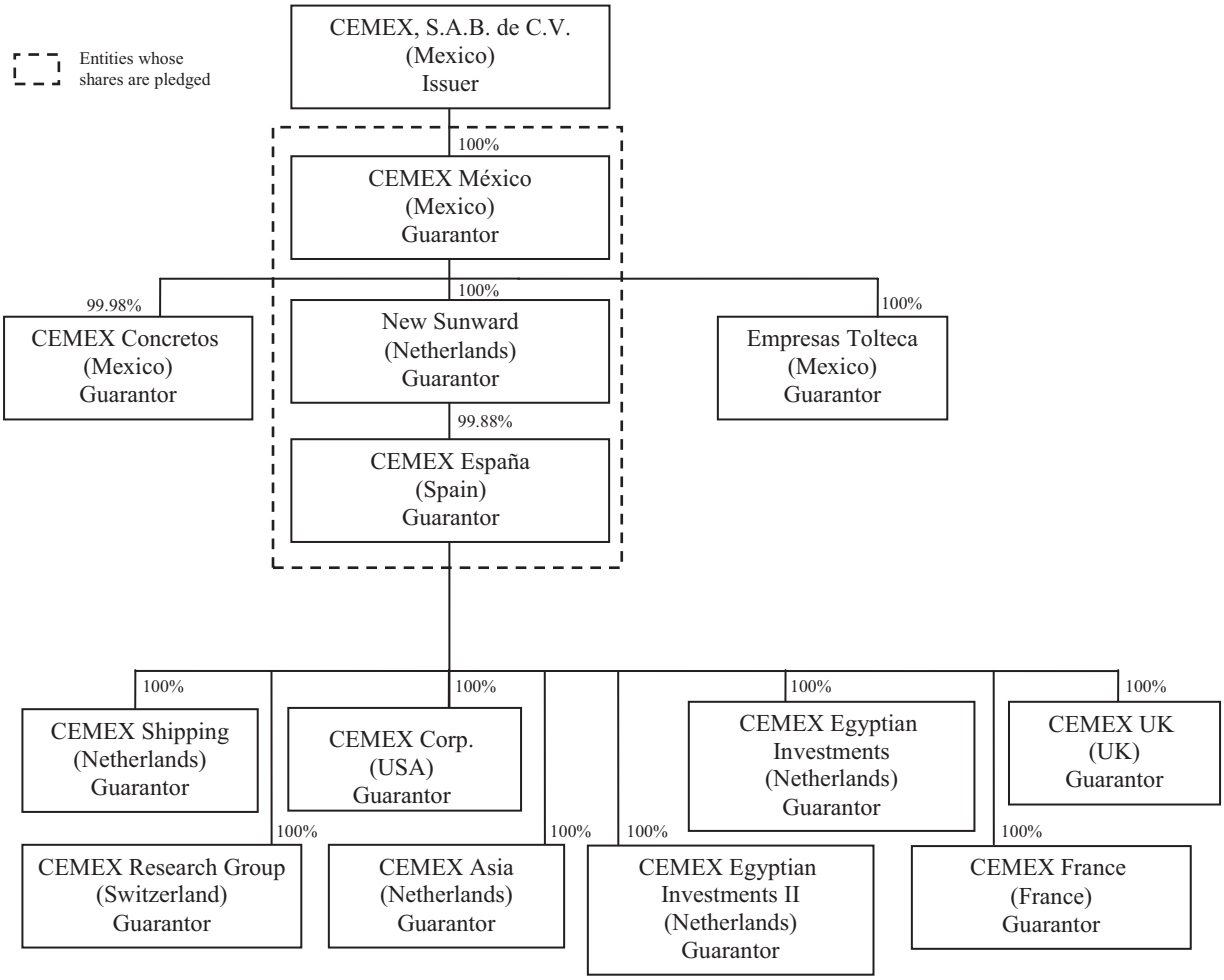
### Recent Developments Relating to Our Indebtedness

On August 12, 2013, CEMEX, S.A.B. de C.V. issued U.S.$1.0 billion aggregate principal amount of its 6.500% Senior Secured Notes due 2019, or the August 2013 Notes, in transactions exempt from registration pursuant to Rule 144A and Regulation S under the Securities Act (the "August 2013 Notes Offering"). The payment of principal, interest and premium, if any, on the August 2013 Notes is fully and unconditionally guaranteed by CEMEX México, CEMEX España, New Sunward, CEMEX Asia, CEMEX Concretos, CEMEX Corp., CEMEX Egyptian Investments, CEMEX Egyptian Investments II, CEMEX France, CEMEX Research Group, CEMEX Shipping, CEMEX UK and Empresas Tolteca. The August 2013 Notes are secured by a first-priority security interest over the Collateral and all proceeds of such Collateral. The August 2013 Notes were issued at par. The net proceeds from the offering of approximately U.S.$995 million, along with available cash, were used to purchase U.S.$925 million aggregate principal amount of CEMEX Finance LLC's 9.50% Senior Secured Notes due 2016 at an aggregrate purchase price of approximately U.S.$1.01 billion through a cash tender offer (the "2016 Notes Tender Offer" and, together with the August 2013 Notes Offering, the "August 2013 Refinancing"), following which such 9.50% Senior Secured Notes due 2016 were immediately cancelled.

**Notes Structure Chart**

The following chart illustrates the structure of the Issuer and the Guarantors and provides certain information with respect to the Collateral and debt information as of June 30, 2013, as adjusted to give effect to the August 2013 Refinancing. The chart also shows, for each company, our approximate direct or indirect percentage equity or economic ownership interest. The chart has been simplified to show the Issuer and the Guarantors and does not include certain intermediary companies and all of the information with respect to the Collateral.

| CEMEX – Consolidated as of June 30, 2013 | |
|---|---|
| Total debt plus other financial obligations excluding the Perpetual debentures | Ps225,452 billion (principal amount Ps231,570 billion) |
| Total debt plus other financial obligations including the Perpetual debentures | Ps231,572 billion (principal amount Ps237,687 billion) |
| Total debt plus other financial obligations issued or guaranteed by CEMEX S.A.B. de C.V.'s subsidiaries other than the Guarantors (including debt plus other financial obligations that may also be issued or guaranteed by the Issuer or the Guarantors) (excluding the Perpetual Debentures) | Ps96,230 billion (principal amount Ps97,523 billion) |



**Executive Offices**

CEMEX, S.A.B. de C.V. is a publicly traded stock corporation with variable capital (sociedad anónima bursátil de capital variable), organized under the laws of the United Mexican States, with its principal executive offices located at Avenida Ricardo Margáin Zozaya #325, Colonia Valle del Campestre, San Pedro, Garza García, Nuevo León, 66265, México. Our main phone number is +5281-8888-8888. Our taxpayer identification number is CEM-880726-UZA.

## SUMMARY OF THE OFFERING

The summary below describes the principal terms of the Notes. Certain of the terms and conditions described below are subject to important limitations and exceptions. The "Description of Notes" section of this offering memorandum contains more detailed descriptions of the terms and conditions of the Notes.

| | |
|---|---|
| **Issuer** | CEMEX, S.A.B. de C.V. |
| **Notes Offered** | U.S.$500,000,000 aggregate principal amount of Floating Rate Senior Secured Notes due 2018. |
| **Maturity Date** | October 15, 2018. |
| **Interest** | Floating rate per year, reset quarterly, equal to three-month LIBOR for deposits in U.S. dollars plus 4.75% (475 basis points) payable in cash quarterly in arrears on each January 15, April 15, July 15 and October 15 (each, an "Interest Payment Date"), subject to the Business Day Convention, beginning on January 15, 2014 through their final maturity.<br><br>The Calculation Agent will determine the interest rate applicable to the Notes in any interest period on or as of the interest determination date for that period, which will be the second London Banking Day preceding each LIBO Rate Reset Date (as defined in "Description of Notes—Determination of Floating Interest Rate") for that period. The initial interest determination date will be September 30, 2013 for the interest period commencing on October 2, 2013. For purposes of the above, "London Banking Day" means any day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits) in London. |
| **Day Count Convention** | Actual / 360. |
| **Business Day Convention** | Modified Following Business Day Convention as follows: if any LIBO Rate Reset Date or Interest Payment Date (other than the maturity date) would otherwise be a day that is not a Business Day, that LIBO Rate Reset Date or Interest Payment Date will be postponed to the next succeeding Business Day, provided, however, that if that date would fall in the next succeeding calendar month, such date will be the immediately preceding Business Day. If any such LIBO Rate Reset Date or Interest Payment Date (other than the maturity date) is postponed or brought forward as described above, the interest amount will be adjusted accordingly. If the maturity date falls on a day that is not a Business Day, payment of principal and interest on the Notes will be made on the next Business Day, and no interest will accrue for the period from and after the maturity date. Postponement as described above will not result in a default. For purposes of the above, "Business Day" means any week day on which banking and trust institutions in New York City, Mexico City, Madrid, Amsterdam, London, Paris or Zurich are not authorized generally or obligated by law, regulation or executive order to close. |

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| **Guarantors** | CEMEX México, CEMEX España, CEMEX Asia, CEMEX Corp., CEMEX Egyptian Investments, CEMEX Egyptian Investments II, CEMEX France, CEMEX Research Group, CEMEX Shipping and CEMEX UK (together, the "Primary Guarantors") and CEMEX Concretos, Empresas Tolteca and New Sunward (together, the "Additional Guarantors," and together with the Primary Guarantors, the "Guarantors").<br><br>Each Primary Guarantor will guarantee the Notes until a legal defeasance occurs or a disposition of capital stock of such Primary Guarantor occurs such that it is no longer a direct or indirect Subsidiary of the Issuer.<br><br>The Additional Guarantors will be subject to the same release provisions as the Primary Guarantors. Each Additional Guarantor will also be released from its Note Guarantee when (i) the exposures under the Facilities Agreement (as defined under "Description of Notes") have been repaid in full and such Additional Guarantor is not a guarantor of the indebtedness incurred to refinance such exposures; (ii) at least 85% of the outstanding indebtedness of the Issuer and its Restricted Subsidiaries is not guaranteed by such Additional Guarantor; or (iii) a Partial Covenant Suspension Event or a Covenant Suspension Event occurs until the occurrence of a Partial Covenant Reversion Date or a Reversion Date, as applicable, at which time such guarantee shall be reinstated unless such Additional Guarantor would have been released at any time during the suspension period pursuant to clause (ii) or (iii) above. See "Description of Notes—Note Guarantees." |
| **Guarantees** | The payment of principal, interest and premium, if any, on the Notes will be fully and unconditionally guaranteed by the Guarantors (each such guarantee, a "Note Guarantee," and together, the "Note Guarantees"). See "Description of Notes—Note Guarantees." |
| **Security** | The Notes will be secured by a first-priority security interest over the Collateral and all proceeds of such Collateral. Holders of Notes will not be entitled to direct the foreclosure on, or foreclose on, the Collateral.<br><br>The Notes will cease to be secured in accordance with the provisions of the Intercreditor Agreement. The Intercreditor Agreement provides that the Collateral will be released (i) as may be agreed from time to time by creditors representing certain thresholds of indebtedness under the Facilities Agreement; and (ii) automatically at any time when there is no default under the Facilities Agreement and a maximum ratio of total debt to EBITDA has been complied with. The ratio for the automatic release varies between the automatic release of the Collateral consisting of shares of CEMEX México, Centro Distribuidor de Cemento, S.A. de C.V., Mexcement Holdings, S.A. de C.V. and Corporación Gouda, S.A. de C.V. and the automatic release of the portion of the Collateral other than such shares. See "Description of Notes—Security Interest." |

**Ranking** . . . . . The Notes will rank:

- equal in right of payment with all other existing and future senior indebtedness of the Issuer and the Guarantors; and
- senior in right of payment to all existing and future Subordinated Indebtedness of the Issuer and the Guarantors, including, in the case of the Issuer, the 2010 Optional Convertible Subordinated Notes and the 2011 Optional Convertible Subordinated Notes (as defined under "Capitalization of CEMEX" elsewhere in this offering memorandum).

The Notes will be effectively subordinated to all existing and future indebtedness of the Issuer and the Guarantors secured by assets of the Issuer and the Guarantors other than the Collateral to the extent of the applicable security interest, and structurally subordinated to all existing and future indebtedness of the Issuer's subsidiaries (other than the Guarantors). Furthermore, the Notes and the Note Guarantees will rank junior to all obligations preferred by law (such as tax, social security or labor obligations). See "Description of Notes—General."

As of June 30, 2013, CEMEX, S.A.B. de C.V.'s subsidiaries other than the Guarantors represented the following approximate percentages of CEMEX's assets and net sales, on a consolidated basis:

- 74% of CEMEX's consolidated assets excluding intercompany balances and excluding investments in subsidiaries; and
- 80% of CEMEX's consolidated total net sales excluding intercompany sales.

**Use of Proceeds** . . . . . The estimated net proceeds from the offering of the Notes and the offering of the Other Notes, after deducting the Initial Purchasers' fees and commissions and the estimated expenses, will be approximately U.S.$1.494 billion. We intend to use the net proceeds from the offerings to purchase any or all of the 9.50% Senior Secured Notes due 2016 (the "2016 Notes"), issued by CEMEX Finance LLC, our indirect subsidiary, and the remainder for general corporate purposes, including to purchase up to €150 million of the outstanding 9.625% Senior Secured Notes due 2017 (the "2017 Notes"), issued by CEMEX Finance LLC, to repay at maturity the 4.75% Notes due 2014 (the "2014 Notes"), issued by CEMEX Finance Europe B.V., our indirect subsidiary, and/or to repay our other indebtedness, all in accordance with the Facilities Agreement.

We currently expect to purchase the 2016 Notes at a price of approximately U.S.$1,062.50 for each U.S.$1,000 principal amount of such notes and to purchase the 2017 Notes at a price of approximately €1,063.50 for each €1,000 principal amount of such notes, in each case, plus accrued interest. See "Use of Proceeds."

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| **Optional Redemption** . . . . . | On or after the Interest Payment Date immediately preceding the maturity date, the Issuer will have the right, at its option, to redeem all of the Notes, at any time prior to their maturity, at par plus any accrued and unpaid interest on the principal amount of the Notes to the date of redemption.<br><br>The Issuer shall not have the right to exercise any optional redemption under the Indenture governing the Notes at any time when the Issuer is prohibited from having such an option under the Facilities Agreement. |
| **Additional Amounts** . . . . . | The Issuer and the Guarantors generally will pay such additional amounts as may be necessary so that the amount received by holders of the Notes after withholdings or deductions for taxes in relation to payments under the Notes, will not be less than the amount that holders of the Notes would have received in the absence of such withholdings or deductions, subject to certain exceptions described under "Description of Notes—Additional Amounts." |
| **Tax Redemption** . . . . . | If as a result of changes in tax laws imposing withholdings or deductions on payments under the Notes and the Note Guarantees, the Issuer or the Guarantors are required to pay additional amounts in excess of those attributable to withholding taxes imposed at a rate of 10% with respect to the Notes, the Issuer will have the option to redeem the Notes, in whole but not in part, at a redemption price equal to 100% of the outstanding principal amount of the Notes, plus any accrued and unpaid interest, if any, to the date of redemption and any additional amounts that may be then payable. See "Description of Notes—Optional Redemption."<br><br>The Issuer shall not have the right to exercise any tax redemption under the Indenture governing the Notes at any time when the Issuer is prohibited from having such an option under the Facilities Agreement. |
| **Certain Covenants** . . . . . | The Notes will be issued under an Indenture. The Indenture, among other things, limits the Issuer's ability and the ability of its Restricted Subsidiaries, to:<br><br>• borrow money;<br>• pay dividends on stock;<br>• redeem stock or redeem subordinated debt;<br>• make investments;<br>• sell assets, including capital stock of subsidiaries;<br>• guarantee indebtedness;<br>• enter into agreements that restrict dividends or other distributions from Restricted Subsidiaries; |

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| | • enter into transactions with affiliates;<br>• create or assume liens; and<br>• engage in mergers or consolidations.<br><br>If the Notes do not have investment grade ratings from two (2) of Fitch Ratings ("Fitch"), Standard & Poor's Ratings Group ("S&P") or Moody's Investors Service, Inc. ("Moody's"), but (i) the Consolidated Leverage Ratio of the Issuer is less than 3.5:1 and (ii) no default has occurred and is continuing, the foregoing covenants will cease to be in effect, with the exception of covenants that contain limitations on incurrence of additional indebtedness, restricted payments and layered indebtedness, liens and on, among other things, certain consolidations, mergers and transfer of assets and designation of unrestricted subsidiaries, for so long as the Consolidated Leverage Ratio is less than 3.5:1.<br><br>If the Notes (i) obtain investment grade ratings from two (2) of Fitch, S&P or Moody's, and (ii) no default has occurred and is continuing, the foregoing covenants will cease to be in effect, with the exception of covenants that contain limitations on liens and on, among other things, certain consolidations, mergers and transfer of assets and designation of unrestricted subsidiaries, for so long as any two of the foregoing rating agencies maintains its investment grade rating. |
| **Change of Control** . . . . . | Upon a Change of Control, holders of Notes will have the right to require the Issuer to purchase all or a portion of the Notes at a price equal to 101% of their principal amount plus accrued and unpaid interest, if any, through the date of purchase. |
| **Events of Default** . . . . . | For a discussion of events that will permit acceleration of the payment of the principal of and accrued interest on the Notes, see "Description of Notes—Events of Default." |
| **Transfer Restrictions** . . . . . | The Notes and the Note Guarantees have not been and will not be registered under the Securities Act and are subject to restrictions on transfer. See "Transfer Restrictions; Notice to Investors." |
| **Form and Denomination** . . . . . | The Notes will be initially issued in the form of (i) one or more Rule 144A global notes (the "Rule 144A Global Notes"), offered and sold to "qualified institutional buyers" (as defined in Rule 144A under the Securities Act), and (ii) one or more Regulation S global notes (the "Regulation S Global Notes" and together with the Rule 144A Global Notes, the "Global Notes"), offered and sold to persons other than "U.S. persons" (as defined in Regulation S) in offshore transactions in reliance on Regulation S under the Securities Act. Each global note will be deposited upon issuance with the Trustee as custodian for DTC, in each case for credit to the account of a direct or indirect participant of DTC. Investors in the Global Notes who are participants in DTC may hold their interests in the Global |

| | |
|---|---|
| | Notes directly through DTC. Investors in the Global Notes who are not participants in DTC may hold their interests indirectly through organizations that are participants in DTC. Interests in the Global Notes will be shown on, and transfers thereof will be effected only through, records maintained by DTC or its nominee (with respect to participants) or by participants and indirect participants (including Euroclear and Clearstream, Luxembourg) and any such interest may not be exchanged for certificated securities, except in limited circumstances. See "Book-Entry; Delivery and Form." Certificated Notes cannot be traded through the facilities of DTC.<br><br>The Notes will be issued only in denominations of U.S.$200,000 and integral multiples of U.S.$1,000 in excess thereof. |
| **Listing** | Application has been made to list the Notes on the Irish Stock Exchange and to trade them on the Global Exchange Market of such exchange. |
| **Trustee, Registrar, Paying Agent and Transfer Agent** | The Bank of New York Mellon. |
| **Calculation Agent** | The Bank of New York Mellon. |
| **Irish Listing Agent** | Arthur Cox Listing Services Limited is acting solely in its capacity as listing agent for the Issuer in connection with the Notes and is not itself seeking admission of the Notes to trading on the Global Exchange Market of the Irish Stock Exchange. |
| **Risk Factors** | Prospective purchasers of the Notes should consider carefully all the information included in this offering memorandum and, in particular, the information set forth under "Risk Factors" and the sections entitled "Risk Factors" in our 2012 Annual Report, August 6-K and September 6-K, which are incorporated by reference in this offering memorandum, before making an investment in the Notes. |
| **Security Codes** | The Notes will be assigned the following securities codes: |

| | |
|---|---|
| 144A: | CUSIP: 151290 BL6<br>ISIN: US151290BL61 |
| Regulation S: | CUSIP: P22575 AG2<br>ISIN: USP22575AG20 |

## RISK FACTORS

You should consider carefully the following risks and all the information set forth in this offering memorandum or incorporated by reference herein before investing in the Notes. The following risk factors are not the only risks we face, and any of the risk factors described below could significantly and adversely affect our business, results of operations or financial condition, as well as the Issuer's ability to satisfy its obligations under the Notes or the Guarantors' ability to satisfy their obligations under the Note Guarantees. See "Item 3—Key Information—Risk Factors" of our 2012 Annual Report, which is incorporated by reference in this offering memorandum, as well as the other documents incorporated by reference herein, for additional risk factors relating to our business.

### Risks Relating To The Notes and This Offering

***We pledged the capital stock of subsidiaries that represent substantially all of our business as collateral to secure our payment obligations under the Facilities Agreement, the Existing Senior Secured Notes and other financing arrangements.***

As part of the Facilities Agreement, we pledged under pledge agreements or transferred to a trustee under a security trust, as collateral, the Collateral, and all proceeds of the Collateral to secure our payment obligations under the Facilities Agreement and under a number of other financing arrangements for the benefit of the creditors and holders of debt and other obligations that benefit from provisions in their instruments requiring that their obligations be equally and ratably secured. The payment of principal, interest and premium, if any, on the Existing Senior Secured Notes are secured by a first-priority security interest over the Collateral and all proceeds of such Collateral. As of June 30, 2013, as adjusted to give effect to the August 2013 Refinancing, the Collateral and all proceeds of such Collateral secured (i) Ps176,850 million (U.S.$13,646 million) (principal amount Ps179,200 million (U.S.$13,828 million) aggregate principal amount of debt under the Facilities Agreement and other financing arrangements and (ii) Ps9,139 million (U.S.$705 million aggregate principal amount of Perpetual Notes (as defined under "Capitalization of CEMEX"), which includes debt of ours held by us. These subsidiaries collectively own, directly or indirectly, substantially all of our operations worldwide. Provided that no default has occurred which is continuing under the Facilities Agreement, the Collateral will be released automatically if we meet specified debt reduction and financial covenant targets.

***The rights of holders of the Notes will be governed, and materially limited, by the Intercreditor Agreement. Holders of the Notes will not be entitled to direct the foreclosure on, or foreclose on, the Collateral. If there is a default, the value of the Collateral may not be sufficient to repay amounts owed in respect of the indebtedness under the Facilities Agreement, the other indebtedness and other obligations secured by the Collateral, including the Existing Senior Secured Notes.***

The Notes will be secured by a first-priority security interest in the Collateral and all proceeds of such Collateral on an equal and ratable basis with (i) indebtedness under the Facilities Agreement and any refinancing thereof made in accordance with the Facilities Agreement that is secured by the Collateral, (ii) notes (or similar instruments, including long-term promissory notes previously issued by us and placed in the Mexican capital markets (*certificados bursátiles*), or CBs) outstanding on the date of the Facilities Agreement required to be secured by the Collateral pursuant to their terms, or any refinancing thereof permitted by the Facilities Agreement, (iii) the Existing Senior Secured Notes, (iv) the dual-currency notes underlying the Perpetual Debentures and (v) future indebtedness secured by the Collateral to the extent permitted by the Facilities Agreement. The Notes will be senior obligations of the Issuer and will be effectively subordinated to all existing and future indebtedness of the Issuer and the Guarantors secured by assets of the Issuer and the Guarantors other than the Collateral to the extent of the applicable security interest.

The rights of the holders of the Notes with respect to the Collateral securing the Notes will be materially limited pursuant to the terms of the Intercreditor Agreement. Wilmington Trust (London) Limited, the security

agent under the Intercreditor Agreement (the "Security Agent"), may foreclose on the Collateral if (i) an event of default under the Facilities Agreement has occurred and is continuing and creditors representing 66.67% or more of indebtedness under the Facilities Agreement have authorized acceleration and (ii) eligible creditors representing certain specified thresholds of indebtedness under the Intercreditor Agreement have determined to enforce the security. Participating creditors could decide not to foreclose the Collateral, regardless of whether or not there is a default under the Facilities Agreement (or under any other agreement or security), and neither the holders of the Notes nor the trustee under the Indenture, have any rights to initiate, cause the initiation or in respect of any action to foreclose on, or otherwise exercise remedies with respect to, the Collateral or otherwise have any enforcement rights with respect to the Collateral, even if the rights of the Notes are adversely affected. In addition, the holders of the Notes will not take part in any approval of amendments to, substitutions or releases of Collateral from the lien of, and waivers of past default under, the collateral documents. The Collateral may be released by the Facilities Agreement creditors at any time, or upon a refinancing of the exposures under the Facilities Agreement in full without the consent or approval of the holders of the Notes. Holders of the Other Notes and the trustee under the indenture governing the Other Notes will have similar rights as the Holders of Notes and the trustee under the indenture governing the Other Notes with respect to the Intercreditor Agreement and the Collateral. In addition, the Intercreditor Agreement provides for an automatic release of the Collateral if certain conditions are met. See "Description of Notes—Security Interest."

The rights of the eligible creditors under the Intercreditor Agreement to foreclose upon and sell the Collateral upon the occurrence of an event of default also would be subject to limitations under applicable insolvency (*concurso mercantil*) or bankruptcy laws if CEMEX or any of its subsidiaries become subject to an insolvency (*concurso mercantil*) or bankruptcy proceeding. In addition, because a portion of the Collateral consists of pledges of the stock of certain of CEMEX's foreign subsidiaries, the validity of those pledges under local law, if applicable, and the ability of the holders of the Notes to realize upon that Collateral under local law, to the extent applicable, may be limited by such local law (including an approval of the foreclosure by applicable governmental authorities), which limitations may or may not affect the security interest.

No appraisal of the value of the Collateral has been made in connection with this offering. In particular, none of the Initial Purchasers has performed an appraisal of the value of the Collateral. The value of the Collateral in the event of liquidation will depend on market and economic conditions, the availability of buyers and other factors. We cannot assure you that the proceeds from the sale or sales of all of such Collateral would be sufficient to satisfy the amounts outstanding under the Notes and other obligations secured by the Collateral after payment in full of all obligations secured by the Collateral. If such proceeds were not sufficient to repay amounts outstanding under the Notes, then holders of the Notes (to the extent not repaid from the proceeds of the sale of the Collateral) would have an unsecured claim against the remaining assets of the Issuer and the Guarantors. In addition, the security agent under the Intercreditor Agreement may not be able to sell all or some portion of the Collateral.

***The Notes will be structurally subordinated to the obligations of our subsidiaries other than the Guarantors.***

CEMEX, S.A.B. de C.V. is a holding company that conducts all of its operations through its subsidiaries. Accordingly, the Notes will be structurally subordinated to all creditors, including trade creditors, of CEMEX, S.A.B. de C.V.'s subsidiaries other than the Guarantors. In particular, the Notes are not guaranteed by certain of CEMEX, S.A.B. de C.V.'s subsidiaries that have issued or guaranteed other of our indebtedness. See "Capitalization—Guarantors." As of June 30, 2013, CEMEX, S.A.B. de C.V.'s subsidiaries other than the Guarantors represented the following approximate percentages of CEMEX's assets and net sales, on a consolidated basis:

- 74% of CEMEX's consolidated assets excluding intercompany balances and excluding investments in subsidiaries; and
- 80% of CEMEX's consolidated total net sales excluding intercompany sales.

Of CEMEX's total debt plus other financial obligations of Ps225,452 million (U.S.$17,396 million) (principal amount Ps231,570 million (U.S.$17,868 million)) as of June 30, 2013, as adjusted to give effect to the August 2013 Refinancing (but not including approximately Ps6,118 million (U.S.$472 million) of Perpetual Notes), Ps96,230 million (U.S.$7,425 million) (principal amount Ps97,523 million (U.S.$7,525 million)) were issued or guaranteed by subsidiaries other than the Guarantors (including debt that may also be issued or guaranteed by Issuer or the Guarantors). Of such amount, Ps88,672 million (U.S.$6,842 million) (principal amount Ps90,098 million (U.S.$6,952 million)) was attributable debt that was issued or guaranteed by CEMEX Finance LLC.

The rights of holders of the Notes to receive any assets of any of CEMEX, S.A.B. de C.V.'s subsidiaries other than the Guarantors, upon their liquidation or reorganization, and therefore the right of such holders to participate in those assets, will be subject to the prior claims of that subsidiary's creditors, including trade creditors and holders of debt of that subsidiary, except to the extent that the Issuer or such Guarantors are creditors of such subsidiary, as the case may be. In addition, payments to us by CEMEX's subsidiaries may be subject to local restrictions on repatriation of earnings or currency exchange.

***The Indenture governing the Notes and the instruments governing our other debt contain cross-default and cross-acceleration provisions that may cause substantially all of the debt we have issued or incurred to become immediately due and payable as a result of a default under any one of our debt instruments.***

The Indenture governing the Notes and the instruments governing our other debt contain certain affirmative and negative covenants. Our failure to comply with the obligations contained in indentures or other instruments governing our indebtedness could result in an event of default under the applicable instrument, which could result in the related debt and the debt issued under other instruments becoming immediately due and payable. In such event, we would need to raise funds from alternative sources, which may not be available to us on favorable terms, on a timely basis or at all. Alternatively, such default could require us to sell our assets and otherwise curtail operations in order to pay our creditors.

***If the Issuer or the Guarantors were to be declared bankrupt, holders of Notes may find it difficult to collect payment on the Notes.***

*Mexican Law*

Pursuant to Mexican Insolvency Law (*Ley de Concursos Mercantiles*), if the Issuer or any of the Mexican Guarantors is declared insolvent (*en concurso mercantil*) or bankrupt (*en quiebra*), certain claims, such as labor claims, claims of tax authorities for unpaid taxes, social security quotas, workers' housing fund quotas, retirement fund quotas, litigation costs, fees and expenses related to the administration of the bankruptcy estate, as well as claims from secured creditors or creditors with specific privileges against the Issuer or such Mexican Guarantor, will have priority over claims of the holders of the Notes.

Under the Mexican Insolvency Law, upon the Issuer's or any Mexican Guarantor's declaration of insolvency (*concurso mercantil*) or bankruptcy (*quiebra*), the Issuer's or such Mexican Guarantor's obligations under the Note Guarantee:

- would be converted into Mexican Pesos, at the exchange rate published by *Banco de México* prevailing at the time of such declaration and would subsequently be converted into *Unidades de Inversión*, which is a unit pegged to the consumer price index calculated and published by *Banco de México*;
- would not be adjusted to take into account depreciation of the Mexican Peso against the U.S. Dollar occurring after such declaration of insolvency;
- would be satisfied at the time claims of all of the creditors of the Issuer or the Mexican Guarantors are satisfied;

- are likely to cease to accrue interest from the day on which insolvency (*concurso mercantil*) was declared; and
- would be dependent upon the outcome and subject to the priorities of the insolvency proceedings.

*Netherlands Law*

If any Dutch Guarantor is declared insolvent or bankrupt (*failliet*) or is granted a (provisional) suspension of payments ((*voorlopige*) *surseance van betaling*) by a competent court, payment, if any, of the obligations of such Dutch Guarantor, as a Guarantor of the Notes, would occur at the time the claims of unsecured and non-preferred creditors were satisfied and would be subject to certain statutory preferences. Any insolvency proceedings with respect to any Dutch Guarantor in the European Economic Area (excluding Denmark) would most likely be based on and governed by the insolvency laws of the Netherlands. In addition, there can be no assurance as to how the insolvency laws of the Netherlands would be applied in the event that a Dutch Guarantor is subject to one or more insolvency proceedings outside the Netherlands.

*United States Law*

If CEMEX Corp. were to become the subject of a case under title 11 of the U.S. Code, we cannot predict whether any distribution in respect of the Note Guarantees would be made or how long such distribution, if any, might be delayed.

*Swiss Law*

According to Swiss insolvency law, if CEMEX Research Group is declared bankrupt (*Konkurs*) or in the case of composition proceedings with creditors (*Nachlassverfahren*) against CEMEX Research Group, certain obligations of CEMEX Research Group, as a Guarantor of the Notes, if insolvent, will be effectively subordinated to those obligations that are preferred under Swiss insolvency law. Therefore, certain preferred and secured claims will have priority over claims of the holders of the Notes. In addition, there can be no assurance as to how Swiss insolvency law would be applied in the event that CEMEX Research Group is subjected to one or more insolvency proceedings outside Switzerland.

*Spanish Law*

According to the Spanish Insolvency Law (*Ley Concursal*), if CEMEX España is declared insolvent (*en concurso*), the obligations of CEMEX España, as a Guarantor of the Notes, will be effectively subordinated to those obligations that are preferred under the Spanish Insolvency Law. Thus, certain claims, such as labor claims, claims of tax authorities for unpaid taxes, social securities quotas, civil liability claims arising from tort, claims from the insolvency petitioner (up to a quarter of their amount), claims from creditors against the bankruptcy estate (*acreedores contra la masa*), which includes expenses incurred in processing the proceedings and expenses that are basically necessary for the debtor to continue its business, as well as claims from secured creditors or from creditors with specific privileges against CEMEX España, will have priority over claims of the holders of the Notes. In addition, under the Spanish Insolvency Law, in the event of CEMEX España's declaration of insolvency, the clauses which grant the right to terminate an agreement solely based on the commencement of insolvency proceedings will be deemed ineffective.

*French Law*

The opening of bankruptcy, insolvency or similar proceedings under French law in respect of CEMEX France would affect the situation of the holders of the Notes in several ways, including as follows:

- Subject to limited exceptions, from the date of the court order commencing the proceedings (safeguard, accelerated financial safeguard or judicial reorganization proceedings), CEMEX France will be

prohibited from paying debts which arose prior to such date (in accelerated financial safeguard proceedings, to financial creditors only) and its creditors will not be able to pursue any legal action against the company with respect to any such claim or otherwise accelerate their claims because of the occurrence of such proceedings or the insolvency of the company. Therefore, the commencement of an insolvency proceeding against CEMEX France would prohibit the holders of the Notes from enforcing their rights and remedies under the Notes.

- If the court adopts a safeguard plan or a reorganization plan, claims of creditors included in the plan will be paid according to the terms of the plan. If the court adopts a plan for the sale of the business or decides to order the judicial liquidation of CEMEX France, the proceeds of the sale or of the liquidation will be allocated for the repayment of the creditors according to the ranking of their claims. In this respect, French insolvency law assigns priority to the payment of certain preferential creditors, including the employees, post-petition legal costs, creditors who have provided new money or goods or services (new money privilege), certain pre-petition secured creditors in liquidation proceedings only, post-petition creditors, the French treasury, other pre-petition secured creditors and pre-petition unsecured creditors.

*English Law*

Insolvency proceedings with respect to CEMEX UK would be likely to proceed under, and be governed by, English insolvency law if, at the time that the application to open insolvency proceedings is filed, the registered office of CEMEX UK were in the U.K., the presumption laid down by Council Regulation (EC) No 1346/2000 of 29 May 2000 on Insolvency Proceedings) (the "Regulation") that the "centre of main interests" or "COMI" (within the meaning of the Regulation) is not rebutted. The situation of the debtor's COMI for the purpose of the Regulation is a question of fact and degree; however, the court may look to determine whether there is evidence that the debtor is seeking to obtain a more favorable legal position to the detriment of the general body of creditors. Thus, an assertion of COMI that might be seen to advantage one class of creditors to the detriment of creditors as a whole might be easier to attack, whereas a COMI assertion without which there could be no rescue is more likely to be supported. Subject to these considerations, the place which creditors would have regarded as the COMI is an important determinant. In addition, among the factors the court will take into account: the place where the company's business is managed and operated and its contracts concluded; the location of any regulatory authorities; the place where board meetings are held; the place where the accounts are prepared and audited; the location of customers, suppliers and loan creditors; the place from which information technology and support and corporate identity and branding run; the place where the chief executive spends most of his time in the running of the business; the location of the majority of employees and the country whose law governs their employment contracts. None of these factors is necessarily decisive on its own, and usually two or more of them are to be found in combination. English insolvency law may not be as favorable as the laws of other jurisdictions with which holders of Notes are familiar.

Under English insolvency laws, the liabilities of CEMEX UK under the Note Guarantees will be paid only after certain of its other debts which are entitled to priority under English law, such as occupational pension scheme contributions and salaries owed to employees (subject to prescribed limits) are paid.

The relevant English insolvency laws empower English courts to make an administration order in respect of an English company in certain circumstances. During the administration, in general no proceedings or other legal process may be commenced or continued against the debtor, except with leave of the court or consent of the administrator. In addition to administration, relevant English insolvency laws empower English courts to wind-up a company that is unable to pay its debts. Any creditor, the company, the directors of the company or any of the company's shareholders may apply to the court for the winding up of a company. Any disposition of the company's property and any transfer of shares after commencement of the winding-up is void unless sanctioned by the court. Once a winding-up order is made, a stay on all proceedings against the company will be imposed. No legal action may be continued or commenced against the company without leave of the court and subject to such terms as the court may impose.

The relevant English insolvency laws also empower shareholders and creditors of a company to appoint a liquidator to the company where the company is insolvent. No stay on proceedings against the company is imposed automatically in these circumstances, however a liquidator (or creditor or shareholder) may apply to the court for such a stay. In the event of a liquidation or similar proceeding under English law, the liabilities of the relevant debtor to its unsecured creditors will be satisfied to the extent assets are available only after payment of all secured indebtedness (to the extent of the assets securing that indebtedness) and after payment of all claims entitled to priority under English insolvency law. Additionally, all expenses (including the liquidator's remuneration) properly incurred in a winding-up are also payable out of such company's assets in priority to all other claims.

In the event that CEMEX UK enters into insolvency proceedings, it is not possible to predict with certainty the outcome of such insolvency or similar proceedings.

***Payments of judgments against the Issuer or the Guarantors on the Notes may not be in U.S. Dollars.***

In the event that proceedings are brought against the Issuer or any of the Mexican Guarantors in Mexico, either to enforce a judgment or as a result of an initial action brought in Mexico in Mexican courts, the Issuer or any such Mexican Guarantor would not be required under Mexican law to discharge those obligations in a currency other than Mexican currency. Under the Monetary Law of the United Mexican States (*Ley Monetaria de los Estados Unidos Mexicanos*), an obligation, whether resulting from the enforcement of a judgment, a judgment arising from an initial action or by agreement, denominated in a currency other than Mexican currency, which is payable in Mexico, may be satisfied in Mexican currency at the rate of exchange in effect on the date on which payments were made. Such rate is currently determined by *Banco de México* every banking day and published in the *Diario Oficial de la Federación*. As a result of the conversion to Mexican Pesos, you may suffer a U.S. Dollar shortfall. You should be aware that under Mexican law, no separate action exists or is enforceable in Mexico for compensation for any such shortfall. See "Description of Notes—Currency Indemnity."

In the event that court proceedings were brought in the Netherlands seeking enforcement in the Netherlands of any Dutch Guarantor's obligations under its Note Guarantee, Dutch courts may render judgments for a monetary amount in foreign currencies, but any such foreign currency monetary amount may need to be converted into Euros for enforcement purposes. Foreign currency monetary amounts claimed in a Dutch (provisional) suspension of payment or bankruptcy proceeding will be converted into Euros at the rate prevailing at commencement of that proceeding.

In the event that proceedings were brought in Spain seeking enforcement in Spain of CEMEX España's obligations under its Note Guarantee, Spanish courts may render judgments for a monetary amount in foreign currencies, but any such foreign currency monetary amount may need to be converted into Euros for enforcement purposes. Foreign currency monetary amounts claimed in a Spanish bankruptcy proceeding will be converted into Euros at the rate prevailing at the commencement of that proceeding.

In the event that court proceedings were brought in Switzerland seeking enforcement in Switzerland of CEMEX Research Group's obligations under its Note Guarantee, Swiss courts may render judgments for a monetary amount in foreign currencies, but any such foreign currency monetary amount may need to be converted into Swiss Francs (CHF) for enforcement purposes. Foreign currency monetary amounts claimed in a Swiss bankruptcy proceeding will be converted into Swiss Francs (CHF) normally at the rate prevailing at commencement of that proceeding.

***The Note Guarantees may not be enforceable under local insolvency laws applicable to the Guarantors or may be subject to limitations.***

*Mexican Law*

The Note Guarantees provide a basis for a direct claim against the Guarantors; however, it is possible that the Note Guarantee of the Mexican Guarantors may not be enforceable under Mexican law. While Mexican law

does not prohibit the giving of guarantees and, as a result, does not prevent the Note Guarantee from being valid, binding and enforceable against the Mexican Guarantors, in the event that any such Mexican Guarantor becomes subject to an insolvency (*concurso mercantil*) proceeding, its Note Guarantee may be deemed to have been a fraudulent transfer and declared void, based upon such Mexican Guarantor being deemed not to have received fair consideration in exchange for the granting of such Note Guarantee for the benefit of the Issuer.

*Netherlands Law*

Enforcement of the Note Guarantee issued by the Dutch Guarantors may, in whole or in part, be limited to the extent that the undertakings of each such Dutch Guarantor under its respective Note Guarantee are deemed to be in conflict with the corporate interest of such Dutch Guarantor or in violation of Dutch insolvency law. The corporate interest will be determined, among other things, on the basis of the direct and indirect benefit that such Dutch Guarantor derives from this offering.

*United States Law*

If in a lawsuit brought by an unpaid creditor or representative of creditors of CEMEX Corp., such as a trustee in bankruptcy or CEMEX Corp. as debtor-in-possession, the court were to find that CEMEX Corp. did not receive fair consideration or reasonably equivalent value for incurring the Note Guarantees and, at the time of and after and giving effect to the incurrence of such indebtedness CEMEX Corp. (i) was or became insolvent, (ii) was engaged in a business for which CEMEX Corp.'s remaining assets constituted unreasonably small capital, or (iii) intended to incur or believed that it would incur debts beyond its ability to pay as they mature, such court could invalidate, in whole or in part, CEMEX Corp.'s obligations under the Note Guarantees as fraudulent transfers and recover amounts previously paid under the Note Guarantees, or could subordinate CEMEX Corp.'s indebtedness under the Note Guarantees to indebtedness of its other creditors. The measure of insolvency for purposes of the foregoing will vary depending on the law of the jurisdiction that is being applied. Generally, however, a debtor would be considered insolvent at a particular time if the sum of its debts was greater than all of its property at a fair valuation or if the present fair saleable value of its assets was less than the amount that would be required to pay its probable liabilities on its existing debts as they because absolute and matured. There can be no assurance as to what standard a court would apply to determine whether CEMEX Corp. was insolvent upon giving effect to its incurrence of the Note Guarantees or how a court would determine CEMEX Corp.'s adequate capitalization or ability to pay debts as they mature.

*Swiss Law*

Enforcement of the Note Guarantee issued by CEMEX Research Group may, in whole or in part, be limited to the extent that the undertakings of CEMEX Research Group under its Note Guarantee are deemed to be in conflict with the corporate interest of CEMEX Research Group or in violation of Swiss law generally and of Swiss insolvency law in particular.

The obligations and liabilities of CEMEX Research Group under the Notes in relation to the obligations, undertakings, indemnities or liabilities of a Guarantor other than CEMEX Research Group or any of its fully owned and controlled subsidiaries is limited to the amount of CEMEX Research Group's Free Reserves Available for Distribution at the time payment is requested. For the purpose of this clause, "Free Reserves Available for Distribution" means an amount equal to the maximal amount in which CEMEX Research Group can make a dividend payment to its shareholder(s) (being the balance sheet profit and any freely disposable reserves available for this purpose, in each case in accordance with applicable Swiss law). Any such payment may be subject to Swiss withholding tax.

*Spanish Law*

According to the Spanish Insolvency Law (*Ley Concursal*), upon CEMEX España's declaration of insolvency (*concurso*) the acts which prejudice the estate of the insolvent debtor (such as issuing the relevant

Note Guarantee) will be rescindable if they were performed during the two-year period prior to the commencement of the insolvency proceedings, even if no fraud existed. In particular, gratuitous (i.e., those granted without direct or indirect consideration) guarantees would be presumed prejudicial for the insolvent company and, thus, could be rescinded if granted during the claw-back period contemplated in the Spanish Insolvency Law (*Ley Concursal*). A general benefit for the group, of which the company may obtain any kind of profit or support, or the existence of cross guarantees from other companies of the group supporting the company's own liabilities, could be deemed a sound reason.

*French Law*

French insolvency laws may also limit the ability of the holders of the Notes to enforce their rights under the Note Guarantee issued by CEMEX France. Under such laws, certain transactions entered into by the debtor during the period between the date on which the debtor becomes unable to pay its due debts from available assets (*date de cession des paiements*) and the date of the judgment (the *période suspecte*) are, by law, void or voidable. Void transactions include transactions or payments entered into during the *période suspecte* that may constitute voluntary preferences for the benefit of some creditors to the detriment of other creditors (e.g., transfers of assets for no consideration, unbalanced contracts, payments of debts not due at the time of payment, guarantee or security granted for debts previously incurred, etc.). Transactions voidable by the court include payments made on accrued debts, transfers of assets for consideration and certain provisional and final attachment measures, if the court determines that the creditor knew or should have known that the debtor was insolvent at the time. The insolvency date is generally deemed to be the date when the reorganization or liquidation proceedings (*redressement judiciaire* or *liquidation judiciaire*) are commenced, but a court may determine that a debtor's insolvency date occurred up to 18 months prior to the commencement date of such proceedings. Consequently, if the insolvency date with respect to CEMEX France was determined to have occurred on or prior to the date the Notes are issued and representatives or agents of the holders of the Notes were found to have been aware of such fact, the guarantee granted by CEMEX France would be voidable at the discretion of the court.

In addition, the grant of a guarantee by CEMEX France for the obligations of the Issuer must be for the corporate benefit of CEMEX France. The guarantee may otherwise be declared ineffective or null and void by the competent court. French case law has recognized that certain inter group transactions, including upstream guarantees, can be in the corporate interest of the company, in particular when the following four criteria are fulfilled:

- existence of a genuine group of companies where the affiliates have real common economic purpose and policy;
- the transaction is in the overall interest of the group;
- the guarantee provider must receive some an actual benefit or consideration from the transaction involving the granting by it of the guarantee; and
- the guarantee must not exceed the financial capacity of the guarantee provider.

The guarantee given by CEMEX France and the amounts recoverable thereunder will therefore be limited to the maximum amount that can be guaranteed by CEMEX France without rendering its guarantee voidable or otherwise ineffective under French law. In accordance with French standard market practice, the guarantee of CEMEX France will be limited to the aggregate amount of the Notes proceeds on-lent, directly or indirectly, to CEMEX France and/or its subsidiaries under inter group loan agreements (other than cash pooling arrangements) and outstanding from time to time.

*English Law*

There are circumstances under English insolvency laws in which the granting by an English company of guarantees can be challenged. Under English insolvency laws, the liquidator or administrator of a company may

apply to the court to set aside the granting of a guarantee prior to the grantor entering into relevant insolvency proceedings, if the grantor was unable to pay its debts at the time of, or becomes unable to pay its debts as a consequence of, the grant of the guarantee. A transaction that has occurred within the two years prior to the guarantor entering into relevant insolvency proceedings might be subject to a challenge if a company received consideration of significantly less value than the benefit given by that company unless a court determines that the company entered into the transaction in good faith for the purpose of carrying on its business and if at the time it did so there were reasonable grounds for believing the transaction would benefit the company. The two year time period limitation would not apply where the transaction was made for the purpose of putting assets beyond the reach of creditors. In addition, a transaction might be subject to challenge where it puts a person into a position which is better than the position that person would be in if the company proceeded into insolvent liquidation and that transaction occurred within the two years (in the case of connected persons) or six months (in the case of unconnected persons) prior to the company entering into relevant insolvency proceedings.

The Issuer cannot assure holders of Notes that in the event of insolvency, the granting of the guarantee by CEMEX UK would not be challenged by a liquidator or administrator or that a court would support the Issuer or CEMEX UK's analysis that the guarantees were entered into in good faith for the purposes described above.

In such circumstances English courts have the power to make void such transactions, or restore the position to what it would have been if the company had not entered into the transaction. If a court voided any grant of security or giving of any guarantee as a result of a transaction at an undervalue or preference, or held it unenforceable for any other reason, holders of Notes would cease to have a claim against the guarantee provided by CEMEX UK.

***The Additional Guarantors may be released from their Note Guarantees prior to the maturity of the Notes without the consent of the holders of the Notes.***

While the Notes are outstanding, the Note Guarantees of the Additional Guarantors will be released without the consent of the holders of the Notes when (i) the indebtedness under the Facilities Agreement has been repaid in full and the Additional Guarantors are not guarantors of the indebtedness incurred to refinance such exposures; (ii) at least 85% of the outstanding indebtedness of the Issuer and its restricted subsidiaries is not guaranteed by the Additional Guarantors; or (iii) a covenant suspension event occurs until the occurrence of a reversion date at which time such guarantee shall be reinstated unless the Additional Guarantors would have been released at any time during the suspension period pursuant to clause (i) or (ii) above. See "Description of Notes—Note Guarantees."

***The amount of interest payable on the Notes will vary and may be lower than the yield on a standard fixed rate debt security of comparable maturity.***

Because three-month U.S. Dollar LIBOR is a floating rate, the level of three-month U.S. Dollar LIBOR will fluctuate. The per annum interest rate that is determined on the relevant interest determination date will apply to the entire interest period following such interest determination date even if three-month U.S. Dollar LIBOR increases during that interest period. Furthermore, as a result of the fluctuating interest rate, the effective yield on the Notes may be less than that which would be payable on a standard fixed-rate debt security of comparable maturity.

***The price at which holders will be able to sell their Notes prior to maturity will depend on a number of factors and may be substantially less than the amount holders originally invested.***

The market value of the Notes at any time may be affected by changes in the level of three-month U.S. Dollar LIBOR. For example, an increase in the level of three-month U.S. Dollar LIBOR could cause an increase in the market value of the Notes. Conversely, a decrease in the level of three-month U.S. Dollar LIBOR may cause a decrease in the market value of the Notes. The level of three-month U.S. Dollar LIBOR will be

influenced by complex and interrelated political, economic, financial and other factors that can affect the money markets generally and the London interbank market in particular. Volatility is the term used to describe the size and frequency of market fluctuations. If the volatility of three-month U.S. Dollar LIBOR changes, the market value of the Notes may change.

***The historical performance of three-month U.S. dollar LIBOR is not an indication of its future performance.***

Changes in the level of three-month U.S. Dollar LIBOR will affect the trading price of the Notes, but it is impossible to predict whether the level of three-month U.S. Dollar LIBOR will rise or fall.

***The Notes will bear interest at a floating rate that could rise significantly, increasing our interest cost and debt.***

The Notes will bear interest at floating rates of interest per annum equal to LIBOR, adjusted quarterly, plus a spread. LIBOR could rise significantly in the future. Although we intend to maintain certain hedging arrangements designed to fix a portion of these rates, there can be no assurances that hedging will continue to be available on commercially reasonable terms. To the extent interest rates were to rise significantly our interest expense associated with the Notes, and thus the carrying cost of our debt load would correspondingly increase.

***You may only transfer the Notes in a transaction registered under or exempt from the registration requirements of the Securities Act.***

We are relying upon an exemption from registration under the Securities Act and applicable state securities laws to offer the Notes. The Notes may be transferred or resold only in a transaction registered under, or exempt from, the Securities Act and applicable state securities laws. See "Transfer Restrictions; Notice to Investors" for a full explanation of such restrictions.

***An active trading market for the Notes may not develop and they may not be listed on any exchange.***

Prior to this offering, there has been no market for the Notes. We have applied to have the Notes listed on the Official List of the Irish Stock Exchange and to trade them on the Global Exchange Market of such exchange. However, we cannot assure you that we will obtain this listing, and, even if the Notes become listed on this exchange, we may delist the Notes and we would not be required to list them on any other exchange. If an active market for the Notes were to develop, the Notes may trade at a discount from their initial offering price, depending upon many factors, including prevailing interest rates, the market for similar securities, general economic conditions and our financial condition. The Initial Purchasers are not under any obligation to make a market with respect to the Notes, and we cannot assure you that trading markets will develop or be maintained. Accordingly, we cannot assure you as to the development or liquidity of any trading market for the Notes. If the Notes are not listed on any exchange or if an active market for the Notes does not develop or is interrupted, the market price and liquidity of the Notes may be adversely affected. In addition, trading or resale of the Notes (or beneficial interests therein) may be negatively affected by other factors described in this offering memorandum arising from this transaction or the market for securities of Mexican issuers generally.

***We may not have the ability to raise the funds necessary to finance the Change of Control offer required by the Indenture.***

If there is a Change of Control (as defined in the Indenture), we may need to refinance large amounts of debt, including the Notes, the Other Notes and indebtedness under certain of CEMEX's credit facilities or other instruments. Under the Indenture, if a Change of Control occurs, we must offer to buy back the Notes for a price equal to 101% of the principal amount of the Notes, plus any accrued and unpaid interest. We may not have sufficient funds available to us to make any required repurchases of the Notes upon a Change of Control.

Accordingly, we may not be able to satisfy our obligations to purchase the Notes unless we are able to refinance or obtain waivers under the Facilities Agreement. If we fail to repurchase the Notes in those circumstances, we will be in default under the Indenture, which may, in turn, trigger cross-default provisions in our other debt instruments.

***We cannot assure you that the credit ratings for the Notes will not be lowered, suspended or withdrawn by the rating agencies.***

The credit ratings of the Notes may change after issuance. Such ratings are limited in scope, and do not address all material risks relating to an investment in the Notes, but rather reflect only the views of the rating agencies at the time the ratings are issued. An explanation of the significance of such ratings may be obtained from the rating agencies. We cannot assure you that such credit ratings will remain in effect for any given period of time or that such ratings will not be lowered, suspended or withdrawn entirely by the rating agencies, if, in the judgment of such rating agencies, circumstances so warrant. Any lowering, suspension or withdrawal of such ratings may have an adverse effect on the market price and marketability of the Notes.

***The collection of interest on interest may not be enforceable in Mexico.***

Mexican law does not permit the collection of interest on interest and, therefore, the accrual of default interest on past due ordinary interest accrued in respect of the Notes may be unenforceable in Mexico.

## CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This offering memorandum, including the information incorporated by reference herein, contains forward-looking statements within the meaning of the U.S. federal securities laws. We intend these forward-looking statements to be covered by the safe harbor provisions for forward-looking statements in the U.S. federal securities laws. In some cases, these statements can be identified by the use of forward-looking words such as "may," "should," "could," "anticipate," "estimate," "expect," "plan," "believe," "predict," "potential" and "intend" or other similar words. These forward-looking statements reflect our current expectations and projections about future events based on our knowledge of present facts and circumstances and assumptions about future events. These statements necessarily involve risks and uncertainties that could cause actual results to differ materially from our expectations. Some of the risks, uncertainties and other important factors that could cause results to differ, or that otherwise could have an impact on us or our subsidiaries, include:

- the cyclical activity of the construction sector;
- competition;
- general political, economic and business conditions in the markets in which we operate;
- the regulatory environment, including environmental, tax, antitrust and acquisition-related rules and regulations;
- our ability to satisfy our obligations under the Facilities Agreement entered into with our major creditors and our obligations under the indentures that govern the Existing Senior Secured Notes and our other debt instruments;
- our ability to consummate asset sales, achieve cost-savings from our cost-reduction initiatives and implement our global pricing initiatives for our products;
- weather conditions;
- natural disasters and other unforeseen events; and
- the other risks and uncertainties described under "Risk Factors" and elsewhere in this offering memorandum.

Readers are urged to read this offering memorandum, including the information incorporated by reference, and carefully consider the risks, uncertainties and other factors that affect our business. The information contained or incorporated by reference in this offering memorandum is subject to change without notice, and we are not obligated to publicly update or revise forward-looking statements. Readers should review future reports filed by us with the SEC.

## MEXICAN PESO EXCHANGE RATES

Mexico has had no exchange control system in place since the dual exchange control system was abolished in November 1991. The Mexican Peso has floated freely in foreign exchange markets since December 1994, when the Mexican Central Bank (*Banco de México*) abandoned its prior policy of having an official devaluation band. Since then, the Peso has been subject to substantial fluctuations in value. The Peso depreciated against the U.S. Dollar by approximately 20.5% in 2008, appreciated against the U.S. Dollar by approximately 5% and 6% in 2009 and 2010, respectively, depreciated against the U.S. Dollar by approximately 11.5% in 2011 and appreciated against the U.S. Dollar by approximately 9% in 2012. These percentages are based on the exchange rate that we use for accounting purposes, or the CEMEX accounting rate. The CEMEX accounting rate represents the average of three different exchange rates that are provided to us by Banco Nacional de México, S.A., integrante del Grupo Financiero Banamex, or Banamex. For any given date, the CEMEX accounting rate may differ from the noon buying rate for Mexican Pesos in New York City published by the U.S. Federal Reserve Bank of New York.

The following table sets forth, for the periods and dates indicated, the end-of-period, average and high and low points of the CEMEX accounting rate as well as the noon buying rate for Mexican Pesos, expressed in Mexican Pesos per U.S.$1.00.

| | CEMEX Accounting Rate | | | | Noon Buying Rate | | | |
|---|---|---|---|---|---|---|---|---|
| **Year Ended December 31,** | **End of Period** | **Average[1]** | **High** | **Low** | **End of Period** | **Average[1]** | **High** | **Low** |
| 2008 | 13.74 | 11.21 | 13.96 | 9.87 | 13.83 | 11.15 | 13.92 | 9.92 |
| 2009 | 13.09 | 13.51 | 15.57 | 12.62 | 13.06 | 13.50 | 15.41 | 12.63 |
| 2010 | 12.36 | 12.67 | 13.21 | 12.15 | 12.38 | 12.64 | 13.19 | 12.16 |
| 2011 | 13.96 | 12.45 | 14.21 | 11.50 | 13.95 | 12.43 | 14.25 | 11.51 |
| 2012 | 12.85 | 13.16 | 14.37 | 12.56 | 12.96 | 13.15 | 14.37 | 12.63 |
| **Monthly (2013)** | | | | | | | | |
| March | 12.34 | | | | 12.32 | | 12.80 | 12.32 |
| April | 12.14 | | | | 12.13 | | 12.34 | 12.07 |
| May | 12.82 | | | | 12.78 | | 12.78 | 11.98 |
| June | 12.96 | | | | 12.99 | | 13.41 | 12.70 |
| July | 12.76 | | | | 12.71 | | 13.04 | 12.50 |
| August | 13.38 | | | | 13.34 | | 13.34 | 12.56 |
| September[2] | 12.82 | | | | 12.78 | | 13.43 | 12.74 |

(1) The average of the CEMEX accounting rate or the noon buying rate for Mexican Pesos, as applicable, on the last day of each full month during the relevant period.

(2) Noon buying rates are through September 20, 2013. CEMEX accounting rates are through September 23, 2013.

On September 23, 2013, the CEMEX accounting rate was Ps12.82 to U.S.$1.00. Between June 30, 2013 and September 20, 2013, the Mexican Peso appreciated by approximately 1.6% against the U.S. Dollar, based on the noon buying rate for Mexican Pesos.

## USE OF PROCEEDS

The estimated net proceeds from the offering of the Notes and the offering of the Other Notes, after deducting the Initial Purchasers' fees and commissions and the estimated expenses, will be approximately U.S.$1.494 billion. We intend to use the net proceeds from the offerings to purchase any or all of the 2016 Notes, and the remainder for general corporate purposes, including to purchase up to €150 million of the outstanding 2017 Notes, to repay at maturity the 2014 Notes and/or to repay our other indebtedness, all in accordance with the Facilities Agreement.

We currently expect to purchase the 2016 Notes at a price of approximately U.S.$1,062.50 for each U.S.$1,000 principal amount of such notes and to purchase the 2017 Notes at a price of approximately €1,063.50 for each €1,000 principal amount of such notes, in each case, plus accrued interest.

This Offering Memorandum does not constitute an offer or a solicitation of an offer to purchase any of our securities in any transaction. Any offer to purchase our securities, including any offer to purchase the 2016 Notes or 2017 Notes, will be made solely on the terms and subject to the conditions set out in one or more separate offers to purchase directed to holders of such securities.

## CAPITALIZATION OF CEMEX

The following table sets forth our cash and cash equivalents and consolidated indebtedness and capitalization as of June 30, 2013 (1) on an actual basis; (2) as adjusted to give effect to the August 2013 Refinancing; and (3) as further adjusted to give effect to the issuance and sale in this offering of U.S.$500,000,000 aggregate principal amount of the Notes and the concurrent offering of U.S.$1,000,000,000 aggregate principal amount of the Other Notes, without giving effect to the application of the estimated net proceeds as described under "Use of Proceeds."

The financial information set forth below is based on information derived from our unaudited financial statements, which have been prepared in accordance with IFRS, which differ in significant respects from U.S. GAAP. Under IFRS, debt amounts are presented net of issuance costs, which will increase the debt amount as they are expensed over the term of such debt. For further information about our financial presentation, see "Selected Consolidated Financial Information" in our September 6-K, which is incorporated by reference in this offering memorandum.

| | As of June 30, 2013 | | |
|---|---|---|---|
| | Actual | As Adjusted | As Further Adjusted |
| | (in millions of Pesos) | | |
| Cash and cash equivalents | Ps 9,672 | Ps 9,481 | Ps 28,838 |
| Short-term debt[1] | | | |
| Secured | | | |
| Other secured | 50 | 20 | 20 |
| Unsecured | | | |
| Eurobonds[2] | 3,857 | 3,857 | 3,857 |
| Other unsecured | 593 | 593 | 593 |
| Total short-term debt | 4,500 | 4,470 | 4,470 |
| Short-term other financial obligations | | | |
| Unsecured | | | |
| Liability component of Mandatory Convertible Notes[3] | 164 | 164 | 164 |
| Secured | | | |
| Other secured | 8,043 | 8,043 | 8,043 |
| Total short-term other financial obligations | 8,207 | 8,207 | 8,207 |
| Total short-term debt plus other financial obligations | 12,707 | 12,677 | 12,677 |
| Long-term debt | | | |
| Secured by the Collateral | | | |
| Facilities Agreement | 52,791 | 52,791 | 52,791 |
| CBs[4] | 577 | 577 | 577 |
| Existing Senior Secured Notes[5] | 122,117 | 122,818 | 122,818 |
| The Notes offered hereby | — | — | 6,449 |
| Other Notes | — | — | 12,908 |
| Other secured | | | |
| Bancomext[6] | 1,082 | 1,082 | 1,082 |
| Unsecured | | | |
| Other unsecured | 2,381 | 2,381 | 2,381 |
| Total long-term debt | 178,948 | 179,649 | 199,006 |

| | As of June 30, 2013 | | |
|---|---|---|---|
| | Actual | As Adjusted | As Further Adjusted |
| | (in millions of Pesos) | | |
| Long-term other financial obligations | | | |
| Unsecured | | | |
| Liability component of 2010 Optional Convertible Subordinated Notes[7] | 8,619 | 8,619 | 8,619 |
| Liability component of 2011 Optional Convertible Subordinated Notes[8] | 18,388 | 18,388 | 18,388 |
| Liability component of Mandatory Convertible Notes[3] | 1,479 | 1,479 | 1,479 |
| Secured | | | |
| Other secured | 4,639 | 4,639 | 4,639 |
| Total long-term other financial obligations | 33,125 | 33,125 | 33,125 |
| Total long-term debt plus other financial obligations | 212,073 | 212,774 | 232,131 |
| Total debt plus other financial obligations | 224,780 | 225,452 | 244,808 |
| Stockholders' equity | | | |
| Non-controlling interest | | | |
| Perpetual Debentures[9] | | | |
| In U.S. Dollars | 5,043 | 5,043 | 5,043 |
| In Euros | 1,075 | 1,075 | 1,075 |
| Other | 7,969 | 7,969 | 7,969 |
| Controlling interest[3][7][8] | 139,469 | 139,469 | 139,469 |
| Total stockholders' equity | 153,556 | 153,556 | 153,556 |
| Total capitalization[10] | Ps 378,336 | Ps 379,008 | Ps 398,364 |

(1) Includes current portion of long-term debt.

(2) Represents €247,442,000 aggregate principal amount of 2014 Notes issued by CEMEX Finance Europe B.V. on March 5, 2007, a special purpose vehicle and wholly-owned subsidiary of CEMEX España, and solely guaranteed by CEMEX España.

(3) In the case of instruments mandatorily convertible into shares of CEMEX, S.A.B. de C.V., as is the case with the 10% mandatory convertible notes issued by CEMEX, S.A.B. de C.V. in December 2009, or the Mandatory Convertible Notes, the liability component represents the net present value of interest payments on the principal amount, using a market interest rate, without assuming any early conversion, and is recognized within "Other financial obligations." As of June 30, 2013, this liability component represented approximately Ps1,643 million (U.S.$127 million). Beginning January 1, 2013 due to changes in the parent company's functional currency, the conversion option is accounted for as a derivative financial instrument at fair value.

(4) Represents a CB maturing in November 2017.

(5) Includes (i) U.S.$1,250,000,000 aggregate principal amount of 2016 Notes (or U.S.$825,000,000 aggregate principal amount of 2016 Notes in the case of "As Adjusted" and "As Further Adjusted" amounts) and €350,000,000 aggregate principal amount of 9.625% Senior Secured Notes due 2017 issued by CEMEX Finance LLC on December 14, 2009, or together, the December 2009 Notes, (ii) U.S.$500,000,000 additional aggregate principal amount of 2016 Notes on January 19, 2010, or the Additional 2016 Notes, (iii) U.S.$1,067,665,000 aggregate principal amount of 9.25% Senior Secured Notes due 2020 and €115,346,000 aggregate principal amount of 8.875% Senior Secured Notes due 2017 issued by CEMEX España, acting through its Luxembourg branch, on May 12, 2010, or together, the May 2010 Notes, (iv) U.S.$1,000,000,000 aggregate principal amount of 9.000% Senior Secured Notes due 2018 issued by CEMEX, S.A.B. de C.V. on January 11, 2011, or the January 2011 Notes, (v) U.S.$125,331,000 additional aggregate principal amount of 9.25% Senior Secured Notes due 2020 issued by CEMEX España, acting

through its Luxembourg branch, on March 4, 2011, or the Additional 2020 Notes, (vi) U.S.$800,000,000 Floating Rate Senior Secured Notes due 2015 issued by CEMEX, S.A.B. de C.V. on April 5, 2011, or the April 2011 Notes, (vii) additional U.S.$650,000,000 aggregate principal amount of 9.000% Senior Secured Notes due 2018 issued by CEMEX, S.A.B. de C.V. on July 11, 2011, or the Additional January 2011 Notes, (viii) U.S.$703,861,000 aggregate principal amount of 9.875% U.S. Dollar-Denominated Senior Secured Notes due 2019 and €179,219,000 aggregate principal amount of 9.875% Euro-Denominated Senior Secured Notes due 2019 issued by CEMEX España, acting through its Luxembourg branch, on March 28, 2012, or the March 2012 Notes, (ix) U.S.$500,000,000 aggregate principal amount of 9.50% Senior Secured Notes due 2018 issued by CEMEX, S.A.B. de C.V. on September 17, 2012, or the September 2012 Notes, (x) U.S.$1,500,000,000 aggregate principal amount of 9.375% Senior Secured Notes due 2022 issued by CEMEX Finance LLC on October 12, 2012, or the October 2012 Notes, (xi) U.S.$600,000,000 aggregate principal amount of 5.875% Senior Secured Notes due 2019 issued by CEMEX, S.A.B. de C.V. on March 25, 2013, or the March 2013 Notes, and (xii) in the case of "As Adjusted" and "As Further Adjusted" amounts, U.S.$1,000,000,000 aggregate principal amount of 6.500% Senior Secured Notes due 2019 issued by CEMEX, S.A.B. de C.V. on August 12, 2013, or the August 2013 Notes. We refer to these notes, collectively, as the Existing Senior Secured Notes.

(6) Represents obligations with Banco Nacional de Comercio Exterior, S.N.C., a Mexican development bank, which were secured by fixed assets not pledged as Collateral.

(7) Under IFRS, when a financial instrument contains both liability and equity components, such as a note that at maturity is convertible into a fixed number of CEMEX, S.A.B. de C.V.´s shares, and the currency in which the instrument is denominated is the same as the functional currency of the issuer, each component is recognized separately in the balance sheet according to the specific characteristics of each transaction. In the case of instruments that are optionally convertible into a fixed number of shares, as is the case with the 4.875% Convertible Subordinated Notes due 2015 issued by CEMEX, S.A.B. de C.V., or the 2010 Optional Convertible Subordinated Notes, the liability component represents the difference between the principal amount and the fair value of the conversion option premium. As of June 30, 2013, the liability component represented approximately Ps8,619 million (U.S.$665 million). Beginning January 1, 2013 due to the changes in the parent company's functional currency, the conversion option ceased to be treated as a derivative financial instrument and was reclassified as an equity component.

(8) Under IFRS, when a financial instrument contains both liability and equity components, such as a note that at maturity is convertible into a fixed number of CEMEX, S.A.B. de C.V.´s shares, and the currency in which the instrument is denominated is the same as the functional currency of the issuer, each component is recognized separately in the balance sheet according to the specific characteristics of each transaction. In the case of instruments that are optionally convertible into a fixed number of shares, as is the case with the 3.25% Convertible Subordinated Notes due 2016 and the 3.75% Convertible Subordinated Notes due 2018, each issued by CEMEX, S.A.B. de C.V., or together, the 2011 Optional Convertible Subordinated Notes, the liability component represents the difference between the principal amount and the fair value of the conversion option premium. As of June 30, 2013, the liability component represented approximately Ps18,388 million (U.S.$1,419 million). Beginning January 1, 2013 due to the changes in the parent company's functional currency, the conversion option ceased to be treated as a derivative financial instrument and was reclassified as an equity component.

(9) Represents U.S. Dollar-Denominated 6.196% Fixed-to-Floating Rate Callable Perpetual Debentures issued by C5 Capital (SPV) Limited, U.S. Dollar-Denominated 6.640% Fixed-to-Floating Rate Callable Perpetual Debentures issued by C8 Capital (SPV) Limited, U.S. Dollar-Denominated 6.722% Fixed-to-Floating Rate Callable Perpetual Debentures issued by C10 Capital (SPV) Limited and Euro-Denominated 6.277% Fixed-to-Floating Rate Callable Perpetual Debentures issued by C10-EUR Capital (SPV) Limited, or together, the Perpetual Debentures. In accordance with IFRS, these securities are accounted for as equity due to the fact that they do not have a specified maturity date and the option to defer payment of interest. The dual-currency notes underlying the Perpetual Debentures, or together, the Perpetual Notes, are secured by the Collateral.

(10) As used in this table, total capitalization equals short- and long-term debt, plus the Mandatory Convertible Notes, plus the Notes and plus total stockholders' equity.

## Guarantors

For a description of the Guarantors, see "General Information."

The Issuer and the Guarantors are borrowers or provide guarantees of certain of our indebtedness, as indicated in the table below.

| | The Notes and the Other Notes | Existing Senior Secured Notes[1] | Facilities Agreement | Perpetual Debentures[1] | Eurobonds[1] | CBs[2] |
|---|---|---|---|---|---|---|
| **Amount outstanding as of June 30, 2013[3]** | | U.S.$9,528 million (Ps123,482 million) (principal amount U.S.$9,611 million (Ps124,559 million)) | U.S.$4,073 million (Ps52,791 million) (principal amount U.S.$4,172 million (Ps54,064 million)) | U.S.$705 million (Ps9,139 million) | U.S.$322 million (Ps4,167 million) (principal amount U.S.$322 million (Ps4,173 million)) | U.S.$45 million (Ps577 million) |
| CEMEX, S.A.B. de C.V. | ✓ | ✓ | ✓ | ✓ | | ✓ |
| CEMEX México | ✓ | ✓ | ✓ | ✓ | | ✓ |
| CEMEX Concretos | ✓ | ✓ | ✓ | | | |
| Empresas Tolteca | ✓ | ✓ | ✓ | | | ✓ |
| New Sunward | ✓ | ✓ | ✓ | ✓ | | |
| CEMEX España | ✓ | ✓ | ✓ | | ✓ | |
| CEMEX Asia | ✓ | ✓ | ✓ | | | |
| CEMEX Corp. | ✓ | ✓ | ✓ | | | |
| CEMEX Egyptian Investments | ✓ | ✓ | ✓ | | | |
| CEMEX Egyptian Investments II | ✓ | ✓ | ✓ | | | |
| CEMEX France | ✓ | ✓ | ✓ | | | |
| CEMEX Research Group | ✓ | ✓ | ✓ | | | |
| CEMEX Shipping | ✓ | ✓ | ✓ | | | |
| CEMEX UK | ✓ | ✓ | ✓ | | | |

(1) Includes, as applicable, Existing Senior Secured Notes, Perpetual Debentures and Eurobonds held by CEMEX.

(2) Includes long-term secured CBs.

(3) As adjusted to give effect to the August 2013 Refinancing.

Of CEMEX's total debt plus other financial obligations of Ps225,452 million (U.S.$17,396 million) (principal amount Ps231,570 million (U.S.$17,868 million)) as of June 30, 2013, as adjusted to give effect to the August 2013 Refinancing (but not including approximately Ps6,118 million (U.S.$472 million) of Perpetual Notes), Ps96,230 million (U.S.$7,425 million) (principal amount Ps97,523 million (U.S.$7,525 million)) was issued or guaranteed by CEMEX´s subsidiaries other than the Guarantors (including debt that may also be issued or guaranteed by Issuer or the Guarantors), as follows:

- CEMEX Finance LLC, a special purpose vehicle and wholly-owned subsidiary of CEMEX España, is the issuer of the December 2009 Notes for an aggregate amount of Ps16,615 million (U.S.$1,282 million) (principal amount Ps16,589 million (U.S.$1,280 million)) and the October 2012 Notes for an aggregate amount of Ps19,274 million (U.S.$1,487 million) (principal amount Ps19,440 million (U.S.$1,500 million)), both of which are guaranteed by the Issuer and the Guarantors. CEMEX Finance LLC has also provided a guarantee in the amount of Ps52,791 million (U.S.$4,073 million) (principal amount Ps54,064 million (U.S.$4,172 million)) under the Facilities Agreement. The December 2009 Notes, the October 2012 Notes and the Facilities Agreement are secured by a first-priority security interest over the Collateral.

- CEMEX, Inc., a subsidiary of CEMEX Corp., is a guarantor of Ps5,923 million (U.S.$457 million) (principal amount Ps6,683 million (U.S.$516 million)) in a facility under the Facilities Agreement and a borrower under other financial obligations for Ps130 million (U.S.$10 million).
- CEMEX Materials LLC is a borrower of Ps878 million (U.S.$68 million) (principal amount Ps890 million (U.S.$69 million)) in a facility under the Facilities Agreement, Ps113 million (U.S.$9 million) under other debt facilities and other financial obligations, and of Ps2,085 million (U.S.$161 million) (principal amount Ps1,944 million (U.S.$150 million)) under an indenture, which is guaranteed by CEMEX Corp.
- CEMEX Finance Europe B.V., a special purpose vehicle and wholly-owned subsidiary of CEMEX España, is the issuer of the Eurobonds for an aggregate amount of Ps3,857 million (U.S.$298 million) (principal amount Ps3,863 million (U.S.$298 million)), which are solely guaranteed by CEMEX España.
- Several of our other operating subsidiaries are borrowers under debt facilities and other financial obligations aggregating Ps1,503 million (U.S.$116 million).

The following tables sets forth certain summarized combined unaudited financial information of (i) the Guarantors (taken together excluding their respective subsidiaries) and (ii) the Issuer's subsidiaries other than the Guarantors (taken together excluding their respective subsidiaries), in each case, as of and for the year ended December 31, 2013 and the six months ended June 30, 2013, respectively. The tables do not reflect any transactions occurring after the periods presented. Percentages shown below represent the attributable portions of the consolidated financial data.

| | As of and For the Year Ended December 31, 2012 | | | |
|---|---|---|---|---|
| | Guarantors | | Non-Guarantors | |
| | (in millions of Pesos, except percentages) | | | |
| Net sales | Ps 40,060 | 20% | Ps 156,977 | 80% |
| Operating earnings before other expenses, net | 15,493 | 90% | 1,548 | 9% |
| Operating EBITDA | 18,054 | 53% | 16,161 | 47% |
| Net loss | (5,249) | 44% | (6,816) | 57% |
| Total assets | 105,860 | 22% | 360,659 | 75% |
| Total liabilities | 85,294 | 26% | 134,883 | 42% |
| Stockholders' equity | 20,572 | 13% | 225,769 | 145% |

| | As of and For the Six Months Ended June 30, 2013 | | | |
|---|---|---|---|---|
| | Guarantors | | Non-Guarantors | |
| | (in millions of Pesos, except percentages) | | | |
| Net sales | Ps 18,435 | 20% | Ps 74,043 | 80% |
| Operating earnings before other expenses, net | 5,747 | 66% | 3,006 | 34% |
| Operating EBITDA | 7,728 | 49% | 8,111 | 51% |
| Net profit/loss | 3,186 | (58%) | (11,442) | 209% |
| Total assets | 104,374 | 22% | 352,306 | 74% |
| Total liabilities | 85,552 | 27% | 127,354 | 40% |
| Stockholders' equity | 18,821 | 12% | 224,952 | 146% |

## DESCRIPTION OF NOTES

The Issuer will issue the notes (the "Notes") under an Indenture to be dated as of the Issue Date among the Issuer, CEMEX México, S.A. de C.V. ("CEMEX México"), CEMEX Concretos, S.A. de C.V., Empresas Tolteca de México, S.A. de C.V., New Sunward Holding B.V. ("New Sunward"), CEMEX España, S.A., Cemex Asia B.V., CEMEX Corp., Cemex Egyptian Investments B.V., Cemex Egyptian Investments II B.V., CEMEX France Gestion (S.A.S.), Cemex Research Group AG, Cemex Shipping B.V. and CEMEX UK, as Guarantors, and The Bank of New York Mellon, as trustee (the "Trustee") and paying agent (the "Paying Agent") (the "Indenture"). The Notes will be issued in private transactions that are not subject to the registration requirements of the U.S. Securities Act of 1933, as amended (the "Securities Act"). The Notes will not have the benefit of any registration rights. The Notes are subject to all such terms pursuant to the provisions of the Indenture, and holders of such Notes are referred to the Indenture for a statement thereof.

The following is a summary of the material provisions of the Indenture. Because this is a summary, it may not contain all the information that is important to you. You can find the definitions of certain terms used in this description under "—Certain Definitions." When we refer to the Issuer in this section, we mean CEMEX, S.A.B. de C.V. and not its subsidiaries; when we refer to the Notes in this section, we mean the Notes originally issued on the Issue Date and any Additional Notes; and when we refer to the Other Notes in this section, we mean the 7.250% Senior Secured Notes due 2021 of the Issuer offered contemporaneously herewith and "Additional Notes" as defined in the indenture governing such Other Notes.

### General

The Notes will:

- be senior obligations of the Issuer,
- rank equal in right of payment with all other existing and future Senior Indebtedness of the Issuer,
- rank senior in right of payment to all existing and future Subordinated Indebtedness of the Issuer, if any,
- be secured on a first-priority basis by the Collateral, subject to the provisions described below under "—Security Interest,"
- be effectively subordinated to all existing and future Indebtedness of the Issuer and the Guarantors secured by assets of the Issuer and the Guarantors, other than the Collateral, to the extent of the security interest,
- be structurally subordinated to all existing and future Indebtedness of the Issuer's Subsidiaries (other than the Guarantors),
- be subordinated to liabilities preferred by statute (such as tax, social security and labor obligations),
- be fully and unconditionally guaranteed, on a joint and several basis and on a general senior basis, by CEMEX México, CEMEX España, S.A., Cemex Asia B.V., CEMEX Corp., Cemex Egyptian Investments B.V., Cemex Egyptian Investments II B.V., CEMEX France Gestion (S.A.S.), Cemex Research Group AG, Cemex Shipping B.V. and CEMEX UK (each, a "Primary Guarantor"), and
- be fully and unconditionally guaranteed, on a joint and several basis with the Primary Guarantors and on a general senior basis, by CEMEX Concretos, S.A. de C.V., Empresas Tolteca de México S.A. de C.V. and New Sunward (each an "Additional Guarantor"), subject to the guarantee release provisions described below applicable solely to the Additional Guarantors.

**Additional Notes**

Subject to the limitations set forth under "Certain Covenants—Limitation on Incurrence of Additional Indebtedness," and "Certain Covenants—Limitation on Liens" the Issuer and its Subsidiaries may Incur additional Indebtedness. At the Issuer's option, this additional Indebtedness may consist of additional Notes ("Additional Notes") issued in one or more transactions, which have identical terms (other than issue date and issue price) as the Notes issued on the Issue Date. Holders of Additional Notes would have the right to vote together with holders of the Notes issued on the Issue Date as one class.

**Principal, Maturity and Interest**

The Notes will mature on October 15, 2018.

The Notes will be issued in minimum denominations of U.S.$200,000 and in integral multiples of U.S.$1,000 in excess thereof. The rights of holders of beneficial interests in the Notes to receive the payments on such Notes are subject to applicable procedures of Euroclear and Clearstream, Luxembourg or The Depositary Trust Company ("DTC"), as applicable.

Initially, the Trustee will act as Paying Agent, Registrar and Transfer Agent for the Notes. The Issuer may change the Paying Agent and Registrar without notice to holders. If a holder of U.S.$10.0 million or more in aggregate principal amount of Notes has given wire transfer instructions to the Paying Agent at least 10 Business Days prior to the applicable payment date, the Issuer will make all principal, premium and interest payments on those Notes in accordance with those instructions. All other payments on the Notes will be made at the office or agency of the Paying Agent and Registrar in New York City unless the Issuer elects to make interest payments by check mailed to the registered holders at their registered addresses.

The Notes bear interest at a floating rate equal to the 3-month Dollar LIBO Rate (as defined below) for deposits in U.S. dollars determined for the relevant interest period plus 4.75% (475 basis points) from October 2, 2013. Interest on the Notes will be payable, in cash, quarterly in arrears on January 15, April 15, July 15 and October 15 of each year, subject to adjustment in accordance with the Business Day Convention, commencing on January 15, 2014 and at maturity (each an "Interest Payment Date"), to holders of record on the immediately preceding January 1, April 1, July 1 and October 1. Interest on the Notes will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the date of original issuance. Each interest payment period shall end on (but not include) the relevant Interest Payment Date.

Interest on the Notes will be computed on the basis of the actual number of days in the interest period divided by 360.

For purposes of the calculation of principal, maturity and interest on the Notes, "*Business Day Convention*" means the following: If any LIBO Rate Reset Date (as defined below) or Interest Payment Date (other than the maturity date) would otherwise be a day that is not a Business Day, that LIBO Rate Reset Date or Interest Payment Date will be postponed to the next succeeding Business Day, provided, however, that if that date would fall in the next succeeding calendar month, such date will be the immediately preceding Business Day. If any such LIBO Rate Reset Date or Interest Payment Date (other than the maturity date) is postponed or brought forward as described above, the interest amount will be adjusted accordingly. If the maturity date falls on a day that is not a Business Day, payment of principal and interest on the Notes will be made on the next Business Day, and no interest will accrue for the period from and after the maturity date. Postponement as described above will not result in a default.

***Determination of Floating Interest Rate***

As long as any Notes are outstanding, the Issuer will maintain a calculation agent (the "Calculation Agent") for calculating the interest rates on the Notes. The Issuer has initially appointed The Bank of New York Mellon to serve as the Calculation Agent.

The Calculation Agent will reset the rate of interest on the Notes on each Interest Payment Date and with respect to the first interest period, the Issue Date (each also a "LIBO Rate Reset Date"). The interest rate set for the Notes on a particular LIBO Rate Reset Date will remain in effect during the interest period commencing on that LIBO Rate Reset Date. Each interest period will be the period from and including a LIBO Rate Reset Date to but excluding the next LIBO Rate Reset Date or until the maturity date of the Notes, as the case may be.

The "*3-month Dollar LIBO Rate*" means the rate determined in accordance with the following provisions:

- On the LIBOR Interest Determination Date, the Calculation Agent will determine the 3-month Dollar LIBO Rate, which will be the rate for deposits in U.S. Dollars having a three-month maturity which appears on the Reuters Screen LIBOR01 as of 11:00 a.m., London time, on the Interest Determination Date; or if such rate does not appear on the Reuters Screen LIBOR01 on any LIBOR Interest Determination Date, then the corresponding rate appearing on the Bloomberg L.P. page "BBAM" as of 11:00 a.m., London time, on the relevant LIBOR Interest Determination Date; or
- If no rate appears on the Reuters Screen LIBOR01 or the Bloomberg L.P. page "BBAM" on the LIBOR Interest Determination Date the rate will be determined on the basis of the rates at which deposits in U.S. Dollars are offered by four major banks in the London interbank market (the "Reference Banks") at approximately 11:00 a.m., London time, on that LIBOR Interest Determination Date to prime banks in the London interbank market for the period of three months commencing on the applicable LIBO Rate Reset Date and in a principal amount that is representative for a single transaction in U.S. Dollars in that market at that time. The Calculation Agent, after consultation with the Issuer, will request the principal London office of each of the Reference Banks to provide a quotation for its rate. If at least two such quotations are provided, then the 3-month Dollar LIBO Rate for that LIBOR Interest Determination Date will be the arithmetic mean of the quotations (rounded, if necessary, to the nearest one-hundredth (0.01) of a percent). If fewer than two quotations are provided as requested, the rate for that LIBOR Interest Determination Date will be the arithmetic mean (rounded, if necessary, to the nearest one-hundredth (0.01) of a percent) of the rates quoted by major banks in New York City, selected by the Calculation Agent, after consultation with the Issuer, at approximately 11:00 a.m., New York time on that LIBOR Interest Determination Date for loans in U.S. Dollars to leading European banks having a three-month maturity commencing on the applicable LIBO Rate Reset Date and in a principal amount that is representative for a single transaction in U.S. Dollars in that market at that time.

If the rate cannot be determined in accordance with the foregoing provision, the "*3-month Dollar LIBO Rate*" shall mean the 3-month Dollar LIBO Rate determined on the immediately preceding LIBOR Interest Determination Date.

"*Reuters Page LIBOR01*" means the display designated as "Page LIBOR01" on Reuters Money 3000 Service or any successor service (or such other page as may replace Page LIBOR01 on that service) or such other service displaying the London Inter-Bank offered rates of major banks, as may replace Reuters Money 3000 Service.

"*LIBOR Interest Determination Date*" means the second London Banking Day preceding each LIBO Rate Reset Date.

"*London Banking Day*" means any day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits) in London.

The interest rate determined on a LIBOR Interest Determination Date will become effective on and as of the next LIBO Rate Reset Date. The initial LIBOR Interest Determination Date will be September 30, 2013 for the interest period commencing on October 2, 2013.

The interest rate payable on the Notes will not be higher than the maximum rate permitted by New York state law as that law may be modified by U.S. law of general application.

The Calculation Agent will, as soon as practicable after 11:00 a.m., London time, on each LIBOR Interest Determination Date, in relation to each interest period, calculate the amount of interest (the "Interest Amount") payable in respect of each Note for such interest period. The Interest Amount will be calculated by applying the rate of interest for such interest period to the principal amount of such Note, multiplying the product by the actual number of days in such interest period divided by 360.

The Calculation Agent will cause the rate of interest and Interest Amount for each interest period determined by it, together with the relevant Interest Payment Date, to be notified to the Issuer and the Paying Agent. The Calculation Agent will also notify to each listing authority, stock exchange and/or quotation system (if any) by which the Notes have been admitted to listing, trading and/or quotation as soon as practicable after such determination but in any event not later than the first day of the relevant interest period, the rate of interest, the amount of interest payable in respect of each U.S.$1,000 principal amount of Notes and the Interest Payment Date Notice thereof shall also promptly be given to the holders of the Notes. The Calculation Agent will be entitled to recalculate any Interest Amount (on the basis of the foregoing provisions) without notice in the event of an extension or shortening of the relevant interest period.

All notifications, opinions, determinations, certificates, calculations, quotations and decisions given, expressed, made or obtained for the purposes of this condition by the Calculation Agent will (in the absence of willful default, bad faith or manifest error) be binding on the Issuer, the Paying Agent and the holders of the Notes and (subject to aforesaid) no liability to any such person will attach to the Calculation Agent in connection with the exercise or non-exercise by it of its powers, duties and discretions for such purposes.

All percentages resulting from any of the above calculations will be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point, with five one-millionths of a percentage point being rounded upwards (e.g., 9.876545% (or .09876545) being rounded to 9.87655% (or .0987655)) and all dollar amounts resulting from such calculations will be rounded to the nearest cent (with one-half cent being rounded upwards).

**Additional Amounts**

All payments made by the Issuer or the Guarantors under, or with respect to, the Notes will be made free and clear of, and without withholding or deduction for or on account of any present or future tax, duty, levy, impost, assessment or other governmental charge (including penalties, interest and other liabilities related thereto) (collectively, "Taxes") imposed or levied by or on behalf of the United States, Mexico, Spain, the Netherlands, France, the United Kingdom, Switzerland or, in the event that the Issuer appoints additional paying agents, by the jurisdictions of such additional paying agents (a "Taxing Jurisdiction"), unless the Issuer or such Guarantor, as the case may be, is required to withhold or deduct Taxes by law or by the official interpretation or administration thereof.

If the Issuer or any Guarantor is so required to withhold or deduct any amount for, or on account of, such Taxes from any payment made under or with respect to the Notes, the Issuer or such Guarantor, as the case may be, will pay such additional amounts ("Additional Amounts") as may be necessary so that the net amount received by each holder (including Additional Amounts) after such withholding or deduction, will not be less

than the amount such holder would have received if such Taxes had not been required to be withheld or deducted; *provided*, *however*, that the foregoing obligation to pay Additional Amounts does not apply to:

- any Taxes imposed solely because at any time there is or was a connection between the holder and a Taxing Jurisdiction (other than the mere purchase of the Notes, or receipt of a payment or the ownership or holding of the Notes),
- any estate, inheritance, gift, sales, transfer, personal property or similar Tax imposed with respect to the Notes,
- any Taxes imposed solely because the holder or any other person fails to comply with any certification, identification or other reporting requirement concerning the nationality, residence, identity or connection with a Taxing Jurisdiction of the holder or any beneficial owner of the Notes if compliance is required by the applicable law of the Taxing Jurisdiction as a precondition to exemption from, or reduction in the rate of, the tax, assessment or other governmental charge and we have given the holders at least 30 days' notice that holders will be required to provide such information and identification,
- any Taxes payable otherwise than by deduction or withholding from payments on the Notes,
- any Taxes imposed on a payment to or for the benefit of an individual pursuant to European Council Directive 2003/48/EC or any other directive implementing the conclusions of the ECOFIN Council meeting of November 26-27, 2000 or any law implementing or complying with, or introduced in order to conform to, such directives,
- any Taxes that would have been avoided by presenting for payment (where presentation is required) the relevant Note to another paying agent,
- any Taxes with respect to such Notes presented for payment more than 30 days after the date on which the payment became due and payable or the date on which payment thereof is duly provided for and notice thereof given to holders, whichever occurs later, except to the extent that the holders of such Notes would have been entitled to such Additional Amounts on presenting such Notes for payment on any date during such 30 day period, or
- any payment on the Notes to a holder that is a fiduciary or partnership or a person other than the sole beneficial owner of any such payment, to the extent that a beneficiary or settlor with respect to such fiduciary, a member of such a partnership or the beneficial owner of the payment would not have been entitled to the Additional Amounts had the beneficiary, settlor, member or beneficial owner been the holder of the Notes.

The foregoing provisions will survive any termination or discharge of the Indenture and shall apply *mutatis mutandis* to any Taxing Jurisdiction with respect to any successor to the Issuer or any Guarantor, as the case may be. The Issuer or such Guarantor, as applicable, will (i) make such withholding or deduction and (ii) remit the full amount deducted or withheld to the relevant Taxing Jurisdiction in accordance with applicable law. The Issuer or such Guarantor, as applicable, will use all reasonable efforts to obtain certified copies of tax receipts evidencing the payment of any Taxes so deducted or withheld from each Taxing Jurisdiction imposing such Taxes and will furnish such certified copies to the Trustee within 30 days after the date the payment of any Taxes so deducted or so withheld is due pursuant to applicable law or, if such tax receipts are not reasonably available to the Issuer or such Guarantor, as applicable, furnish such other documentation that provides reasonable evidence of such payment by the Issuer or such Guarantor, as applicable.

The exception to the Issuer's obligations to pay Additional Amounts pursuant to the third bullet point above will not apply if (i) the provision of information, documentation or other evidence described in the applicable bullet point would be materially more onerous, in form, in procedure or in the substance of information disclosed, to a holder or beneficial owner of a Note, than comparable information or other reporting requirements imposed under U.S. tax law, regulation (including proposed regulations) and administrative practice, or

(ii) Article 195, Section II, paragraph (a), of the Mexican Income Tax Law (*Ley del Impuesto Sobre la Renta*) (or a substitute or equivalent provision) is in effect, unless (A) the provision of the information, documentation or other evidence described in such third bullet is expressly required by the applicable Mexican laws and regulations in order to apply Article 195, Section II, paragraph (a), of the Mexican Income Tax Law (or substitute or equivalent provision), (B) we cannot obtain the information, documentation or other evidence necessary to comply with the applicable Mexican laws and regulations on our own through reasonable diligence and (C) we would not otherwise meet the requirements for application of the applicable Mexican laws and regulations.

In addition, such third bullet does not require, and shall not be construed to require, that any holder, including any non-Mexican pension fund, retirement fund, tax-exempt organization or financial institution, register with the Tax Management Service (*Servicio de Administración Tributaria*) or the Mexican Ministry of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*) to establish eligibility for an exemption from, or a reduction of, Mexican withholding taxes.

Any reference in this offering memorandum, the Indenture, any supplemental indenture or the Notes to principal, premium, interest or any other amount payable in respect of the Notes by us will be deemed also to refer to any Additional Amount that may be payable with respect to that amount under the obligations referred to in this subsection. Payment of any Additional Amounts with respect to interest shall be considered as an interest payment under, or with respect to, the Notes.

In the event that Additional Amounts actually paid with respect to the Notes pursuant to the preceding paragraphs are based on rates of deduction or withholding of withholding taxes in excess of the appropriate rate applicable to the holder of such Notes, and as a result thereof such holder is entitled to make a claim for a refund or credit of such excess from the authority imposing such withholding tax, then such holder shall, by accepting such Notes, and without any further action, be deemed to have assigned and transferred all right, title and interest to any such claim for a refund or credit of such excess to us. However, by making such assignment, the holder makes no representation or warranty that we will be entitled to receive such claim for a refund or credit and incurs no other obligation with respect thereto.

**Note Guarantees**

Each Guarantor will fully and unconditionally guarantee, on a joint and several basis, the performance of all obligations of the Issuer under the Indenture and the Notes on a senior basis.

The obligations of each Guarantor may be deemed to have been a fraudulent transfer and declared void, or may be effectively subordinated to those obligations that are preferred under applicable laws, in the event any such Guarantor becomes subject to an insolvency proceeding under applicable law. Laws under applicable jurisdictions may, under specific circumstances, allow courts to void the Notes or the related Note Guarantees. See “Risks Relating To The Notes and This Offering—The Note Guarantees may not be enforceable under local insolvency laws applicable to the Guarantors or may be subject to limitations.”

Each Guarantor will be released and relieved of its obligations under its Note Guarantee in the event:

(1) there is a Legal Defeasance of the Notes as described under “Legal Defeasance and Covenant Defeasance”;

(2) with respect to any Guarantor, there is a sale or other disposition of Capital Stock of such Guarantor following which such Guarantor is no longer a direct or indirect Subsidiary of the Issuer; or

(3) solely with respect to any Additional Guarantor, either (i) the Facilities Agreement Indebtedness has been repaid in full and such Additional Guarantor is not a guarantor of the Indebtedness Incurred to refinance such Facilities Agreement Indebtedness or (ii) at least 85% of the outstanding Indebtedness of the Issuer and its Restricted Subsidiaries is not guaranteed by such Additional Guarantor;

*provided* that the transaction is carried out pursuant to and in accordance with all other applicable provisions of the Indenture.

In addition, each Additional Guarantor will be released and relieved of its obligations under its guarantee of the Notes upon the occurrence of a Partial Covenant Suspension Event or a Covenant Suspension Event until the occurrence of a Partial Covenant Reversion Date or a Reversion Date, as applicable, at which time the guarantee of the Notes by such Additional Guarantor shall be reinstated unless such Additional Guarantor would have been released at any time during the Partial Suspension Period or Suspension Period, as applicable, pursuant to the immediately preceding paragraph (see "Certain Covenants—Suspension of Covenants").

Only the Guarantors will guarantee the Notes, and our Unrestricted Subsidiaries and certain of our Restricted Subsidiaries will not guarantee the Notes. In the event of a bankruptcy, liquidation or reorganization of these non-guarantor subsidiaries, these non-guarantor subsidiaries will pay the holders of their debt and their trade creditors before they will be able to distribute any of their assets to us. In addition, holders of minority equity interests in Subsidiaries may receive distributions prior to or pro rata with the Issuer and its Subsidiaries depending on the terms of the equity interests.

**Security Interest**

The Notes will be secured by a first-priority security interest in the Collateral on an equal and ratable basis with (i) the Facilities Agreement Indebtedness and any refinancing thereof made in accordance with the Facilities Agreement that is secured by the Collateral, (ii) notes (or similar instruments, including *Certificados Bursátiles*) outstanding on the date of the Facilities Agreement required to be secured by the Collateral pursuant to their terms, or any past or present refinancing thereof permitted by the Facilities Agreement, (iii) the Existing Senior Notes, and (iv) future indebtedness secured by the Collateral to the extent permitted by the Facilities Agreement.

Each holder and the Issuer authorize and instruct the Trustee (i) to enter into (or cause an agent or grant such powers of attorney to enter into), on its own behalf and on behalf of the holders, such documents (the "Security Documents") as are necessary or desirable (which shall be evidenced by a written instruction from the Issuer satisfactory to the Trustee) in order to create and maintain the security interest of the Trustee and the holders in the Collateral as may from time to time be provided to equally and ratably secure the Notes, (ii) to grant such powers of attorney and to do or cause to be done all such acts and things, on its own behalf and in the name and on behalf of the holders, as are necessary or desirable (which shall be evidenced by a written instruction from the Issuer satisfactory to the Trustee) to create and maintain the security interest of the Trustee and the holders in such Collateral, (iii) to appoint the Security Agent to serve as direct representative of the Trustee and the holders in connection with the creation and maintenance of the security interest of the Trustee and the holders in such Collateral, (iv) to accept the security interest in the Collateral on behalf of each holder, and (v) to grant powers in favor of an attorney to execute an accession or other public deed before a Spanish notary public accepting the security interest in the Collateral on behalf of the holders. It is understood and acknowledged that in certain circumstances the Security Documents may be amended, modified or waived without the consent of the Trustee or the holders. It is understood and acknowledged that the Security Agent, in addition to being appointed by and acting on behalf of the Trustee and the holders, has also been appointed by and is acting on behalf of (and may in the future be appointed by and act on behalf of) other creditors of the Issuer and its Subsidiaries. The Trustee will not have the right to cause the Security Agent to foreclose on the Collateral upon the occurrence of an Event of Default in respect of the Notes.

The Notes will cease to be secured by a security interest in the Collateral in accordance with the provisions of the Intercreditor Agreement. As set forth in the Intercreditor Agreement, the "Collateral" consists of (i) substantially all the shares of CEMEX México, Centro Distribuidor de Cemento, S.A. de C.V., Mexcement Holdings, S.A. de C.V., Corporación Gouda, S.A. de C.V., New Sunward, CEMEX TRADEMARKS HOLDING Ltd., and CEMEX España and (ii) all proceeds of such Collateral.

The Intercreditor Agreement provides that the Collateral will be released as follows:

- in whole or in part as may be agreed from time to time by (x) creditors under the Facilities Agreement Indebtedness and any refinancing thereof representing at least 85% of the amounts originally owed in respect of such Facilities Agreement Indebtedness and any refinancing thereof and (y) creditors under the Facilities Agreement Indebtedness (excluding creditors under any refinancing thereof) representing at least 66⅔% of the amounts owed in respect of such Facilities Agreement Indebtedness (excluding any refinancing thereof);
- with respect to the Collateral consisting of substantially all the shares of CEMEX México, Centro Distribuidor de Cemento, S.A. de C.V., Mexcement Holdings, S.A. de C.V. and Corporación Gouda, S.A. de C.V., automatically at any time when (i) no Default (as defined in the Intercreditor Agreement) is continuing, and (ii) the Issuer's adjusted total debt to EBITDA ratio does not exceed 3.50: 1.00 for one semi-annual testing period; and
- with respect to the portion of the Collateral other than that described in the preceding bullet, automatically at any time when (i) no Default (as defined in the Intercreditor Agreement) is continuing, and (ii) the Issuer's adjusted total debt to EBITDA ratio does not exceed 3.50:1.00 during two consecutive semi-annual testing periods.

In addition, the Notes will cease to be secured by a security interest on the Collateral upon:

(1) (a) payment in full of the principal of, and any accrued and unpaid interest on, the Notes and all other amounts or obligations under the Indenture and the Notes, including Additional Notes, and the Note Guarantees that are due and payable at or prior to the time such principal, accrued and unpaid interest, if any, are paid, (b) a satisfaction and discharge of the Indenture or (c) a Legal Defeasance or Covenant Defeasance as described below under "—Legal Defeasance and Covenant Defeasance"; or

(2) a refinancing of the Facilities Agreement Indebtedness in full as a result of which the Collateral does not secure Indebtedness Incurred to refinance such Facilities Agreement Indebtedness.

**Intercreditor Agreement**

The Security Agent may foreclose on the Collateral (i) if an Event of Default under the Facilities Agreement occurs and is continuing and creditors under the Facilities Agreement Indebtedness (other than creditors under a refinancing thereof) representing at least 66⅔% of the amounts owed in respect of such Facilities Agreement Indebtedness (excluding any refinancing thereof) have authorized the acceleration under the Facilities Agreement; and (ii) the "Instructing Group" determines to enforce the security. The "Instructing Group" means (x) creditors under the Facilities Agreement Indebtedness and any refinancing thereof representing at least 75% of the amounts owed in respect of such Facilities Agreement Indebtedness and any refinancing thereof and (y) creditors under the Facilities Agreement Indebtedness (excluding creditors under any refinancing thereof) representing at least 66⅔% of the amounts owed in respect of such Facilities Agreement Indebtedness (excluding any refinancing thereof). The Instructing Group has the right to direct the Security Agent to take action to enforce the security interests in the Collateral and the Security Agent acts in accordance with the Instructing Group's instructions. The holders of Notes and the Trustee will not be part of the Instructing Group and, therefore, do not have any right to take part in any action to foreclose on, or otherwise exercise remedies with respect to, the Collateral or otherwise have any enforcement rights with respect to the Collateral. Nonetheless, holders of Notes are secured parties under the Intercreditor Agreement and, as such, in the event that the security interest in the Collateral is enforced in accordance with the Intercreditor Agreement, the holders of the Notes will be entitled to receive payments from the proceeds thereof on a *pro rata* and *pari passu* basis with all other creditors entitled to share in the proceeds from the Collateral.

**Optional redemption**

Except as stated below, the Issuer may not redeem the Notes.

On or after the Interest Payment Date immediately preceding the maturity date, the Issuer will have the right, at its option, to redeem all of the Notes, at any time prior to their maturity, at par plus any accrued and unpaid interest on the principal amount of the Notes to the date of redemption; *provided*, *however*, that the Issuer shall not have the right to exercise any such optional redemption at any time when the Issuer is prohibited from having such an option under the Facilities Agreement.

*Optional Redemption for Changes in Withholding Taxes*. If, as a result of any amendment to, or change in, the laws (or any rules or regulations thereunder) of a Taxing Jurisdiction affecting taxation, or any amendment to or change in an official interpretation or application of such laws, rules or regulations that has a general effect, which amendment to or change of such laws, rules or regulations becomes effective on or after the Issue Date (which, in the case of a merger, consolidation or other transaction permitted and described under "Certain Covenants—Limitation on Merger, Consolidation and Sale of Assets," shall be treated for this purpose as the date of such transaction) we would be obligated, after taking all reasonable measures to avoid this requirement, to pay Additional Amounts in excess of those attributable to a withholding tax rate of 10% with respect to the Notes (see "Additional Amounts"), then, at our option, all, but not less than all, of the Notes may be redeemed at any time on giving not less than 30 nor more than 60 days' notice, at a redemption price equal to 100% of the outstanding principal amount, plus any accrued and unpaid interest on the principal amount of the Notes, if any, to the date of redemption; *provided*, *however*, that (1) no notice of redemption for tax reasons may be given earlier than 90 days prior to the earliest date on which we would be obligated to pay these Additional Amounts if a payment on the Notes were then due, and (2) at the time such notice of redemption is given such obligation to pay such Additional Amounts remains in effect; *provided*, *further*, *however*, that the Issuer shall not have the right to exercise any such optional redemption at any time when the Issuer is prohibited from having such an option under the Facilities Agreement.

Prior to the publication of any notice of redemption pursuant to this provision, we will deliver to the Trustee:

- an Officer's Certificate stating that we are entitled to effect the redemption and setting forth a statement of facts showing that the conditions precedent to our right to redeem have occurred, and
- an opinion of outside legal counsel of recognized standing in the affected Taxing Jurisdiction to the effect that we have or will become obligated to pay such Additional Amounts as a result of such change or amendment.

Notice of any redemption will be mailed by first-class mail, postage prepaid to each holder of Notes to be redeemed at its registered address. This notice, once delivered by us to the Trustee, will be irrevocable.

The Issuer will pay the redemption price for any Note on the date of redemption. On and after the redemption date, interest will cease to accrue on Notes as long as the Issuer has deposited with the Paying Agent funds in satisfaction of the redemption price pursuant to the Indenture. Upon redemption of any Notes by the Issuer, such redeemed Notes will be cancelled.

**Sinking fund**

The Issuer is not required to make mandatory redemption payments or sinking fund payments with respect to the Notes.

**Change of Control**

Upon the occurrence of a Change of Control, each holder will have the right to require that the Issuer purchase all or a portion (in integral multiples of U.S.$1,000) of the holder's Notes at a purchase price equal to 101% of the principal amount thereof, plus accrued and unpaid interest thereon through the date of purchase (the "Change of Control Payment").

Within 30 days following the date upon which the Change of Control occurred, the Issuer must send, by first-class mail, a notice to each holder, with a copy to the Trustee, offering to purchase the Notes as described above (a "Change of Control Offer"). The Change of Control Offer shall state, among other things, the purchase date, which must be no earlier than 30 days nor later than 60 days from the date the notice is mailed, other than as may be required by law (the "Change of Control Payment Date").

On the Change of Control Payment Date, the Issuer will, to the extent lawful:

(1) accept for payment all Notes or portions thereof properly tendered and not withdrawn pursuant to the Change of Control Offer;

(2) deposit with the Paying Agent funds in an amount equal to the Change of Control Payment in respect of all Notes or portions thereof so tendered; and

(3) deliver or cause to be delivered to the Trustee the Notes so accepted together with an Officer's Certificate stating the aggregate principal amount of Notes or portions thereof being purchased by the Issuer.

If only a portion of a Note is purchased pursuant to a Change of Control Offer, a new Note in a principal amount equal to the portion thereof not purchased will be issued in the name of the holder thereof upon cancellation of the original Note (or appropriate adjustments to the amount and beneficial interests in a Global Note will be made, as appropriate), *provided*, that each new Note shall be in a minimum principal amount of U.S.$200,000 and in integral multiples of U.S.$1,000 in excess thereof. Notes (or portions thereof) purchased pursuant to a Change of Control Offer will be cancelled and cannot be reissued.

The Issuer will not be required to make a Change of Control Offer upon a Change of Control if (1) a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in the Indenture applicable to a Change of Control Offer made by the Issuer and purchases all Notes properly tendered and not withdrawn under the Change of Control Offer, or (2) notice of redemption has been given pursuant to the Indenture as described above under the caption "—Optional Redemption," unless and until there is a default in payment of the applicable redemption price.

Other existing and future Indebtedness of the Issuer may contain prohibitions on the occurrence of events that would constitute a Change of Control or require that Indebtedness to be repurchased upon a Change of Control. Moreover, the exercise by the holders of their right to require the Issuer to repurchase the Notes upon a Change of Control could cause a default under such Indebtedness even if the Change of Control itself does not.

If a Change of Control Offer occurs, there can be no assurance that the Issuer will have available funds sufficient to make the Change of Control Payment for all the Notes that might be delivered by holders seeking to accept the Change of Control Offer. In the event the Issuer is required to purchase outstanding Notes pursuant to a Change of Control Offer, the Issuer expects that it would seek third-party financing to the extent it does not have available funds to meet its purchase obligations and any other obligations. However, there can be no assurance that the Issuer would be able to obtain necessary financing.

Holders will not be entitled to require the Issuer to purchase their Notes in the event of a takeover, recapitalization, leveraged buyout or similar transaction which is not a Change of Control.

The Issuer will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations in connection with the purchase of Notes to the extent that they apply in connection with a Change of Control Offer. To the extent that the provisions of any securities laws or regulations conflict with the "Change of Control" provisions of the Indenture, the Issuer will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under the Indenture by doing so.

**Certain Covenants**

***Suspension of covenants***

During any period of time that the Notes do not have Investment Grade Ratings from two of the Rating Agencies and (i) the Consolidated Leverage Ratio of the Issuer is less than 3.5:1 and (ii) no Default or Event of Default has occurred and is continuing (the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a "Partial Covenant Suspension Event"), the Issuer and its Restricted Subsidiaries will not be subject to the provisions of the Indenture described under the following covenants (collectively, the "Partial Suspended Covenants"):

(1) "—Limitation on Asset Sales";

(2) "—Limitation on the Ownership of Capital Stock of Restricted Subsidiaries";

(3) the second paragraph of "—Limitation on Designation of Unrestricted Subsidiaries";

(4) "—Limitation on Dividends and Other Payment Restrictions Affecting Restricted Subsidiaries";

(5) clause (1)(b) of "—Limitation on Merger, Consolidation and Sale of Assets";

(6) "—Limitation on Transactions with Affiliates"; and

(7) "—Conduct of Business."

During any period of time that (i) the Notes have Investment Grade Ratings from two of the Rating Agencies and (ii) no Default or Event of Default has occurred and is continuing (the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a "Covenant Suspension Event"), the Issuer and its Restricted Subsidiaries will not be subject to the provisions of the Indenture described under the following covenants (collectively, the "Suspended Covenants"):

(1) "—Limitation on Incurrence of Additional Indebtedness";

(2) "—Limitation on Restricted Payments";

(3) "—Limitation on Asset Sales";

(4) "—Limitation on the Ownership of Capital Stock of Restricted Subsidiaries";

(5) the second paragraph of "—Limitation on Designation of Unrestricted Subsidiaries";

(6) "—Limitation on Dividends and Other Payment Restrictions Affecting Restricted Subsidiaries";

(7) "—Limitation on Layered Indebtedness";

(8) clause (1)(b) of "—Limitation on Merger, Consolidation and Sale of Assets";

(9) "—Limitation on Transactions with Affiliates"; and

(10) "—Conduct of Business."

In addition, (x) no Subsidiary that is a Restricted Subsidiary on the date of the occurrence of a Partial Covenant Suspension Event (the "Partial Covenant Suspension Date") or a Covenant Suspension Event (the "Suspension Date") may be redesignated as an Unrestricted Subsidiary during the Partial Suspension Period or the Suspension Period, as applicable and (y) each Additional Guarantor shall be released from its obligation to guarantee the Notes on the date of a Partial Covenant Suspension Event or a Covenant Suspension Event, as the case may be.

In the event that the Issuer and its Restricted Subsidiaries are not subject to the Partial Suspended Covenants or the Suspended Covenants, as the case may be, for any period of time as a result of the foregoing, and on any subsequent date (in the case of Partial Suspended Covenants, such subsequent date being the "Partial Covenant

Reversion Date" and, in the case of Suspended Covenants, such subsequent date being the "Reversion Date") (i) the Consolidated Leverage Ratio of the Issuer is not less than 3.5:1 during the applicable Partial Suspension Period or (ii) the Notes do not have Investment Grade Ratings from at least two of the Rating Agencies during the applicable Suspension Period, then in each case in clauses (i) and (ii), the Issuer and its Restricted Subsidiaries will thereafter again be subject to the Partial Suspended Covenants or the Suspended Covenants, as applicable, and the Notes will again be guaranteed by the Additional Guarantors (unless, solely with respect to the Additional Guarantors, the conditions for release as described under "—Note Guarantees" above are otherwise satisfied during the Partial Suspension Period or the Suspension Period, as applicable). The period of time between the Partial Suspension Date and the Partial Covenant Reversion Date is referred to as the "Partial Suspension Period" and the period of time between the Suspension Date and the Reversion Date is referred to as the "Suspension Period." Notwithstanding that the Partial Suspended Covenants, the Suspended Covenants and the guarantees by the Additional Guarantors may be reinstated, no Default or Event of Default will be deemed to have occurred as a result of a failure to comply with the Partial Suspended Covenants during the Partial Suspension Period or the Suspended Covenants during the Suspension Period, as the case may be (or upon termination of the applicable Partial Suspension Period or the Suspension Period or after that time based solely on events that occurred during the applicable Partial Suspension Period or the Suspension Period, as the case may be).

On the Reversion Date, all Indebtedness Incurred during the Suspension Period will be classified to have been Incurred pursuant to the first paragraph of "—Limitation on Incurrence of Additional Indebtedness" below or one of the clauses set forth in the second paragraph of "—Limitation on Incurrence of Additional Indebtedness" below (to the extent such Indebtedness would be permitted to be Incurred thereunder as of the Reversion Date and after giving effect to Indebtedness Incurred prior to the Suspension Period and outstanding on the Reversion Date). To the extent such Indebtedness would not be so permitted to be Incurred pursuant to the first or second paragraph of "—Limitation on Incurrence of Additional Indebtedness," such Indebtedness will be deemed to have been outstanding on the Issue Date, so that it is classified as permitted under clause (d) of the second paragraph of "—Limitation on Incurrence of Additional Indebtedness." Calculations made after the Reversion Date of the amount available to be made as Restricted Payments under "—Limitation on Restricted Payments" will be made as though the covenant described under "—Limitation on Restricted Payments" had been in effect since the Issue Date and throughout the Suspension Period. Accordingly, Restricted Payments made during the Suspension Period will reduce the amount available to be made as Restricted Payments under the first paragraph of "—Limitation on Restricted Payments." The Issuer will give the Trustee written notice of any Partial Covenant Suspension Event or any Covenant Suspension Event and in any case no later than five (5) Business Days after such Partial Covenant Suspension Event or Covenant Suspension Event has occurred. In the absence of such notice, the Trustee shall assume that the Partial Suspended Covenants or the Suspended Covenants, as applicable, apply and are in full force and effect.

For purposes of this section only, "Consolidated Leverage Ratio" and all associated definitions shall have the meaning set forth in Annex A to this offering memorandum.

***Limitation on Incurrence of Additional Indebtedness***

(1) The Issuer will not, and will not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, Incur any Indebtedness, including Acquired Indebtedness, except that the Issuer and/or any of the Guarantors may Incur Indebtedness, including Acquired Indebtedness, if, at the time of and immediately after giving pro forma effect to the Incurrence thereof and the application of the proceeds therefrom, the Consolidated Fixed Charge Coverage Ratio of the Issuer is greater than or equal to 2.0 to 1.0.

(2) Notwithstanding clause (1) above, the Issuer and/or any of its Restricted Subsidiaries, as applicable, may Incur the following Indebtedness ("Permitted Indebtedness"):

   (a) Indebtedness consisting of the Notes, excluding Additional Notes, and Indebtedness consisting of the Other Notes;

(b) Guarantees by (x) any Guarantor of Indebtedness of the Issuer or another Guarantor permitted under the Indenture and (y) the Issuer of Indebtedness of any Guarantor; provided that, if any such Guarantee is of Subordinated Indebtedness, then the obligations of the Issuer under the Notes and the Indenture or the Note Guarantee of such Guarantor, as applicable, will be senior to the Guarantee of such Subordinated Indebtedness;

(c) Indebtedness of the Issuer and/or any of its Restricted Subsidiaries outstanding on the Issue Date (excluding Indebtedness permitted under clauses (e), (f), (g) or (j) of this definition of Permitted Indebtedness);

(d) Hedging Obligations, Compensation Related Hedging Obligations and any Guarantees thereof and any reimbursement obligations with respect to letters of credit related thereto, in each case entered into by the Issuer and/or any of its Restricted Subsidiaries; *provided* that, upon the drawing of such letters of credit, such obligations are reimbursed within 30 days following such drawing;

(e) Intercompany Indebtedness between the Issuer and any Restricted Subsidiary or between any Restricted Subsidiaries; *provided* that in the event that at any time any such Indebtedness ceases to be held by the Issuer or a Restricted Subsidiary, such Indebtedness shall be deemed to be Incurred and not permitted by this clause (e) at the time such event occurs;

(f) Indebtedness of the Issuer and/or any of its Restricted Subsidiaries arising from (i) the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds in the ordinary course of business; *provided*, that such Indebtedness is extinguished within five Business Days of Incurrence; or (ii) any cash pooling or other cash management agreements in place with a bank or financial institution but only to the extent of offsetting credit balances of the Issuer and/or its Restricted Subsidiaries pursuant to such cash pooling or other cash management agreement;

(g) Indebtedness of the Issuer and/or any of its Restricted Subsidiaries represented by (i) endorsements of negotiable instruments in the ordinary course of business (excluding an aval), (ii) documentary credits (including all forms of letter of credit), performance bonds or guarantees, advance payments, bank guarantees, bankers' acceptances, surety or appeal bonds or similar instruments for the account of, or guaranteeing performance by, the Issuer and/or any Restricted Subsidiary in the ordinary course of business, (iii) reimbursement obligations with respect to letters of credit in the ordinary course of business, (iv) reimbursement obligations with respect to letters of credit and performance Guarantees in the ordinary course of business to the extent required pursuant to the terms of any Investment made pursuant to clause (12) of the definition of "Permitted Investment" and (v) other Guarantees by the Issuer and/or any Restricted Subsidiary in favor of a bank or financial institution in respect of obligations of that bank or financial institution to a third party in an amount not to exceed U.S.$500 million at any one time outstanding; *provided* that in the case of clauses (ii), (iii) and (iv), upon the drawing of such letters of credit or the Incurrence of such Indebtedness, such obligations are reimbursed within 30 days following such drawing or Incurrence;

(h) Refinancing Indebtedness in respect of:

(1) Indebtedness (other than Indebtedness owed to the Issuer or any Subsidiary of the Issuer) Incurred pursuant to clause (1) above (it being understood that no Indebtedness outstanding on the Issue Date is Incurred pursuant to such clause (1) above), or

(2) Indebtedness Incurred pursuant to clause (a), (b) or (c) above or this clause (h);

(i) Capitalized Lease Obligations, Sale and Leaseback Transactions, export credit facilities with a maturity of at least one year and Purchase Money Indebtedness of, including Guarantees of any of the foregoing by, the Issuer and/or any Restricted Subsidiary, in an aggregate principal amount at any one time outstanding not to exceed U.S.$1 billion;

(j) Indebtedness arising from agreements entered into by the Issuer and/or a Restricted Subsidiary providing for bona fide indemnification, adjustment of purchase price or similar obligations not for financing purposes, in each case, Incurred or assumed in connection with the acquisition or disposition of any business, assets or Capital Stock of a Restricted Subsidiary (including minority interests), *provided* that, in the case of a disposition, the maximum aggregate liability in respect of such Indebtedness shall at no time exceed the gross proceeds actually received by the Issuer and its Restricted Subsidiaries in connection with such disposition;

(k) Indebtedness of the Issuer and/or any of its Restricted Subsidiaries in an aggregate amount not to exceed U.S.$1 billion at any one time outstanding, *provided* that no more than U.S.$250 million of such Indebtedness at any one time outstanding (excluding any Indebtedness under a Permitted Liquidity Facility) may be Incurred by Restricted Subsidiaries that are not Guarantors, which amount shall be increased by the corresponding amount of other Indebtedness of Restricted Subsidiaries other than the Guarantors outstanding on the Issue Date and subsequently repaid from time to time but in any event not to exceed U.S.$500 million at any one time outstanding; *provided, further, however,* that (i) the Issuer and/or any of its Restricted Subsidiaries may Incur Indebtedness under a Permitted Liquidity Facility and (ii) in the event that the Issuer and/or any of its Restricted Subsidiaries shall have Incurred Indebtedness under a Permitted Liquidity Facility that increases the amount outstanding at such time pursuant to this clause (k) in excess of U.S.$1 billion, then up to U.S.$1.2 billion may be Incurred pursuant to this clause (k) at any one time outstanding;

(l) (i) Indebtedness of the Issuer and/or any of its Restricted Subsidiaries in respect of factoring arrangements or Inventory Financing arrangements or (ii) other Indebtedness of the Issuer and/or any of its Restricted Subsidiaries with a maturity of 12 months or less for working capital purposes, not to exceed in the aggregate at any one time (calculated as of the end of the most recent fiscal quarter for which consolidated financial information of the Issuer is available) the greater of:

(A) the sum of

- 20% of the net book value of the inventory of the Issuer and its Restricted Subsidiaries, and
- 20% of the net book value of the accounts receivable of the Issuer and its Restricted Subsidiaries (excluding accounts receivable pledged to secure Indebtedness or subject to a Qualified Receivables Transaction),

less, in each case, the amount of any permanent repayments or reductions of commitments in respect of such Indebtedness made with the Net Cash Proceeds of an Asset Sale in order to comply with "Certain Covenants—Limitation on Asset Sales"; or

(B) U.S.$350 million;

(m) Indebtedness of the Issuer and/or any of its Restricted Subsidiaries for taxes levied, assessments due and other governmental charges required to be paid as a matter of law or regulation in the ordinary course of business; *provided* that such Indebtedness shall be permitted to be Incurred only at such time that the Facilities Agreement (or any refinancing thereof) shall contain an exception to allow the Incurrence of Indebtedness to pay taxes;

(n) Indebtedness Incurred pursuant to the Banobras Facility;

(o) Indebtedness of the Issuer and/or any of its Restricted Subsidiaries Incurred and/or issued to refinance Qualified Receivables Transactions in existence on the Issue Date;

(p) Acquired Indebtedness in an aggregate amount at any one time outstanding under this clause (p) not to exceed U.S.$100 million; and

(q) (i) any Indebtedness that constitutes an Investment that the Issuer and/or any of its Restricted Subsidiaries is contractually committed to Incur as of the Issue Date in any Person (other than a Subsidiary) in which the Issuer or any of its Restricted Subsidiaries maintains an Investment in equity securities; and (ii) Guarantees up to U.S.$100 million in any calendar year by the Issuer and/or any Restricted Subsidiary of Indebtedness of any Person in which the Issuer or any of its Restricted Subsidiaries maintains an equity Investment minus any Investment other than such guarantees in such Person during such calendar year pursuant to clause (17)(b) of the definition of "Permitted Investments."

Notwithstanding anything to the contrary contained in this covenant:

(1) The Issuer shall not, and shall not permit any Guarantor to, Incur any Permitted Indebtedness if the proceeds thereof are used, directly or indirectly, to Refinance any Subordinated Indebtedness unless such Indebtedness shall be subordinated to the Notes or the applicable Note Guarantee, as the case may be, to at least the same extent as such Subordinated Indebtedness.

(2) For purposes of determining compliance with, and the outstanding principal amount of, any particular Indebtedness Incurred pursuant to and in compliance with this covenant, the amount of Indebtedness issued at a price that is less than the principal amount thereof will be equal to the amount of the liability in respect thereof determined in accordance with GAAP. Accrual of interest, the accretion or amortization of original issue discount, the payment of regularly scheduled interest in the form of additional Indebtedness of the same instrument or the payment of regularly scheduled dividends on Disqualified Capital Stock in the form of additional Disqualified Capital Stock with the same terms will not be deemed to be an Incurrence of Indebtedness for purposes of this covenant. For purposes of determining compliance with this covenant, mark-to-market fluctuations of hedging obligations or derivatives outstanding on the Issue Date shall not constitute Incurrence of Indebtedness.

(3) For purposes of determining compliance with this covenant, the principal amount of Indebtedness denominated in foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was Incurred, in the case of term Indebtedness, or first committed, in the case of revolving credit Indebtedness; *provided* that if such Indebtedness is Incurred to refinance other Indebtedness denominated in foreign currency, and such refinancing would cause the applicable restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such restriction shall be deemed not to have been exceeded so long as the principal amount of such Refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced. Notwithstanding any other provision of this covenant, the maximum amount of Indebtedness Incurred to refinance other Indebtedness, if Incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such Refinancing Indebtedness is denominated that is in effect on the date of such refinancing.

(4) For purposes of determining compliance with this covenant:

(a) in the event that an item of Indebtedness meets the criteria of more than one of the types of Indebtedness described above, including, without limitation, the first paragraph of this covenant, the Issuer, in its sole discretion, will classify such item of Indebtedness at the time of Incurrence and only be required to include the amount and type of such Indebtedness in one of the above clauses and may later reclassify all or a portion of such item of Indebtedness as having been Incurred pursuant to any other clause to the extent such Indebtedness could be Incurred pursuant to such clause at the time of such reclassification; and

(b) the Issuer will be entitled to divide and classify an item of Indebtedness in more than one of the types of Indebtedness described above, including, without limitation, the first paragraph of this covenant.

***Limitation on Restricted Payments***

The Issuer will not, and will not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, take any of the following actions (each, a "Restricted Payment"):

(a) declare or pay any dividend or return of capital or make any distribution on or in respect of shares of Capital Stock of the Issuer or any Restricted Subsidiary to holders of such Capital Stock, other than:

(1) dividends, distributions or returns on capital payable in Qualified Capital Stock of the Issuer,

(2) dividends, distributions or returns on capital payable to the Issuer and/or a Restricted Subsidiary,

(3) dividends, distributions or returns of capital made on a pro rata basis to the Issuer and its Restricted Subsidiaries, on the one hand, and minority holders of Capital Stock of a Restricted Subsidiary, on the other hand (or on less than a pro rata basis to any minority holder);

(b) purchase, redeem or otherwise acquire or retire for value:

(1) any Capital Stock of the Issuer, or

(2) any Capital Stock of any Restricted Subsidiary held by an Affiliate of the Issuer or any Preferred Stock of a Restricted Subsidiary, except for:

(i) Capital Stock held by the Issuer or a Restricted Subsidiary, or

(ii) purchases, redemptions, acquisitions or retirements for value of Capital Stock on a pro rata basis from the Issuer and/or any Restricted Subsidiaries, on the one hand, and minority holders of Capital Stock of a Restricted Subsidiary, on the other hand, according to their respective percentage ownership of the Capital Stock of such Restricted Subsidiary;

(c) make any principal payment on, purchase, defease, redeem, prepay, decrease or otherwise acquire or retire for value, prior to any scheduled final maturity, scheduled repayment or scheduled sinking fund payment, as the case may be, any Subordinated Indebtedness; or

(d) make any Investment (other than Permitted Investments); if at the time of the Restricted Payment immediately after giving effect thereto:

(1) a Default or an Event of Default shall have occurred and be continuing;

(2) the Issuer is not able to Incur at least U.S.$1.00 of additional Indebtedness pursuant to clause (1) of "—Limitation on Incurrence of Additional Indebtedness"; or

(3) the aggregate amount (the amount expended for these purposes, if other than in cash, being the Fair Market Value of the relevant property at the time of the making thereof) of the proposed Restricted Payment and all other Restricted Payments made subsequent to the Issue Date up to the date thereof, less any Investment Return calculated as of the date thereof, shall exceed the sum of:

(i) 50% of cumulative Consolidated Net Income of the Issuer or, if cumulative Consolidated Net Income of the Issuer is a loss, minus (i) 100% of the loss, accrued during the period, treated as one accounting period, beginning on the first full fiscal quarter after the Issue Date to the end of the most recent fiscal quarter for which consolidated financial information of the Issuer is available and (ii) the amount of cash benefits to the Issuer or a Restricted Subsidiary that is netted against Investments in Similar Businesses pursuant to clause (12) of the definition of "Permitted Investments"; *plus*

(ii) 100% of the aggregate net cash proceeds received by the Issuer from any Person from any:

- contribution to the equity capital of the Issuer (not representing an interest in Disqualified Capital Stock) or issuance and sale of Qualified Capital Stock of the Issuer, in each case, subsequent to the Issue Date, or
- issuance and sale subsequent to the Issue Date (and, in the case of Indebtedness of a Restricted Subsidiary, at such time as it was a Restricted Subsidiary) of any Indebtedness for borrowed money of the Issuer or any Restricted Subsidiary that has been converted into or exchanged for Qualified Capital Stock of the Issuer,

excluding, in each case, any net cash proceeds:

(w) received from a Subsidiary of the Issuer;

(x) used to redeem Notes under "—Optional Redemption—Optional Redemption Upon Equity Offerings";

(y) used to acquire Capital Stock or other assets from an Affiliate of the Issuer; or

(z) applied in accordance with clause (2)(y) or (3)(x) of the second paragraph of this covenant below.

Notwithstanding the preceding paragraph, this covenant does not prohibit:

(1) the payment of any dividend within 60 days after the date of declaration of such dividend if the dividend would have been permitted on the date of declaration pursuant to the preceding paragraph;

(2) if no Default or Event of Default shall have occurred and be continuing, the acquisition of any shares of Capital Stock of the Issuer,

(x) in exchange for Qualified Capital Stock of the Issuer, or

(y) through the application of the net cash proceeds received by the Issuer from a substantially concurrent sale of Qualified Capital Stock of the Issuer or a contribution to the equity capital of the Issuer not representing an interest in Disqualified Capital Stock, in each case not received from a Subsidiary of the Issuer;

*provided*, that the value of any such Qualified Capital Stock issued in exchange for such acquired Capital Stock and any such net cash proceeds shall be excluded from clause (3)(B) of the first paragraph of this covenant (and were not included therein at any time);

(3) if no Default or Event of Default shall have occurred and be continuing, the voluntary prepayment, purchase, defeasance, redemption or other acquisition or retirement for value of any Subordinated Indebtedness:

(x) solely in exchange for, or through the application of net cash proceeds of a substantially concurrent sale, other than to a Subsidiary of the Issuer, of Qualified Capital Stock of the Issuer, or

(y) solely in exchange for Refinancing Indebtedness for such Subordinated Indebtedness,

*provided*, that the value of any Qualified Capital Stock issued in exchange for Subordinated Indebtedness and any net cash proceeds referred to above shall be excluded from clause (3)(B) of the first paragraph of this covenant (and were not included therein at any time);

(4) repurchases by the Issuer of Common Stock of the Issuer or options, warrants or other securities exercisable or convertible into Common Stock of the Issuer from employees or directors of the Issuer or any of its Subsidiaries or their authorized representatives upon the death, disability or termination of employment or directorship of the employees or directors, in an amount not to exceed U.S.$5 million in

any calendar year and any repurchases other than in connection with compensation of Common Stock of the Issuer pursuant to binding written agreements in effect on the Issue Date;

(5) payments of dividends on Disqualified Capital Stock issued pursuant to the covenant described under "—Limitation on Incurrence of Additional Indebtedness"; *provided*, *however*, that such dividends shall be excluded in the calculation of the amount of Restricted Payments;

(6) non-cash repurchases of Capital Stock deemed to occur upon exercise of stock options, warrants or other similar rights if such Capital Stock represents a portion of the exercise price of such options, warrants or other similar rights;

(7) cash payments in lieu of the issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock of the Issuer;

(8) purchases of any Subordinated Indebtedness of the Issuer (A) at a purchase price not greater than 101% of the principal amount thereof (together with accrued and unpaid interest) in the event of the occurrence of a Change of Control or (B) at a purchase price not greater than 100% of the principal amount thereof (together with accrued and unpaid interest) in the event of an Asset Sale in accordance with provisions similar to those set forth under "—Limitation on Asset Sales"; *provided*, *however*, that prior to such purchase of any such Subordinated Indebtedness, the Issuer has made the Change of Control Offer as provided under "—Change of Control" or "—Limitation on Asset Sales", respectively, and has purchased all Notes validly tendered and not properly withdrawn pursuant thereto;

(9) recapitalization of earnings on or in respect of the Qualified Capital Stock of the Issuer pursuant to which additional Qualified Capital Stock of the Issuer or the right to subscribe for additional Capital Stock of the Issuer is issued to the existing shareholders of the Issuer on a pro rata basis (which, for the avoidance of doubt, shall not allow any payment in cash to be made in respect of Qualified Capital Stock of the Issuer pursuant to this clause (9)); and

(10) so long as (i) no Default or Event of Default shall have occurred and be continuing (or result therefrom) and (ii) the Issuer could Incur at least U.S.$1.00 of additional Debt pursuant to clause (1) of the first paragraph of the covenant described under "—Limitation on Incurrence of Additional Indebtedness," payment of any dividends on Capital Stock (other than Disqualified Capital Stock) of the Issuer in an aggregate amount which, when taken together with all dividends paid pursuant to this clause (10), does not exceed U.S.$50 million in any calendar year; *provided* that such dividends shall be included in the calculation of the amount of Restricted Payments.

In determining the aggregate amount of Restricted Payments made subsequent to the Issue Date, amounts expended pursuant to clauses (1) (without duplication for the declaration of the relevant dividend), (4), (8) and (10) above shall be included in such calculation and amounts expended pursuant to clauses (2), (3), (5), (6), (7) and (9) above shall not be included in such calculation.

***Limitation on Asset Sales***

The Issuer will not, and will not permit any of its Restricted Subsidiaries to, consummate an Asset Sale unless:

(a) the Issuer or the applicable Restricted Subsidiary, as the case may be, receives consideration at the time of the Asset Sale at least equal to the Fair Market Value (to be determined as of the date on which such sale is contracted) of the assets sold or otherwise disposed of, and

(b) other than in respect of Permitted Asset Swap Transactions, at least 80% of the consideration received for the assets sold by the Issuer or the Restricted Subsidiary, as the case may be, in the Asset Sale shall be in the form of cash or Cash Equivalents received at the time of such Asset

Sale; *provided*, *however*, for the purposes of this clause (b), the following are also deemed to be cash or Cash Equivalents:

(1) the assumption of Indebtedness (other than Subordinated Indebtedness) of the Issuer or any Restricted Subsidiary and the release of the Issuer or such Restricted Subsidiary from all liability on such Indebtedness in connection with such Asset Sale;

(2) any securities, notes or obligation received by the Issuer or any Restricted Subsidiary from the transferee that are, within 180 days after the Asset Sale, converted by the Issuer or such Restricted Subsidiary into cash, to the extent of cash received in that conversion;

(3) Capital Stock of a Person who is or who, after giving effect to such Asset Sale, becomes, a Restricted Subsidiary; and

(4) any Designated Non-cash Consideration received by the Issuer or such Restricted Subsidiary in connection with such Asset Sale having an aggregate Fair Market Value which, when taken together with the Fair Market Value of all other Designated Non-cash Consideration received pursuant to this clause (4) since the Issue Date, does not exceed the sum of (i) 3.0% of Consolidated Tangible Assets of the Issuer calculated as of the end of the most recent fiscal quarter for which consolidated financial information is available (with the Fair Market Value of each item of Designated Non-cash Consideration being measured as of the date it was received and without giving effect to subsequent changes in value of any such item of Designated Non-cash Consideration) and (ii) the amount of cash or Cash Equivalents received in connection with a subsequent sale of such Designated Non-cash Consideration.

The Issuer or any Restricted Subsidiary may apply the Net Cash Proceeds of any such Asset Sale within 365 days thereof to:

(x) repay any Senior Indebtedness for borrowed money or constituting a Capitalized Lease Obligation and permanently reduce the commitments with respect thereto, or

(y) purchase

(1) assets (except for current assets as determined in accordance with GAAP or Capital Stock) to be used by the Issuer or any Restricted Subsidiary in a Permitted Business, or

(2) substantially all of the assets of a Permitted Business or Capital Stock of a Person engaged in a Permitted Business that will become, upon purchase, a Restricted Subsidiary from a Person other than the Issuer and its Restricted Subsidiaries.

To the extent all or a portion of the Net Cash Proceeds of any Asset Sale are not applied within the 365 days of the Asset Sale as described in clause (x) or (y) of the immediately preceding paragraph, the Issuer will make an offer to purchase Notes (the "Asset Sale Offer"), at a purchase price equal to 100% of the principal amount of the Notes to be purchased, plus accrued and unpaid interest thereon, to the date of purchase (the "Asset Sale Offer Amount"). The Issuer will purchase pursuant to an Asset Sale Offer from all tendering holders on a *pro rata* basis, and, at the Issuer's option, on a *pro rata* basis with the holders of any other Senior Indebtedness with similar provisions requiring the Issuer to offer to purchase the other Senior Indebtedness with the proceeds of Asset Sales, that principal amount (or accreted value in the case of Indebtedness issued with original issue discount) of the Notes and the other Senior Indebtedness to be purchased equal to such unapplied Net Cash Proceeds. The Issuer may satisfy its obligations under this covenant with respect to the Net Cash Proceeds of an Asset Sale by making an Asset Sale Offer prior to the expiration of the relevant 365-day period.

Pending the final application of any Net Cash Proceeds pursuant to this covenant, the holder of such Net Cash Proceeds may apply such Net Cash Proceeds temporarily to reduce Indebtedness outstanding under a revolving credit facility or otherwise invest such Net Cash Proceeds in any manner not prohibited by the Indenture.

The purchase of the Notes pursuant to an Asset Sale Offer will occur not less than 20 business days following the date thereof, or any longer period as may be required by law, nor more than 45 days following the 365th day following the Asset Sale. The Issuer may, however, defer an Asset Sale Offer until there is an aggregate amount of unapplied Net Cash Proceeds from one or more Asset Sales equal to or in excess of U.S.$100 million. At that time, the entire amount of unapplied Net Cash Proceeds, and not just the amount in excess of U.S.$100 million, will be applied as required pursuant to this covenant.

Each notice of an Asset Sale Offer will be mailed first class, postage prepaid, to the record holders as shown on the register of holders within 20 days following such 365th day (or such earlier date as the Issuer shall have elected to make such Asset Sale Offer), with a copy to the Trustee offering to purchase the Notes as described above. Each notice of an Asset Sale Offer will state, among other things, the purchase date, which must be no earlier than 30 days nor later than 60 days from the date the notice is mailed, other than as may be required by law (the "Asset Sale Offer Payment Date"). Upon receiving notice of an Asset Sale Offer, holders may elect to tender their Notes in whole or in part in denominations of U.S.$200,000 and integral multiples of U.S.$1,000 in excess thereof in exchange for cash.

On the Asset Sale Offer Payment Date, the Issuer will, to the extent lawful:

(1) accept for payment all Notes or portions thereof properly tendered pursuant to the Asset Sale Offer;

(2) deposit with the Paying Agent funds in an amount equal to the Asset Sale Offer Amount in respect of all Notes or portions thereof so tendered; and

(3) deliver or cause to be delivered to the Trustee the Notes so accepted together with an Officer's Certificate stating the aggregate principal amount of the Notes or portions thereof being purchased by the Issuer.

To the extent holders of the Notes and holders of other Senior Indebtedness, if any, which are the subject of an Asset Sale Offer properly tender and do not withdraw Notes or the other Senior Indebtedness in an aggregate amount exceeding the amount of unapplied Net Cash Proceeds, the Issuer will purchase the Notes and the other Senior Indebtedness on a *pro rata* basis (based on amounts tendered). If only a portion of a Note is purchased pursuant to an Asset Sale Offer, a new Note in a principal amount equal to the portion thereof not purchased will be issued in the name of the holder thereof upon cancellation of the original Note (or appropriate adjustments to the amount and beneficial interests in a global note will be made, as appropriate). Notes (or portions thereof) purchased pursuant to an Asset Sale Offer will be cancelled and cannot be reissued.

The Issuer will comply with the requirements of Rule 14e-1 under the Exchange Act and any other applicable securities laws in connection with the purchase of Notes pursuant to an Asset Sale Offer. To the extent that the provisions of any applicable securities laws or regulations conflict with the "Asset Sale" provisions of the Indenture, the Issuer will comply with these laws and regulations and will not be deemed to have breached its obligations under the "Asset Sale" provisions of the Indenture by doing so.

Upon completion of an Asset Sale Offer, the amount of Net Cash Proceeds will be reset at zero. Accordingly, to the extent that the aggregate amount of the Notes and other Indebtedness tendered pursuant to an Asset Sale Offer is less than the aggregate amount of unapplied Net Cash Proceeds, the Issuer may use any remaining Net Cash Proceeds for general corporate purposes of the Issuer and its Restricted Subsidiaries.

In the event of the transfer of substantially all (but not all) of the property and assets of the Issuer and its Restricted Subsidiaries as an entirety to a Person in a transaction permitted under "—Limitation on Merger, Consolidation and Sale of Assets," the Successor Issuer will be deemed to have sold the properties and assets of the Issuer and its Restricted Subsidiaries not so transferred for purposes of this covenant, and will comply with the provisions of this covenant with respect to the deemed sale as if it were an Asset Sale. In addition, the Fair Market Value of properties and assets of the Issuer or its Restricted Subsidiaries so deemed to be sold will be deemed to be Net Cash Proceeds for purposes of this covenant.

If at any time any non-cash consideration received by the Issuer or any Restricted Subsidiary, as the case may be, in connection with any Asset Sale, is converted into or sold or otherwise disposed of for cash (other than interest received with respect to any non-cash consideration), the conversion or disposition will be deemed to constitute an Asset Sale hereunder and the Net Cash Proceeds thereof will be applied in accordance with this covenant within 365 days of conversion or disposition.

***Limitation on the Ownership of Capital Stock of Restricted Subsidiaries***

The Issuer will not permit any Person other than the Issuer or another Restricted Subsidiary to, directly or indirectly, own or control any Capital Stock of any Restricted Subsidiary, except for:

(1) Capital Stock owned by such Person on the Issue Date;

(2) directors' qualifying shares;

(3) the sale or Disposition of 100% of the shares of the Capital Stock of any Restricted Subsidiary held by the Issuer and its Restricted Subsidiaries to any Person other than the Issuer or another Restricted Subsidiary effected in accordance with, as applicable, "—Limitation on Asset Sales" and "—Limitation on Merger, Consolidation and Sale of Assets";

(4) in the case of a Restricted Subsidiary other than a Restricted Subsidiary that is a Wholly Owned Subsidiary,

  (a) the issuance by that Restricted Subsidiary of Capital Stock on a pro rata basis to the Issuer and its Restricted Subsidiaries, on the one hand, and minority holders of Capital Stock of such Restricted Subsidiary, on the other hand (or on less than a pro rata basis to any minority holder); or

  (b) sales, transfers and other dispositions of Capital Stock in a Restricted Subsidiary to the extent required by, or made pursuant to, buy/sell, put/call or similar shareholder arrangements set forth in binding agreements in effect on the Issue Date; and

(5) the sale of Capital Stock of a Restricted Subsidiary by the Issuer or another Restricted Subsidiary or the sale or issuance by a Restricted Subsidiary of its newly-issued Capital Stock if such sale or issuance is made in compliance with "—Limitation on Asset Sales" and either:

  (a) such Restricted Subsidiary is no longer a Subsidiary, and the continuing Investment of the Issuer and its Restricted Subsidiaries in such former Restricted Subsidiary is in compliance with "—Limitation on Restricted Payments", or

  (b) such Restricted Subsidiary continues to be a Restricted Subsidiary.

***Limitation on Designation of Unrestricted Subsidiaries***

The Issuer may designate after the Issue Date any Subsidiary of the Issuer other than a Guarantor as an "Unrestricted Subsidiary" under the Indenture (a "Designation") only if:

(1) no Default or Event of Default shall have occurred and be continuing at the time of or after giving effect to such Designation and any transactions between the Issuer or any of its Restricted Subsidiaries and such Unrestricted Subsidiary are in compliance with "—Limitation on Transactions with Affiliates";

(2) at the time of and after giving effect to such Designation, the Issuer could Incur U.S.$1.00 of additional Indebtedness pursuant to clause (1) of "—Limitation on Incurrence of Additional Indebtedness";

(3) the Issuer would be permitted to make an Investment at the time of Designation (assuming the effectiveness of such Designation and treating such Designation as an Investment at the time of Designation) as a Restricted Payment pursuant to the first paragraph of "—Limitation on Restricted Payments" in an amount (the "Designation Amount") equal to the amount of the Issuer's Investment in such Subsidiary on such date; and

(4) the terms of any Affiliate Transaction existing on the date of such Designation between the Subsidiary being Designated (and its Subsidiaries) and the Issuer or any Restricted Subsidiary would be permitted under "—Limitation on Transactions with Affiliates" if entered into immediately following such Designation.

Neither the Issuer nor any Restricted Subsidiary will at any time:

(1) provide credit support for, subject any of its property or assets (other than the Capital Stock of any Unrestricted Subsidiary) to the satisfaction of, or Guarantee, any Indebtedness of any Unrestricted Subsidiary (including any undertaking, agreement or instrument evidencing such Indebtedness);

(2) be directly or indirectly liable for any Indebtedness of any Unrestricted Subsidiary; or

(3) be directly or indirectly liable for any Indebtedness which provides that the holder thereof may (upon notice, lapse of time or both) declare a default thereon or cause the payment thereof to be accelerated or payable prior to its final scheduled maturity upon the occurrence of a default with respect to any Indebtedness of any Unrestricted Subsidiary.

The Issuer may revoke any Designation of a Subsidiary as an Unrestricted Subsidiary (a "Revocation") only if:

(1) no Default or Event of Default shall have occurred and be continuing at the time of and after giving effect to such Revocation; and

(2) all Liens and Indebtedness of such Unrestricted Subsidiary outstanding immediately following such Revocation, if Incurred at such time, would have been permitted to be Incurred for all purposes of the Indenture.

The Designation of a Subsidiary of the Issuer as an Unrestricted Subsidiary shall be deemed to include the Designation of all of the Subsidiaries of such Subsidiary as Unrestricted Subsidiaries. All Designations and Revocations must be evidenced by an Officer's Certificate of the Issuer, delivered to the Trustee certifying compliance with the preceding provisions.

***Limitation on Dividends and Other Payment Restrictions Affecting Restricted Subsidiaries***

(a) Except as provided in paragraph (b) below, the Issuer will not, and will not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or permit to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary to:

(1) pay dividends or make any other distributions on or in respect of its Capital Stock to the Issuer or any other Restricted Subsidiary or pay any Indebtedness owed to the Issuer or any other Restricted Subsidiary;

(2) make loans or advances to, or make any Investment in, the Issuer or any other Restricted Subsidiary; or

(3) transfer any of its property or assets to the Issuer or any other Restricted Subsidiary.

(b) Paragraph (a) above will not apply to encumbrances or restrictions existing under or by reason of:

(1) applicable law, rule, regulation or order;

(2) the Indenture;

(3) any encumbrance or restriction pursuant to an agreement in effect at or entered into on the Issue Date, and any amendments, restatements, renewals, replacements or refinancings thereof; *provided*, that any amendment, restatement, renewal, replacement or refinancing is

not materially more restrictive with respect to such encumbrances or restrictions than those in existence on the Issue Date as determined in good faith by the Issuer's senior management;

(4) customary non-assignment provisions of any contract and customary provisions restricting assignment or subletting in any lease governing a leasehold interest of any Restricted Subsidiary, or any customary restriction on the ability of a Restricted Subsidiary to dividend, distribute or otherwise transfer any asset which secures Indebtedness secured by a Lien, in each case permitted to be Incurred under the Indenture;

(5) any instrument governing Acquired Indebtedness not Incurred in connection with, or in anticipation or contemplation of, the relevant acquisition, merger or consolidation, which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person or the properties or assets of the Person so acquired;

(6) restrictions with respect to a Restricted Subsidiary of the Issuer imposed pursuant to a binding agreement which has been entered into for the sale or disposition of Capital Stock or assets of such Restricted Subsidiary; *provided*, that such restrictions apply solely to the Capital Stock or assets of such Restricted Subsidiary being sold (and in the case of Capital Stock, its Subsidiaries);

(7) customary restrictions imposed on the transfer of copyrighted or patented materials;

(8) an agreement governing Indebtedness Incurred to Refinance the Indebtedness issued, assumed or Incurred pursuant to an agreement referred to in clause (3) or (5) of this paragraph (b); *provided*, that such Refinancing agreement is not materially more restrictive with respect to such encumbrances or restrictions than those contained in the agreement referred to in such clause (3) or (5) as determined in good faith by the Issuer's senior management;

(9) Liens permitted to be Incurred pursuant to the provisions of the covenant described under "Certain Covenants—Limitation on Liens" that limit the right of any person to transfer the assets subject to such Liens;

(10) Purchase Money Indebtedness for property acquired in the ordinary course of business and Capitalized Lease Obligations that impose restrictions of the nature discussed in clause (3) of paragraph (a) above on the property so acquired;

(11) restrictions on cash or other deposits imposed by customers under contracts or other arrangements entered into or agreed to in the ordinary course of business not materially more restrictive than those existing on the Issue Date as determined in good faith by the Issuer's senior management;

(12) customary provisions in joint venture agreements relating to dividends or other distributions in respect of such joint venture or the securities, assets or revenues of such joint venture;

(13) restrictions in Indebtedness Incurred by a Restricted Subsidiary in compliance with the covenant described under "Certain Covenants—Limitations on Incurrence of Additional Indebtedness;" *provided* that such restrictions (i) are not materially more restrictive with respect to such encumbrances and restrictions than those such Restricted Subsidiary was subject to in agreements related to obligations referenced in clause (3) above as determined in good faith by the Issuer's senior management or (ii) constitute financial covenants or similar restrictions that limit the ability to pay dividends or make distributions upon the occurrence or continuance of a default or event of default or that would result in a default or event of default under such Indebtedness upon the declaration or payment of dividends or other distributions; and

(14) net worth provisions in leases entered into by the Issuer or any Restricted Subsidiary in the ordinary course of business not materially more restrictive than those existing on the Issue Date as determined in good faith by the Issuer's senior management.

***Limitation on Layered Indebtedness***

The Issuer will not, and will not permit any Guarantor to, directly or indirectly, Incur any Indebtedness that is subordinate in right of payment to any other Indebtedness, unless such Indebtedness is expressly subordinate in right of payment to the Notes or, in the case of a Guarantor, its Note Guarantee, to the same extent, on the same terms and for so long (except as a result of the provisions of the Intercreditor Agreement applicable to Facilities Agreement Indebtedness and any refinancing thereof) as such Indebtedness is subordinate to such other Indebtedness.

***Limitation on Liens***

The Issuer will not, and will not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, incur, grant, assume or suffer to exist any Liens of any kind (except for Permitted Liens) (i) against or upon any of their respective properties or assets, whether owned on the Issue Date or acquired after the Issue Date, or any proceeds therefrom, to secure any Indebtedness or trade payables or (ii) deemed to exist in respect of Capitalized Lease Obligations (including any Capitalized Lease Obligations in respect of Sale and Leaseback Transactions), in each case unless contemporaneously therewith effective provision is made:

(1) in the case of the Issuer or any Restricted Subsidiary that is not a Guarantor, to secure the Notes and all other amounts due under the Indenture; and

(2) in the case of a Guarantor, to secure such Guarantor's Note Guarantee of the Notes and all other amounts due under the Indenture,

in each case, equally and ratably with such Indebtedness or other obligation (or, in the event that such Indebtedness is subordinated in right of payment to the Notes or such Note Guarantee, as the case may be, prior to such Indebtedness or other obligation) with a Lien on the same properties and assets securing such Indebtedness or other obligation for so long as such Indebtedness or other obligation is secured by such Lien.

***Limitation on Merger, Consolidation and Sale of Assets***

(1) The Issuer will not, in a single transaction or series of related transactions, consolidate or merge with or into any Person (whether or not the Issuer is the surviving or continuing Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of the Issuer's properties and assets (determined on a consolidated basis for the Issuer and its Restricted Subsidiaries), to any Person unless:

(a) either:

(1) the Issuer shall be the surviving or continuing corporation, or

(2) the Person (if other than the Issuer) formed by such consolidation or into which the Issuer is merged or the Person which acquires by sale, assignment, transfer, lease, conveyance or other disposition the properties and assets of the Issuer (determined on a consolidated basis for the Issuer and its Restricted Subsidiaries) substantially as an entirety (the "Successor Issuer")

(i) shall be a Person organized and validly existing under the laws of Mexico, the United States of America, any State thereof or the District of Columbia, Canada, France, Belgium, Germany, Italy, Luxembourg, the Netherlands, Portugal, Spain, Switzerland or the United Kingdom, or any political subdivision thereof (the "Permitted Merger Jurisdictions"); and

(ii) shall expressly assume by a supplemental indenture (in form and substance satisfactory to the Trustee), executed and delivered to the Trustee, the due and punctual payment of the principal of, and premium, if any, and interest on all of the Notes and the performance and observance of every covenant of the Notes and the Indenture on the part of the Issuer to be performed or observed and provide the Trustee with an Officer's Certificate and Opinion of Counsel, and such transaction is otherwise in compliance with the Indenture;

(b) immediately after giving effect to such transaction and the assumption contemplated by clause (a)(2)(ii) above (including giving effect on a *pro forma* basis to any Indebtedness, including any Acquired Indebtedness, Incurred or anticipated to be Incurred or discharged in connection with or in respect of such transaction):

(1) the Issuer will have a Consolidated Fixed Charge Coverage Ratio that will be not less than the Consolidated Fixed Charge Coverage Ratio of the Issuer immediately prior to such transaction; or

(2) the Issuer or such Successor Issuer, as the case may be, will be able to Incur at least U.S.$1.00 of additional Indebtedness pursuant to clause (1) of "—Limitation on Incurrence of Additional Indebtedness";

(c) immediately before and immediately after giving effect to such transaction and the assumption contemplated by clause (a)(2)(ii) above (including, without limitation, giving effect on a *pro forma* basis to any Indebtedness, including any Acquired Indebtedness, Incurred or anticipated to be Incurred or discharged and any Lien granted in connection with or in respect of the transaction), no Default or Event of Default shall have occurred or be continuing;

(d) in the case of a transaction resulting in a Successor Issuer, each Guarantor has confirmed by supplemental indenture that its Note Guarantee will apply for Obligations of the Successor Issuer in respect of the Indenture and the Notes; and

(e) if the Issuer merges with a Person, or the Successor Issuer is, organized under the laws of any of the Permitted Merger Jurisdictions, the Issuer or the Successor Issuer will have delivered to the Trustee an Opinion of Counsel stating that, as applicable:

(1) the holders of the Notes will not recognize income, gain or loss for the purposes of the income tax laws of the United States or the applicable Permitted Merger Jurisdiction as a result of the transaction and will be taxed in the holder's home jurisdiction in the same manner and on the same amounts (assuming solely for this purpose that no Additional Amounts are required to be paid on the Notes) and at the same times as would have been the case if the transaction had not occurred;

(2) any payment of interest or principal under or relating to the Notes or any Guarantees will be paid in compliance with any requirements under the section "—Additional Amounts;" and

(3) no other taxes on income, including capital gains, will be payable by holders of the Notes under the laws of the United States or the applicable Permitted Merger Jurisdiction relating to the acquisition, ownership or disposition of the Notes, including the receipt of interest or principal thereon; *provided* that the holder does not use or hold, and is not deemed to use or hold, the Notes in carrying on a business in the United States or the applicable Permitted Merger Jurisdiction.

The provisions of clauses (b) and (c) of the previous paragraph will not apply to:

(1) any transfer of the properties or assets of a Restricted Subsidiary to the Issuer;

(2) any merger of a Restricted Subsidiary into the Issuer; or

(3) any merger of the Issuer into a Guarantor or a Wholly Owned Subsidiary of the Issuer.

For purposes of this covenant, the transfer (by lease, assignment, sale or otherwise, in a single transaction or series of transactions) of all or substantially all of the properties or assets of one or more Restricted Subsidiaries of the Issuer, the Capital Stock of which constitutes all or substantially all of the properties and assets of the Issuer (determined on a consolidated basis for the Issuer and its Restricted Subsidiaries), will be deemed to be the transfer of all or substantially all of the properties and assets of the Issuer.

The Successor Issuer will succeed to, and be substituted for, such Issuer under the Indenture and the Notes, as applicable. For the avoidance of doubt, compliance with this covenant will not affect the obligations of the Issuer (including a Successor Issuer, if applicable) under "—Change of Control," if applicable.

(2) Each Guarantor will not, and the Issuer will not cause or permit any such Guarantor to, consolidate with or merge into, or sell or dispose of all or substantially all of its assets to, any Person (other than the Issuer) that is not a Guarantor unless:

(a) such Person (if such Person is the surviving entity) (the "Successor Guarantor") assumes all of the obligations of such Guarantor in respect of its Note Guarantee by executing a supplemental indenture and providing the Trustee with an Officer's Certificate and Opinion of Counsel, and such transaction is otherwise in compliance with the Indenture;

(b) such Note Guarantee is to be released as provided under "Note Guarantees"; or

(c) such sale or other disposition of substantially all of such Guarantor's assets is made in accordance with "—Limitation on Asset Sales."

Subject to certain limitations described in the Indenture, the Successor Guarantor will succeed to, and be substituted for, such Guarantor under the Indenture and such Guarantor's Note Guarantee. The provisions of the previous paragraph will not apply to:

(1) any transfer of the properties or assets of a Guarantor to the Issuer or another Guarantor;

(2) any merger of a Guarantor into the Issuer or another Guarantor; or

(3) any merger of a Guarantor into a Wholly Owned Subsidiary of the Issuer.

***Limitation on Transactions with Affiliates***

(1) The Issuer will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into any transaction or series of related transactions (including, without limitation, the purchase, sale, lease or exchange of any property or the rendering of any service) with, or for the benefit of, any of its Affiliates (each an "Affiliate Transaction"), unless the terms of such Affiliate Transaction are no less favorable than those that could reasonably be expected to be obtained in a comparable transaction at such time on an arm's length basis from a Person that is not an Affiliate of the Issuer.

(2) Paragraph (1) above will not apply to:

(a) Affiliate Transactions with or among the Issuer and any Restricted Subsidiary or between or among Restricted Subsidiaries;

(b) reasonable fees and compensation paid to, and any indemnity provided on behalf of, officers, directors, employees, consultants or agents of the Issuer or any Restricted Subsidiary as determined in good faith by the Issuer's Board of Directors or, to the extent consistent with past practice, senior management;

(c) Affiliate Transactions undertaken pursuant to any contractual obligations or rights in existence on the Issue Date (as in effect on the Issue Date with modifications, extensions and replacements thereof not materially adverse to the Issuer and its Restricted Subsidiaries) as determined in good faith by the Issuer's senior management;

(d) any Restricted Payments in compliance with "Limitation on Restricted Payments";

(e) payments and issuances of Qualified Capital Stock to any officers, directors and employees of the Issuer or any Restricted Subsidiary pursuant to any management equity plan or stock option plan or any other stock subscription or shareholder agreement, and any employment agreements, stock option plans or other compensatory arrangements (and any successor plans thereto) and any supplemental executive retirement benefit plans or arrangements with any such officers, directors or employees that are, in each case, approved in good faith by the Board of Directors or, to the extent consistent with past practice, senior management of the Issuer;

(f) loans and advances to officers, directors and employees of the Issuer or any Restricted Subsidiary for travel, entertainment, moving and other relocation expenses, in each case made in the ordinary course of business in amounts consistent with the past practice of the Issuer or such Restricted Subsidiary; and

(g) loans made by the Issuer or any Restricted Subsidiary to employees or directors in an aggregate amount not to exceed U.S.$15 million (or its equivalent in another currency) at any time outstanding.

***Conduct of Business***

The Issuer and its Restricted Subsidiaries will not engage in any business other than a Permitted Business.

***Reports to Holders***

Notwithstanding that the Issuer may not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, so long as any Notes remain outstanding, the Issuer will:

(1) provide the Trustee and the holders with:

(a) annual reports on Form 20-F (or any successor form) containing the information required to be contained therein (or such successor form) within the time period required under the rules of the Commission for the filing of Form 20-F (or any successor form) by "foreign private issuers" (as defined in Rule 3b-4 of the Exchange Act (or any successor rule));

(b) reports on Form 6-K (or any successor form) including, whether or not required, unaudited quarterly financial statements (which will include at least a balance sheet, income statement and cash flow statement) including a discussion of financial condition and results of operations of the Issuer in accordance with past practice, within 45 days after the end of each of the first three fiscal quarters of each fiscal year; and

(c) such other reports on Form 6-K (or any successor form) promptly from time to time after the occurrence of an event that would be required to be reported on a Form 6-K (or any successor form); and

(2) file with the Commission, to the extent permitted, the information, documents and reports referred to in clause (1) within the periods specified for such filings under the Exchange Act (whether or not applicable to the Issuer).

In addition, at any time when the Issuer is not subject to or is not current in its reporting obligations under clause (2) of the preceding paragraph, the Issuer will make available, upon request, to any holder and any prospective purchaser of the Notes the information required pursuant to Rule 144A(d)(4) under the Securities Act.

Notwithstanding anything in the Indenture to the contrary, the Issuer will not be deemed to have failed to comply with any of its obligations hereunder for purposes of clause (4) under "Events of Default" or for any other purpose hereunder until 75 days after the date any report hereunder is due.

Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such reports shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Issuer's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates).

**Listing**

Application has been made to the Irish Stock Exchange for the approval of this offering memorandum as "listing particulars." Application has been made to the Irish Stock Exchange for the Notes to be admitted to trading on the Global Exchange Market which is the exchange regulated market of the Irish Stock Exchange. The Global Exchange Market is not a regulated market for the purposes of Directive 2004/39/EC. There can be no guarantee that the Notes become listed, and if listed, that they remain listed. See "Risk Factors—Risks Relating to the Notes—An active trading market for the Notes may not develop and they may not be listed on any exchange."

**Notices**

All notices to Holders of the Notes will be validly given if mailed to them at their respective addresses in the register of the Holders of such Notes, if any, maintained by the registrar. For so long as any Notes are represented by global notes, all notices to Holders of the Notes will be delivered to Euroclear, Clearstream and DTC, delivery of which shall be deemed to satisfy the requirements of this paragraph.

Each such notice shall be deemed to have been given on the date of delivery or mailing. Any notice or communication mailed to a Holder shall be mailed to such Person by first-class mail or other equivalent means and shall be sufficiently given to them if so mailed within the time prescribed. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

**Events of Default**

The following are "Events of Default":

(1) default in the payment when due of the principal of or premium, if any, on any Note, including the failure to make a required payment to purchase Notes tendered pursuant to an optional redemption, a Change of Control Offer or an Asset Sale Offer;

(2) default for 30 days or more in the payment when due of interest or Additional Amounts on any Notes;

(3) the failure to perform or comply with any of the provisions described under "Certain Covenants—Limitation on Merger, Consolidation and Sale of Assets;"

(4) the failure by the Issuer or any Restricted Subsidiary to comply with, or in the case of non-guarantor Restricted Subsidiaries, to perform according to, any other covenant or agreement contained in the Indenture or in the Notes for 45 days or more after written notice to the Issuer from the Trustee or the holders of at least 25% in aggregate principal amount of the outstanding Notes;

(5) default by the Issuer or any Restricted Subsidiary under any Indebtedness which:

(a) is caused by a failure to pay principal of or premium, if any, when due or interest on such Indebtedness prior to the later of the expiration of any applicable grace period provided in such Indebtedness on the date of such default or five days past when due; or

(b) results in the acceleration of such Indebtedness prior to its stated maturity;

and the principal or accreted amount of Indebtedness covered by (a) or (b) at the relevant time, aggregates U.S.$50 million or more;

(6) failure by the Issuer or any of its Restricted Subsidiaries to pay one or more final judgments against any of them, aggregating U.S.$100 million or more, which judgment(s) are not paid, discharged or stayed for a period of 60 days or more;

(7) certain events of bankruptcy under applicable law (including *concurso mercantil* or *quiebra*) affecting the Issuer or any of its Significant Subsidiaries or group of Subsidiaries that, taken together, would constitute a Significant Subsidiary; or

(8) except as permitted by the Indenture, any Note Guarantee is held to be unenforceable or invalid in a judicial proceeding or ceases for any reason to be in full force and effect or any Guarantor, or any Person acting on behalf of any Guarantor, denies or disaffirms such Guarantor's obligations under its Note Guarantee.

If an Event of Default (other than an Event of Default specified in clause (7) above with respect to the Issuer) shall occur and be continuing, the Trustee or the holders of at least 25% in principal amount of outstanding Notes may declare the unpaid principal of (and premium, if any) and accrued and unpaid interest on all the Notes to be immediately due and payable by notice in writing to the Issuer and the Trustee specifying the Event of Default and that it is a "notice of acceleration." If an Event of Default specified in clause (7) above occurs with respect to the Issuer, then the unpaid principal of (and premium, if any) and accrued and unpaid interest on all the Notes will become immediately due and payable without any declaration or other act on the part of the Trustee or any holder.

At any time after a declaration of acceleration with respect to the Notes as described in the preceding paragraph, the holders of a majority in principal amount of the Notes may rescind and cancel such declaration and its consequences:

(1) if the rescission would not conflict with any judgment or decree;

(2) if all existing Events of Default have been cured or waived, except nonpayment of principal or interest that has become due solely because of the acceleration;

(3) to the extent the payment of such interest is lawful, interest on overdue installments of interest and overdue principal, which has become due otherwise than by such declaration of acceleration, has been paid; and

(4) if the Issuer has paid the Trustee its reasonable compensation and reimbursed the Trustee for its reasonable expenses, disbursements and advances.

No rescission will affect any subsequent Default or impair any rights relating thereto.

The holders of a majority in principal amount of the Notes may waive any existing Default or Event of Default under the Indenture, and its consequences, except a default in the payment of the principal of, premium, if any, or interest on any Notes.

Subject to the provisions of the Indenture relating to the duties of the Trustee, the Trustee is under no obligation to exercise any of its rights or powers under the Indenture at the request, order or direction of any of the holders, unless such holders have offered to the Trustee indemnity satisfactory to it. Subject to all provisions of the Indenture and applicable law, the holders of a majority in aggregate principal amount of the then outstanding Notes have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee.

No holder of any Notes will have any right to institute any proceeding with respect to the Indenture or for any remedy thereunder, unless:

(1) such holder gives to the Trustee written notice of a continuing Event of Default;

(2) holders of at least 25% in principal amount of the then outstanding Notes make a written request to pursue the remedy;

(3) such holders of the Notes provide the Trustee indemnity satisfactory to it;

(4) the Trustee does not comply within 60 days; and

(5) during such 60 day period the holders of a majority in principal amount of the outstanding Notes do not give the Trustee a written direction which, in the opinion of the Trustee, is inconsistent with the request;

*provided*, that a holder of a Note may institute suit for enforcement of payment of the principal of and premium, if any, or interest on such Note on or after the respective due dates expressed in such Note.

The Issuer is required to deliver to the Trustee written notice of any event which would constitute certain Defaults or Events of Default, their status and what action the Issuer is taking or proposes to take in respect thereof. In addition, the Issuer is required to deliver to the Trustee, within 105 days after the end of each fiscal year, an Officer's Certificate indicating whether the signers thereof know of any Default or Event of Default that occurred during the previous fiscal year. The Indenture provides that if a Default or Event of Default occurs, is continuing and is actually known to the Trustee, the Trustee must mail to each holder notice of the Default or Event of Default within 90 days after the occurrence thereof. Except in the case of a Default or Event of Default in the payment of principal of, premium, if any, or interest on any Note, the Trustee may withhold notice if and so long as a committee of its trust officers in good faith determines that withholding notice is in the interest of the holders.

**Legal Defeasance and Covenant Defeasance**

The Issuer may, at its option and at any time, elect to have its obligations discharged with respect to the outstanding Notes ("Legal Defeasance"). Such Legal Defeasance means that the Issuer will be deemed to have paid and discharged the entire indebtedness represented by the outstanding Notes upon fulfillment of the conditions described below, except for:

(1) the rights of holders to receive payments in respect of the principal of, premium, if any, and interest on the Notes when such payments are due from the trust described below;

(2) the Issuer's obligations with respect to the Notes concerning issuing temporary Notes, registration of Notes, mutilated, destroyed, lost or stolen Notes and the maintenance of an office or agency for payments;

(3) the rights, powers, trust, duties and immunities of the Trustee and the Issuer's obligations in connection therewith; and

(4) the Legal Defeasance provisions of the Indenture.

In addition, the Issuer may, at its option and at any time, elect to have its obligations released with respect to certain covenants that are described in the Indenture ("Covenant Defeasance") and thereafter any omission to comply with such obligations will not constitute a Default or Event of Default with respect to the Notes. In the event Covenant Defeasance occurs, certain events (not including non-payment, bankruptcy, receivership, reorganization and insolvency events) described under "Events of Default" will no longer constitute an Event of Default with respect to the Notes.

In order to exercise either Legal Defeasance or Covenant Defeasance:

(1) the Issuer must irrevocably deposit with the Trustee, in trust, for the benefit of the holders, cash in U.S. dollars, certain direct non-callable obligations of, or guaranteed by, the United States, or a combination thereof, in such amounts as will be sufficient without reinvestment, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of, premium, if any, and interest (including Additional Amounts) on the Notes on the stated date for payment thereof or on the applicable redemption date, as the case may be;

(2) in the case of Legal Defeasance, the Issuer must deliver to the Trustee an Opinion of Counsel from counsel reasonably acceptable to the Trustee and independent of the Issuer to the effect that:

(a) the Issuer has received from, or there has been published by, the Internal Revenue Service a ruling; or

(b) since the Issue Date, there has been a change in the applicable U.S. federal income tax law,

in either case to the effect that, and based thereon such Opinion of Counsel shall state that, the holders will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Legal Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(3) in the case of Covenant Defeasance, the Issuer must deliver to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee to the effect that the holders will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Covenant Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(4) no Default or Event of Default shall have occurred and be continuing on the date of the deposit pursuant to clause (1) of this paragraph (except any Default or Event of Default resulting from the failure to comply with "Certain Covenants—Limitation on Incurrence of Additional Indebtedness" as a result of the borrowing of funds required to effect such deposit);

(5) the Trustee has received an Officer's Certificate stating that such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under the Indenture or any other material agreement or instrument to which the Issuer or any of its Subsidiaries is a party or by which the Issuer or any of its Subsidiaries is bound;

(6) the Issuer has delivered to the Trustee an Officer's Certificate stating that the deposit was not made by the Issuer with the intent of preferring the holders over any other creditors of the Issuer or any Subsidiary of the Issuer or with the intent of defeating, hindering, delaying or defrauding any other creditors of the Issuer or others;

(7) the Issuer has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel from counsel reasonably acceptable to the Trustee and independent of the Issuer, each stating that all conditions precedent provided for or relating to the Legal Defeasance or the Covenant Defeasance have been complied with; and

(8) the Issuer has delivered to the Trustee an Opinion of Counsel from counsel reasonably acceptable to the Trustee and independent of the Issuer to the effect that the trust resulting from the deposit does not constitute, or is qualified as, a regulated investment company under the Investment Company Act of 1940.

**Satisfaction and Discharge**

The Indenture will be discharged and will cease to be of further effect (except as to surviving rights or registration of transfer or exchange of the Notes, as expressly provided for in the Indenture) as to all outstanding Notes when:

(1) either:

(a) all the Notes theretofore authenticated and delivered (except lost, stolen or destroyed Notes which have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Issuer and thereafter repaid to the Issuer or discharged from such trust) have been delivered to the Trustee for cancellation; or

(b) all Notes not theretofore delivered to the Trustee for cancellation have become due and payable, and the Issuer has irrevocably deposited or caused to be deposited with the Trustee funds or certain direct, non-callable obligations of, or guaranteed by, the United States sufficient without reinvestment to pay and discharge the entire Indebtedness on the Notes not theretofore delivered to the Trustee for cancellation, for principal of, premium, if any, and interest on the Notes to the date of deposit, together with irrevocable instructions from the Issuer directing the Trustee to apply such funds to the payment;

(2) the Issuer has paid all other sums payable under the Indenture and the Notes by it; and

(3) the Issuer has delivered to the Trustee an Officer's Certificate stating that all conditions precedent under the Indenture relating to the satisfaction and discharge of the Indenture have been complied with.

**Modification of the Indenture**

From time to time, the Issuer, the Guarantors and the Trustee, without the consent of the holders, may amend the Indenture or the Notes for certain specified purposes, including curing ambiguities, defects or inconsistencies, adding Note Guarantees or covenants, issuing Additional Notes, and making other changes which do not adversely affect the rights of any of the holders in any material respect. In executing such supplemental indentures, the Trustee will be entitled to rely on, and will be fully protected in relying on, such evidence as it deems appropriate, including solely on an Opinion of Counsel and Officer's Certificate. Other modifications and amendments of the Indenture or the Notes may be made with the consent of the holders of a majority in principal amount of the then outstanding Notes issued under the Indenture, except that, without the consent of each holder affected thereby, no amendment may:

(1) reduce the amount of Notes whose holders must consent to an amendment or waiver;

(2) reduce the rate of or change or have the effect of changing the time for payment of interest, including defaulted interest, on any Notes;

(3) reduce the principal of or change or have the effect of changing the fixed maturity of any Notes, or change the date on which any Notes may be subject to redemption, or reduce the redemption price therefor;

(4) make any Notes payable in money other than that stated in the Notes;

(5) make any change in provisions of the Indenture entitling each holder to receive payment of principal of, premium, if any, and interest on such Note on or after the due date thereof or to bring suit to enforce such payment, or permitting holders of a majority in principal amount of Notes to waive Defaults or Events of Default;

(6) amend, change or modify in any material respect the obligation of the Issuer to make and consummate a Change of Control Offer in respect of a Change of Control that has occurred or make and consummate an Asset Sale Offer with respect to any Asset Sale that has been consummated;

(7) make any change in the provisions of the Indenture described under "Additional Amounts" that adversely affects the rights of any holder or amend the terms of the Notes in a way that would result in a loss of exemption from Taxes; and

(8) make any change to the provisions of the Indenture or the Notes that adversely affect the ranking of the Notes.

**Governing Law; Jurisdiction**

The Indenture and the Notes will be governed by, and construed in accordance with, the law of the State of New York. The Issuer and the Guarantors have consented to the jurisdiction of the Federal and State courts located in The City of New York, Borough of Manhattan and have appointed an agent for service of process with respect to any actions brought in these courts arising out of or based on the Indenture or the Notes.

**The Trustee**

Except during the continuance of an Event of Default, the Trustee will perform only such duties as are specifically set forth in the Indenture. During the existence of an Event of Default, the Trustee will exercise such rights and powers vested in it by the Indenture, and use the same degree of care and skill in its exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

The Indenture contains certain limitations on the rights of the Trustee, should it become a creditor of the Issuer, to obtain payments of claims in certain cases or to realize on certain property received in respect of any such claim as security or otherwise.

**No Personal Liability**

An incorporator, director, officer, employee, stockholder or controlling person, as such, of the Issuer or any Guarantor will not have any liability for any obligations of the Issuer or any Guarantor under the Notes or the Indenture or for any claims based on, in respect of or by reason of such obligations or their creation. By accepting a Note, each holder waives and releases all such liability.

**Currency Indemnity**

The Issuer and each Guarantor will pay all sums payable under the Notes solely in U.S. Dollars. Any amount that you receive or recover in a currency other than U.S. Dollars in respect of any sum expressed to be due to you from the Issuer or any Guarantor will only constitute a discharge to us to the extent of the U.S. Dollar amount which you are able to purchase with the amount received or recovered in that other currency on the date of the receipt or recovery or, if it is not practicable to make the purchase on that date, on the first date on which you are able to do so. If the U.S. Dollar amount is less than the U.S. Dollar amount expressed to be due to you under any Note, the Issuer and each Guarantor will indemnify you, to the greatest extent permitted by law, against any loss you sustain as a result. In any event, the Issuer and each Guarantor will indemnify you, to the greatest extent permitted by law, against the cost of making any purchase of U.S. Dollars. For the purposes of this paragraph, it will be sufficient for you to certify in a satisfactory manner that you would have suffered a loss had an actual purchase of U.S. Dollars been made with the amount received in that other currency on the date of receipt or recovery or, if it was not practicable to make the purchase on that date, on the first date on which you were able to do so. In addition, you will also be required to certify in a satisfactory manner the need for a change of the purchase date.

The indemnities described above:

- constitute a separate and independent obligation from the other obligations of the Issuer and the Guarantors;
- will give rise to a separate and independent cause of action;
- will apply irrespective of any indulgence granted by any holder; and
- will continue in full force and effect despite any other judgment, order, claim or proof for a liquidated amount in respect of any sum due under any Note.

**Certain Definitions**

Set forth below is a summary of certain of the defined terms used in the Indenture. Reference is made to the Indenture for a full definition of all such terms, as well as any other terms used herein for which no definition is provided.

"*2009 Financing Agreement*" means the financing agreement, dated as of August 14, 2009, entered into among the Issuer and certain of its Subsidiaries, the financial institutions and noteholders party thereto, Citibank

International PLC, as administrative agent, and Wilmington Trust (London) Limited, as security agent, as such agreement may be amended, modified or waived from time to time.

"*Acquired Indebtedness*" means Indebtedness of a Person or any of its Subsidiaries existing at the time such Person becomes a Restricted Subsidiary or at the time it merges or consolidates with the Issuer or any of its Restricted Subsidiaries or is assumed in connection with the acquisition of assets from such Person. Such Indebtedness will be deemed to have been Incurred at the time such Person becomes a Restricted Subsidiary or at the time it merges or consolidates with the Issuer or a Restricted Subsidiary or at the time such Indebtedness is assumed in connection with the acquisition of assets from such Person.

"*Acquired Subsidiary*" means any Subsidiary acquired by the Issuer or any other Subsidiary after the Issue Date in an Acquisition, and any Subsidiaries of such Acquired Subsidiary on the date of such Acquisition.

"*Acquiring Subsidiary*" means any Subsidiary formed by the Issuer or one of its Subsidiaries solely for the purpose of participating as the acquiring party in any Acquisition, and any Subsidiaries of such Acquiring Subsidiary acquired in such Acquisition.

"*Acquisition*" means any merger, consolidation, acquisition or lease of assets, acquisition of securities or business combination or acquisition, or any two or more of such transactions, if, upon the completion of such transaction or transactions, the Issuer or any Restricted Subsidiary thereof has acquired an interest in any Person who would be deemed to be a Restricted Subsidiary under the Indenture and was not a Restricted Subsidiary prior thereto.

"*Additional Amounts*" has the meaning set forth under "—Additional Amounts" above.

"*Additional Guarantors*" has the meaning set forth under "—General" above.

"*Additional Notes*" has the meaning set forth under "—Additional Notes" above.

"*Affiliate*" means, with respect to any specified Person, any other Person who directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such specified Person. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. For purposes of this definition, the terms "controlling," "controlled by" and "under common control with" have correlative meanings.

"*Affiliate Transaction*" has the meaning set forth in "Certain Covenants—Limitations on Transactions with Affiliates" above.

"*Asset Sale*" means any direct or indirect sale, disposition, issuance, conveyance, transfer, lease (other than an operating lease entered into in the ordinary course of business), assignment or other transfer, including a Sale and Leaseback Transaction (each, a "disposition") by the Issuer or any Restricted Subsidiary of:

(1) any Capital Stock other than Capital Stock of the Issuer; or

(2) any property or assets (other than cash, Cash Equivalents or Capital Stock) of the Issuer or any Restricted Subsidiary;

Notwithstanding the preceding, the following will not be deemed to be Asset Sales:

(a) the disposition of all or substantially all of the assets of the Issuer and its Restricted Subsidiaries as permitted under "Certain Covenants—Limitation on Merger, Consolidation and Sale of Assets;"

(b) any disposition of equipment that is not usable or obsolete or worn out equipment in the ordinary course of business or any disposition of inventory or goods (or other assets) held for sale or no longer used in the ordinary course of business;

(c) dispositions of assets in any fiscal year with a Fair Market Value not to exceed U.S.$25 million in the aggregate;

(d) for purposes of "Certain Covenants—Limitation on Asset Sales" only, the making or disposition of a Permitted Investment or Restricted Payment permitted under "Certain Covenants—Limitation on Restricted Payments";

(e) a disposition to the Issuer or a Restricted Subsidiary, including a Person that is or will become a Restricted Subsidiary immediately after the disposition;

(f) the creation of a Lien permitted under the Indenture (other than a deemed Lien in connection with a Sale and Leaseback Transaction);

(g) (i) the disposition of Receivables Assets pursuant to a Qualified Receivables Transaction and (ii) the disposition of other accounts receivable in the ordinary course of business;

(h) the disposition of any asset constituted by a license of intellectual property in the ordinary course of business;

(i) the disposition of inventory pursuant to an Inventory Financing or similar arrangement that is otherwise permitted under the Indenture;

(j) the disposition of any asset compulsorily acquired by a governmental authority; and

(k) sales, transfers and other dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements.

"*Asset Sale Offer*" has the meaning set forth under "Certain Covenants—Limitation on Asset Sales" above.

"*Axtel Share Forward Transaction*" means the Axtel share forward transaction that is governed by a long form confirmation originally dated January 22, 2009, as replaced by long form confirmations dated September 28, 2010 and March 19, 2012, and as further replaced by a long form confirmation dated August 27, 2013, between Credit Suisse International and Centro Distribuidor de Cemento, S.A. de C.V. (References: External ID: 16059563R5-Risk ID: 10008383) and any replacements, amendments or renewals thereof that are entered into on then prevailing market terms with the underlying amounts not greater than the original underlying amounts.

"*Bancomext Facility*" means the U.S.$250,000,000 credit agreement (*Crédito Simple*), dated October 14, 2008, as amended from time to time (*provided* that the principal amount thereof does not increase above the principal amount outstanding as of August 14, 2009 (except by the amount of any capitalized interest if so provided by such facility and on those terms as of August 14, 2009 ) less the amount of any repayments and prepayments made in respect of such facility), among the Issuer, as borrower, Banco Nacional de Comercio Exterior, S.N.C., as lender, and CEMEX México, as guarantor, and secured by the mortgage of a cement plant in Ensenada, Baja California, Mexico.

"*Banobras Facility*" means a revolving loan agreement (*Contrato de Apertura de Crédito en Cuenta Corriente*), dated April 22, 2009, among CEMEX Concretos, S.A. de C.V., as borrower and Banco Nacional de Obras y Servicios Públicos, S.N.C., as lender, as in effect on the Issue Date and as amended from time to time, and secured by a mortgage of Planta Yaqui in Hermosillo, Sonora, Mexico.

"*Board of Directors*" means, as to any Person, the board of directors, management committee or similar governing body of such Person or any duly authorized committee thereof.

"*Business Day*" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City, Mexico City, Madrid, Amsterdam, London, Paris or Zurich are authorized or required by law, regulation or other governmental action to remain closed.

"*Calculation Agent*" has the meaning set forth under "Principal, Maturity and Interest—Determination of Floating Interest Rate" above.

"*Capital Stock*" means:

(1) with respect to any Person that is a corporation, any and all shares, interests, participations or other equivalents (however designated and whether or not voting) of corporate stock, including each class of Common Stock and Preferred Stock of such Person;

(2) with respect to any Person that is not a corporation, any and all partnership or other equity or ownership interests of such Person; and

(3) any warrants, rights or options to purchase any of the instruments or interests referred to in clause (1) or (2) above, but excluding any Indebtedness exchangeable into such equity interest in existence on the Issue Date or Incurred pursuant to "Certain Covenants—Limitation on Incurrence of Additional Indebtedness."

"*Capitalized Lease Obligations*" means, as to any Person, the obligations of such Person under a lease that are required to be classified and accounted for as capital lease obligations under GAAP. For purposes of the definition, the amount of such obligations at any date will be the capitalized amount of such obligations at such date, determined in accordance with GAAP.

"*Cash Equivalents*" means:

(1) marketable direct obligations issued by, or unconditionally guaranteed by, the United States government, the United Kingdom or any member nation of the European Union or issued by any agency thereof and backed by the full faith and credit of the United States, the United Kingdom, such member nation of the European Union or any European Union central bank, in each case maturing within one year from the date of acquisition thereof;

(2) marketable direct obligations issued by the Mexican government, or issued by any agency thereof, including but not limited to, Certificados de la Tesorería de la Federación (Cetes) or Bonos de Desarrollo del Gobierno Federal (Bondes), in each case, issued by the government of Mexico and maturing not later than one year after the acquisition thereof;

(3) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either S&P or Fitch or any successor thereto;

(4) commercial paper or corporate debt obligations maturing no more than one year from the date of creation thereof and, at the time of acquisition, having a rating of at least A-1 or AAA from S&P, at least F-1 or AAA from Fitch or P-1 or Aaa from Moody's;

(5) demand deposits, certificates of deposit, time deposits or bankers' acceptances or other short-term unsecured debt obligations (and any cash or deposits in transit in any of the foregoing) maturing within one year from the date of acquisition thereof issued by (a) any bank organized under the laws of the United States of America or any state thereof or the District of Columbia, the United Kingdom or any country of the European Union, (b) any U.S. branch of a non-U.S. bank having at the date of acquisition thereof combined capital and surplus of not less than U.S.$500 million, or (c) in the case of Mexican peso deposits, any financial institution in good standing with Banco de México organized under the laws of Mexico;

(6) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clause (1) and (2) above entered into with any bank meeting the qualifications specified in clause (5) above;

(7) investments in money market funds which invest substantially all of their assets in securities of the types described in clauses (1) through (6), (8) and (9);

(8) certificates of deposit issued by any of Nacional Financiera, S.N.C., Banco Nacional de Comercio Exterior, S.N.C., Banco Nacional de Obras y Servicios Públicos, S.N.C. or any other development bank controlled by the Mexican government;

(9) any other debt instrument rated "investment grade" (or the local equivalent thereof according to local criteria in a country in which the Issuer or a Restricted Subsidiary operates and in which local pensions are permitted by law to invest) with maturities of 12 months or less from the date of acquisition; and

(10) Investments in mutual funds, managed by banks, with a local currency credit rating of at least MxAA by S&P or other equally reputable local rating agency, that invest principally in marketable direct obligations issued by the Mexican Government, or issued by any agency or instrumentality thereof.

In the case of Investments by any Restricted Subsidiary, Cash Equivalents will also include (a) investments of the type and maturity described in clauses (1) through (10) of any Restricted Subsidiary outside of Mexico in the country in which such Restricted Subsidiary operates, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalents ratings from comparable foreign rating agencies, (b) local currencies and other short-term investments utilized by Restricted Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (1) through (10) and in this paragraph and (c) investments of the type described in clauses (1) through (9) maturing within one year of the Issue Date.

"*Certificados Bursátiles*" means debt securities issued by the Issuer guaranteed (*por aval*) by CEMEX México and Empresas Tolteca de México, S.A. de C.V., wholly owned subsidiaries of the Issuer, in the Mexican capital markets with the approval of the Mexican National Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores*) and listed on the Mexican Stock Exchange.

"*Change of Control*" means the beneficial ownership (within the meaning of Rule 13d-3 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended) of twenty percent (20%) or more in voting power of the outstanding voting stock of the Issuer is acquired by any Person; *provided that* the acquisition of beneficial ownership of Capital Stock of the Issuer by Lorenzo H. Zambrano or any member of his immediate family shall not constitute a Change of Control.

"*Change of Control Offer*" has the meaning set forth under "—Change of Control" above.

"*Change of Control Payment*" has the meaning set forth under "—Change of Control" above.

"*Change of Control Payment Date*" has the meaning set forth under "—Change of Control" above.

"*Collateral*" has the meaning set forth under "Security Interest" above.

"*Commission*" means the U.S. Securities and Exchange Commission.

"*Commodity Price Purchase Agreement*" means, in respect of any Person, any forward contract, commodity swap agreement, commodity option agreement or other similar agreement or arrangement designed to protect such Person from fluctuations in commodity prices.

"*Common Stock*" of any Person means any and all shares, interests or other participations in, and other equivalents (however designated and whether voting or non-voting) of such Person's common equity interests, whether outstanding on the Issue Date or issued after the Issue Date, and includes, without limitation, all series and classes of such common equity interests.

"*Compensation Related Hedging Obligations*" means (i) the obligations of any Person pursuant to any equity option contract, equity forward contract, equity swap, warrant, rights or other similar agreement designed to hedge risks or obligations relating to employee, director or consultant compensation, pension, benefits or similar activities of the Issuer and/or any of its Subsidiaries and (ii) the obligations of any Person pursuant to any agreement that requires another Person to make payments or deliveries that are otherwise required to be made by the first Person relating to employee, director or consultant compensation, pension, benefits or similar activities of the Issuer and/or any of its Subsidiaries, in each case in the ordinary course of business.

"*Consolidated EBITDA*" means, for any Person for any period, Consolidated Net Income for such Person for such period, plus the following, without duplication, to the extent deducted or added in calculating such Consolidated Net Income:

(1) Consolidated Income Tax Expense for such Person for such period;

(2) Consolidated Interest Expense for such Person for such period net of consolidated interest income for such period;

(3) Consolidated Non-cash Charges for such Person for such period;

(4) the amount of any nonrecurring restructuring charge or reserve deducted in such period in computing Consolidated Net Income;

(5) the net effect on income or loss in respect of Hedging Obligations or other derivative instruments, which shall include, for the avoidance of doubt, all amounts not excluded from Consolidated Net Income pursuant to the proviso in clause (9) thereof; and

(6) net income of such Person attributable to minority interests in Subsidiaries of such Person.

*less* (x) all non-cash credits and gains increasing Consolidated Net Income for such Person for such period and (y) all cash payments made by such Person and its Restricted Subsidiaries during such period relating to Consolidated Non-cash Charges that were added back in determining Consolidated EBITDA in any prior period.

"*Consolidated Fixed Charge Coverage Ratio*" means, for any Person as of any date of determination (the "Fixed Charge Calculation Date"), the ratio of the aggregate amount of Consolidated EBITDA of such Person for the four most recent full fiscal quarters for which financial statements are available ending prior to the date of such determination (the "Four Quarter Period") to Consolidated Fixed Charges for such Person for such Four Quarter Period. For purposes of making the computation referred to above, Material Acquisitions and Material Dispositions (as determined in accordance with GAAP) that have been made by the Issuer or any of its Restricted Subsidiaries during the Four Quarter Period or subsequent to such Four Quarter Period and on or prior to or simultaneously with the Fixed Charge Calculation Date shall be calculated on a *pro forma* basis assuming that all such Material Acquisitions and Material Dispositions (and the change in any associated fixed charge obligations and the change in Consolidated EBITDA resulting therefrom) had occurred on the first day of the Four Quarter Period. If since the beginning of such period any Person that subsequently became a Restricted Subsidiary or was merged with or into the Issuer or any of its Restricted Subsidiaries since the beginning of such period shall have made any Material Acquisition or Material Disposition that would have required adjustment pursuant to this definition, then the Consolidated Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect thereto.

For purposes of this definition, whenever *pro forma* effect is to be given to a Material Acquisition or Material Disposition and the amount of income or earnings relating thereto or with respect to other *pro forma*

calculations under this definition, such *pro forma* calculations shall be made in good faith by a responsible financial or accounting officer of the Issuer. If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the Fixed Charge Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness). Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Issuer to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. For purposes of making the computation referred to above, interest on any Indebtedness under a revolving credit facility computed on a pro forma basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period except as set forth in the first paragraph of this definition. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Issuer may designate.

Furthermore, in calculating "Consolidated Fixed Charges" for purposes of determining the denominator (but not the numerator) of this "Consolidated Fixed Charge Coverage Ratio,"

(1) interest on outstanding Indebtedness determined on a fluctuating basis as of the date of determination and which will continue to be so determined thereafter will be deemed to have accrued at a fixed rate per annum equal to the rate of interest on such Indebtedness in effect on such date of determination;

(2) if interest on any Indebtedness actually Incurred on such date of determination may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rates, then the interest rate in effect on such date of determination will be deemed to have been in effect during the Four Quarter Period; and

(3) notwithstanding clause (a) above, interest on Indebtedness determined on a fluctuating basis, to the extent such interest is covered by Hedging Obligations, will be deemed to accrue at the rate per annum resulting after giving effect to the operation of such agreements.

"*Consolidated Fixed Charges*" means, for any Person for any period, the sum, without duplication, of:

(1) Consolidated Interest Expense for such Person for such period, plus

(2) to the extent not included in (1) above, payments during such period in respect of the financing costs of financial derivatives in the form of equity swaps, plus

(3) the product of:

  (a) the amount of all cash and non-cash dividend payments on any series of Preferred Stock or Disqualified Capital Stock of such Person (other than dividends paid in Qualified Capital Stock) or any Subsidiary of such Person (Restricted Subsidiary in the case of the Issuer) paid, accrued or scheduled to be paid or accrued during such period, excluding dividend payments on Preferred Stock or Disqualified Capital Stock paid, accrued or scheduled to be paid to such Person or another Subsidiary (Restricted Subsidiary in the case of the Issuer), times

  (b) a fraction, the numerator of which is one and the denominator of which is one minus the then current effective tax rate of such Person in its principal taxpaying jurisdiction (Mexico, in the case of the Issuer), expressed as a decimal.

"*Consolidated Income Tax Expense*" means, with respect to any Person for any period, the provision for federal, state and local income and asset taxes payable, including current and deferred taxes, by such Person and its Subsidiaries (Restricted Subsidiaries in the case of the Issuer) for such period as determined on a consolidated basis in accordance with GAAP.

"*Consolidated Interest Expense*" means, for any Person for any period, the sum of, without duplication determined on a consolidated basis in accordance with GAAP:

(1) the aggregate of cash and non-cash interest expense of such Person and its Subsidiaries (Restricted Subsidiaries in the case of the Issuer) for such period determined on a consolidated basis in accordance with GAAP, including, without limitation the following for such Person and its Subsidiaries (Restricted Subsidiaries in the case of the Issuer) whether or not interest expense in accordance with GAAP:

   (a) any amortization or accretion of debt discount or any interest paid on Indebtedness of such Person and its Subsidiaries (Restricted Subsidiaries in the case of the Issuer) in the form of additional Indebtedness,

   (b) any amortization of deferred financing costs; *provided* that any such amortization resulting from costs incurred prior to the Issue Date shall be excluded for the calculation of Consolidated Interest Expense,

   (c) the net costs under Hedging Obligations relating to Indebtedness (including amortization of fees but excluding foreign exchange adjustments on the notional amounts of the Hedging Obligations),

   (d) all capitalized interest,

   (e) the interest portion of any deferred payment obligation,

   (f) commissions, discounts and other fees and charges Incurred in respect of letters of credit or bankers' acceptances or in connection with sales or other dispositions of accounts receivable and related assets,

   (g) any interest expense on Indebtedness of another Person that is Guaranteed by such Person or one of its Subsidiaries (Restricted Subsidiary in the case of the Issuer) or secured by a Lien on the assets of such Person or one of its Subsidiaries (Restricted Subsidiaries in the case of the Issuer), whether or not such Guarantee or Lien is called upon, and

   (h) any interest accrued in respect of Indebtedness without a maturity date; and

(2) the interest component of Capitalized Lease Obligations paid, accrued and/or scheduled to be paid or accrued by such Person and its Subsidiaries (Restricted Subsidiaries in the case of the Issuer) during such period.

"*Consolidated Net Income*" means, with respect to any Person for any period, the aggregate net income (or loss) of such Person and its Subsidiaries for such period on a consolidated basis (after deducting (i) the portion of such net income attributable to minority interests in Subsidiaries of such Person and (ii) any interest paid or accrued in respect of Indebtedness without a maturity date), determined in accordance with GAAP; *provided*, that there shall be excluded therefrom:

(1) net after-tax gains and losses from Asset Sale transactions or abandonments or reserves relating thereto;

(2) net after-tax items classified as extraordinary gains or losses;

(3) the net income (but not loss) of any Subsidiary of such Person (non-Guarantor in the case of the Issuer) to the extent that a corresponding amount could not be distributed to such Person at the date of determination as a result of any restriction pursuant to the constituent documents of such Subsidiary (non-Guarantor in the case of the Issuer) or any law, regulation, agreement or judgment applicable to any such distribution;

(4) any net income (loss) of any Person (other than the Issuer) if such Person is not a Restricted Subsidiary, except that the Issuer's equity in the net income of any such Person for such period shall be included in such Consolidated Net Income up to the aggregate amount of cash distributed by such Person during such period to the Issuer or a Restricted Subsidiary as a dividend or other distribution (subject, in the

case of a dividend or other distribution to a Restricted Subsidiary, to the limitations contained in this clause);

(5) [Reserved];

(6) any restoration to income of any contingency reserve, except to the extent that provision for such reserve was made out of Consolidated Net Income accrued at any time following the Issue Date;

(7) any gain (or loss) from foreign exchange translation or change in net monetary position;

(8) any gain (or loss) from the cumulative effect of changes in accounting principles; and

(9) any net gain or loss (after any offset) resulting in such period from Hedging Obligations or other derivative instruments; *provided* that the net effect on income or loss (including in any prior periods) shall be included upon any termination or early extinguishment of such Hedging Obligations or other derivative instrument, other than any Hedging Obligations with respect to Indebtedness (that is not itself a Hedging Obligation) and that are extinguished concurrently with the termination or other prepayment of such Indebtedness.

"*Consolidated Non-cash Charges*" means, for any Person for any period, the aggregate depreciation, amortization (including amortization of goodwill and other Intangible Assets) and other non-cash expenses or losses of such Person and its Subsidiaries (Restricted Subsidiaries in the case of the Issuer) for such period, determined on a consolidated basis in accordance with GAAP (excluding any such charge which constitutes an accrual of or a reserve for cash charges for any future period or the amortization of a prepaid cash expense paid in a prior period).

"*Consolidated Tangible Assets*" means, for any Person at any time, the total consolidated assets of such Person and its Subsidiaries (Restricted Subsidiaries in the case of the Issuer) as set forth on the balance sheet as of the most recent fiscal quarter of such Person, prepared in accordance with GAAP, less Intangible Assets.

"*Covenant Defeasance*" has the meaning set forth under "—Legal Defeasance and Covenant Defeasance" above.

"*Covenant Suspension Event*" has the meaning set forth under "Certain Covenants—Suspension of Covenants" above.

"*Currency Agreement*" means, in respect of any Person, any foreign exchange contract, currency swap agreement or other similar agreement as to which such Person is a party designed to hedge foreign currency risk of such Person.

"*Default*" means an event or condition the occurrence of which is, or with the lapse of time or the giving of notice or both would be, an Event of Default.

"*Designated Non-cash Consideration*" means the Fair Market Value of non-cash consideration received by the Issuer or a Restricted Subsidiary in connection with an Asset Sale that is so designated as Designated Non-cash Consideration pursuant to an Officer's Certificate setting forth the basis of such valuation.

"*Designation*" and "*Designation Amount*" have the meanings set forth under "Certain Covenants—Limitation on Designation of Unrestricted Subsidiaries" above.

"*Disposition*" means, with respect to any property, any sale, lease, Sale and Leaseback Transaction, assignment, conveyance, transfer or other disposition thereof.

"*Disqualified Capital Stock*" means that portion of any Capital Stock which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder thereof), or

upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the sole option of the holder thereof, in any case, on or prior to the 91st day after the final maturity date of the Notes, but excluding with respect to Mexican companies, any shares of such Mexican company that are part of the variable portion of its Capital Stock and that are redeemable under the Mexican General Law of Business Corporations (*Ley General de Sociedades Mercantiles*).

"*Equity Offering*" has the meaning set forth under "Optional Redemption" above.

"*Event of Default*" has the meaning set forth under "Events of Default" above.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended, or any successor statute or statutes thereto.

"*Existing Senior Notes*" means the U.S. Dollar-denominated 9.50% Senior Secured Notes due 2016 guaranteed by the Issuer, the Euro-denominated 9.625% Senior Secured Notes due 2017 guaranteed by the Issuer, the U.S. Dollar-denominated 9.25% Senior Secured Notes due 2020 guaranteed by the Issuer, the Euro-denominated 8.875% Senior Secured Notes due 2017 guaranteed by the Issuer, the U.S. Dollar-denominated 9.000% Senior Secured Notes due 2018 issued by the Issuer, the U.S. Dollar-denominated Floating Rate Senior Secured Notes due 2015 issued by the Issuer, the U.S. Dollar-denominated 9.875% Senior Secured Notes due 2019 guaranteed by the Issuer, the Euro-denominated 9.875% Senior Secured Notes due 2019 guaranteed by the Issuer, the U.S. Dollar-denominated 9.50% Senior Secured Notes due 2018 issued by the Issuer, the U.S. Dollar-denominated 9.375% Senior Secured Notes due 2022 guaranteed by the Issuer, the U.S. Dollar-denominated 5.875% Senior Secured Notes due 2019 issued by the Issuer, the U.S. Dollar-denominated 6.500% Senior Secured Notes due 2019 issued by the Issuer and the Other Notes

"*Facilities Agreement*" means the facilities agreement, dated as of September 17, 2012, entered into among the Issuer and certain of its Subsidiaries, the financial institutions and noteholders party thereto, Citibank International PLC, as new administrative agent, and the Security Agent, as such agreement may be amended, modified or waived from time to time.

"*Facilities Agreement Indebtedness*" means the Indebtedness that is subject to and outstanding under the Facilities Agreement.

"*Fair Market Value*" means, with respect to any asset, the price (after taking into account any liabilities relating to such assets) which could be negotiated in an arm's length free market transaction, for cash, between a willing seller and a willing and able buyer, neither of which is under any compulsion to complete the transaction. Fair Market Value shall be determined, except as otherwise provided, by the Issuer in good faith.

"*Fitch*" means Fitch Ratings and any successor to its rating agency business.

*"Four Quarter Period*" has the meaning assigned to it in the definition of Consolidated Fixed Charge Coverage Ratio above.

"*GAAP*" means IFRS as in effect on the Issue Date. At any time, and from time to time, after the Issue Date, the Issuer may elect to apply IFRS as in effect at such time in lieu of GAAP and, upon any such election, references herein to GAAP shall thereafter be construed to mean IFRS as in effect on the date of such election; *provided* that any such election, once made, shall be irrevocable. The Issuer shall give notice of any such election to the Trustee.

"*Guarantee*" means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person:

(1) to purchase or pay, or advance or supply funds for the purchase or payment of, such Indebtedness of such other Person, whether arising by virtue of partnership arrangements, or by agreement to keep-well

to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise, or

(2) entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof, in whole or in part,

*provided*, that "Guarantee" will not include endorsements for collection or deposit in the ordinary course of business. "Guarantee" used as a verb has a corresponding meaning.

"*Guarantors*" means (i) each of the Issuer's Restricted Subsidiaries that executes the Indenture as a Guarantor or an Additional Guarantor and (ii) each of the Issuer's Restricted Subsidiaries that in the future executes a supplemental indenture in which such Restricted Subsidiary agrees to be bound by the terms of the Indenture as a Guarantor, and their respective successors and assigns; *provided* that any Person constituting a Guarantor as described above shall cease to constitute a Guarantor when its respective Note Guarantee is released in accordance with the terms of the Indenture.

"*Hedging Obligations*" means the obligations of any Person pursuant to any Interest Rate Agreement, Currency Agreement, Commodity Price Purchase Agreement or any Transportation Agreement, in each case, not entered into for speculative purposes.

"*IFRS*" means the International Financial Reporting Standards as issued by the International Accounting Standards Board.

"*Incur*" means, with respect to any Indebtedness or other obligation of any Person, to create, issue, incur (including by conversion, exchange or otherwise), assume, Guarantee or otherwise become liable in respect of such Indebtedness or other obligation on the balance sheet of such Person (and "Incurrence," "Incurred" and "Incurring" will have meanings correlative to the preceding).

"*Indebtedness*" means with respect to any Person, without duplication:

(1) the principal amount (or, if less, the accreted value) of all obligations of such Person for borrowed money;

(2) the principal amount (or, if less, the accreted value) of all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, including any perpetual bonds, debenture notes or similar instruments without regard to maturity date;

(3) all Capitalized Lease Obligations of such Person;

(4) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations and all payment obligations under any title retention agreement (but excluding trade accounts payable and other accrued liabilities accounted for as current liabilities (in accordance with GAAP) arising in the ordinary course of business) to the extent of any reimbursement obligations in respect thereof;

(5) reimbursement obligations with respect to letters of credit, banker's acceptances or similar credit transactions;

(6) Guarantees and other contingent obligations of such Person in respect of Indebtedness referred to in clauses (1) through (5) above and clauses (8) through (10) below;

(7) all Indebtedness of any other Person of the type referred to in clauses (1) through (6) which is secured by any Lien on any property or asset of the first Person, the amount of such Indebtedness being deemed to be the lesser of the Fair Market Value of such property or asset or the amount of the Indebtedness so secured;

(8) all obligations under Hedging Obligations or other derivatives of such Person;

(9) all liabilities (contingent or otherwise) of such Person in connection with a sale or other disposition of accounts receivable and related assets (not including Qualified Receivables Transactions), irrespective of their treatment under GAAP or IFRS; and

(10) all Disqualified Capital Stock issued by such Person with the amount of Indebtedness represented by such Disqualified Capital Stock being equal to the greater of its voluntary or involuntary liquidation preference and its maximum fixed repurchase price, but excluding accrued dividends, if any; *provided*, that:

(a) if the Disqualified Capital Stock does not have a fixed repurchase price, such maximum fixed repurchase price will be calculated in accordance with the terms of the Disqualified Capital Stock as if the Disqualified Capital Stock were purchased on any date on which Indebtedness will be required to be determined pursuant to the Indenture, and

(b) if the maximum fixed repurchase price is based upon, or measured by, the fair market value of the Disqualified Capital Stock, the fair market value will be the Fair Market Value thereof.

"*Indenture*" has the meaning set forth in the first paragraph of this Description of Notes.

"*Instructing Group*" has the meaning set forth under "Intercreditor Agreement" above.

"*Intangible Assets*" means with respect to any Person all unamortized debt discount and expense, unamortized deferred charges, goodwill, patents, trademarks, service marks, trade names, copyrights and all other items which would be treated as intangibles on the consolidated balance sheet of such Person prepared in accordance with GAAP.

"*Intercreditor Agreement*" means the intercreditor agreement, dated as of September 17, 2012, entered into among the Issuer and certain of its Subsidiaries, the financial institutions and noteholders party thereto, Citibank International PLC, as facility agent, and Wilmington Trust (London) Limited, as security agent, as such agreement may be amended from time to time.

"*Interest Rate Agreement*" of any Person means any interest rate protection agreement (including, without limitation, interest rate swaps, caps, floors, collars, derivative instruments and similar agreements) and/or other types of hedging agreements designed to hedge interest rate risk of such Person.

"*Inventory Financing*" means a financing arrangement pursuant to which the Issuer or any of its Restricted Subsidiaries sells inventory to a bank or other institution (or a special purpose vehicle or partnership incorporated or established by or on behalf of such bank or other institution or an Affiliate of such bank or other institution) and has an obligation to repurchase such inventory to the extent that it is not sold to a third party within a specified period.

"*Investment*" means, with respect to any Person, any:

(1) direct or indirect loan, advance or other extension of credit (including, without limitation, a Guarantee) to any other Person,

(2) capital contribution (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others) to any other Person, or

(3) purchase or acquisition by such Person of any Capital Stock, bonds, notes, debentures or other securities or evidences of Indebtedness issued by any other Person.

"*Investment*" will exclude accounts receivable, extensions of credit in connection with supplier or customer financings consistent with industry or past practice, advance payment of capital expenditures arising in the ordinary course of business, deposits arising in the ordinary course of business and transactions (other than

(i) any sale, lease, license, transfer or other disposal and (ii) the granting or creation of a Lien or the Incurring or permitting to subsist of Indebtedness) conducted in the ordinary course of business on arm's length terms.

For purposes of the "Limitation on Restricted Payments" covenant, the Issuer will be deemed to have made an "Investment" in an Unrestricted Subsidiary at the time of its Designation, which will be valued at the Fair Market Value of the sum of the net assets of such Unrestricted Subsidiary multiplied by the percentage equity ownership of the Issuer and its Restricted Subsidiaries in such designated Unrestricted Subsidiary at the time of its Designation and the amount of any Indebtedness of such Unrestricted Subsidiary or owed to the Issuer or any Restricted Subsidiary immediately following such Designation. Any property transferred to or from an Unrestricted Subsidiary will be valued at its Fair Market Value at the time of such transfer. If the Issuer or any Restricted Subsidiary sells or otherwise disposes of any Capital Stock of a Restricted Subsidiary (including any issuance and sale of Capital Stock by a Restricted Subsidiary) such that, after giving effect to any such sale or disposition, such Restricted Subsidiary would cease to be a Subsidiary of the Issuer, the Issuer will be deemed to have made an Investment on the date of any such sale or disposition equal to sum of the Fair Market Value of the Capital Stock of such former Restricted Subsidiary held by the Issuer or any Restricted Subsidiary immediately following such sale or other disposition and the amount of any Indebtedness of such former Restricted Subsidiary Guaranteed by the Issuer or any Restricted Subsidiary or owed to the Issuer or any other Restricted Subsidiary immediately following such sale or other disposition. The acquisition by the Issuer or any Restricted Subsidiary of the Issuer of a Person that holds an Investment in a third Person will be deemed to be an Investment by the Issuer or such Restricted Subsidiary in such third Person in an amount equal to the Fair Market Value of the Investments held by the acquired Person in such third Person. Except as otherwise provided in the Indenture, the amount of an Investment will be determined at the time the Investment is made without giving effect to subsequent changes in value.

"*Investment Grade Rating*" means a rating equal to or higher than BBB- (or the equivalent) by Fitch, Baa3 (or the equivalent) by Moody's and BBB- (or the equivalent) by S&P.

"*Investment Return*" means, in respect of any Investment (other than a Permitted Investment) made after the Issue Date by the Issuer or any Restricted Subsidiary:

(1) the cash proceeds received by the Issuer upon the sale, liquidation or repayment of such Investment or, in the case of a Guarantee, the amount of the Guarantee upon the unconditional release of the Issuer and its Restricted Subsidiaries in full, less any payments previously made by the Issuer or any Restricted Subsidiary in respect of such Guarantee;

(2) in the case of the Revocation of the Designation of an Unrestricted Subsidiary, an amount equal to the lesser of:

   (a) the Issuer's Investment in such Unrestricted Subsidiary at the time of such Revocation;

   (b) that portion of the Fair Market Value of the net assets of such Unrestricted Subsidiary at the time of Revocation that is proportionate to the Issuer's equity interest in such Unrestricted Subsidiary at the time of Revocation; and

   (c) the Designation Amount with respect to such Unrestricted Subsidiary upon its Designation which was treated as a Restricted Payment;

(3) in the event the Issuer or any Restricted Subsidiary makes any Investment in a Person that, as a result of or in connection with such Investment, becomes a Restricted Subsidiary, the existing Investment of the Issuer and its Restricted Subsidiaries in such Person,

in the case of each of (1), (2) and (3), up to the amount of such Investment that was treated as a Restricted Payment under "Certain Covenants—Limitation on Restricted Payments" less the amount of any previous Investment Return in respect of such Investment.

"*Issue Date*" means the first date of issuance of Notes under the Indenture and following a Partial Covenant Suspension Event or a Covenant Suspension Event, except under "Optional Redemption—Optional Redemption for Changes in Withholding Taxes", "Certain Covenants—Suspension of Covenants" and the definition of "Permitted Liens", the most recent Partial Covenant Reversion Date or Reversion Date, as applicable.

"*Legal Defeasance*" has the meaning set forth under "Legal Defeasance and Covenant Defeasance" above.

"*Lien*" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset. The Issuer or any Restricted Subsidiary shall be deemed to own, subject to a Lien, any asset that it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, Capitalized Lease Obligations or other title retention lease relating to such asset, or any account receivable transferred by it with recourse (including any such transfer subject to a holdback or similar arrangement that effectively imposes the risk of collectability on the transferor).

"*Material Acquisition*" means:

(1) an Investment by the Issuer or any Restricted Subsidiary in any other Person pursuant to which such Person will become a Restricted Subsidiary, or will be merged with or into the Issuer or any Restricted Subsidiary;

(2) the acquisition by the Issuer or any Restricted Subsidiary of the assets of any Person (other than a Subsidiary of the Issuer) which constitute all or substantially all of the assets of such Person or comprises any division or line of business of such Person or any other properties or assets of such Person other than in the ordinary course of business; or

(3) any Revocation with respect to an Unrestricted Subsidiary;

in each case which involves an Investment, Designation or payment of consideration in excess of U.S.$25,000,000 (or the equivalent in other currencies).

"*Material Disposition*" means any Asset Sale and, whether or not constituting an Asset Sale, (1) any sale or other disposition of Capital Stock, (2) any Designation with respect to an Unrestricted Subsidiary and (3) any sale or other disposition of property or assets excluded from the definition of Asset Sale by clause (4) of that definition, in each case which involves an Investment, Designation or payment of consideration in excess of U.S.$25,000,000 (or the equivalent in other currencies).

"*Moody's*" means Moody's Investors Service, Inc. and any successor to its rating agency business.

"*Net Cash Proceeds*" means, with respect to any Asset Sale, the proceeds in the form of cash or Cash Equivalents, including payments in respect of deferred payment obligations when received in the form of cash or Cash Equivalents received by the Issuer or any of its Restricted Subsidiaries from such Asset Sale, net of:

(1) reasonable out-of-pocket expenses and fees relating to such Asset Sale (including, without limitation, legal, accounting and investment banking fees and sales commissions);

(2) taxes paid or payable in respect of such Asset Sale after taking into account any reduction in consolidated tax liability due to available tax credits or deductions and any tax sharing arrangements;

(3) repayment of Indebtedness secured by a Lien permitted under the Indenture that is required to be repaid in connection with such Asset Sale; and

(4) appropriate amounts to be provided by the Issuer or any Restricted Subsidiary, as the case may be, as a reserve, in accordance with GAAP, against any liabilities associated with such Asset Sale and retained by the Issuer or any Restricted Subsidiary, as the case may be, after such Asset Sale, including, without limitation, pension and other post-employment benefit liabilities, liabilities related to environmental matters and liabilities under any indemnification obligations associated with such Asset Sale, but excluding any reserves with respect to Indebtedness.

"*Note Guarantee*" means any guarantee of the Issuer's Obligations under the Notes and the Indenture by any Guarantor pursuant to the Indenture.

"*Notes*" has the meaning set forth in the first paragraph of this Description of Notes.

"*Obligations*" means, with respect to any Indebtedness, any principal, interest (including, without limitation, Post-Petition Interest), penalties, fees, indemnifications, reimbursements, damages, and other liabilities payable under the documentation governing such Indebtedness, including in the case of the Notes and the Note Guarantees and the Indenture.

"*Officer's Certificate*" means a certificate signed on behalf of a Person by an Officer of such Person, who must be the principal executive officer, the principal financial officer, the treasurer, the Vice President—Corporate Finance, or the principal accounting officer or attorney-in-fact of such Person, that meets the requirements set forth in the Indenture.

"*Opinion of Counsel*" means a written opinion of counsel, who may be an employee of or counsel for the Issuer (except as otherwise provided in the Indenture) and who shall be reasonably acceptable to the Trustee.

"*Partial Covenant Reversion Date*" has the meaning set forth under "Certain Covenants—Suspension of Covenants" above.

"*Partial Covenant Suspension Event*" has the meaning set forth under "Certain Covenants—Suspension of Covenants" above.

"*Partial Suspended Covenants*" has the meaning set forth under "Certain Covenants—Suspension of Covenants" above.

"*Partial Suspension Date*" has the meaning set forth under "Certain Covenants—Suspension of Covenants" above.

"*Partial Suspension Period*" has the meaning set forth under "Certain Covenants—Suspension of Covenants" above.

"*Paying Agent*" has the meaning set forth in the first paragraph of this Description of Notes.

"*Permitted Asset Swap Transaction*" means a transaction consisting substantially of the concurrent (i) disposition by the Issuer or any of its Restricted Subsidiaries of any asset, property or cash consideration (other than a Restricted Subsidiary) in exchange for assets, property or cash consideration transferred to the Issuer or a Restricted Subsidiary, to be used in a Permitted Business or (ii) disposition by the Issuer or any of its Restricted Subsidiaries of Capital Stock of a Restricted Subsidiary in exchange for Capital Stock of another Restricted Subsidiary or of Capital Stock of any Person that becomes a Restricted Subsidiary after giving effect to such transaction; *provided* that any cash or Cash Equivalents received in such a transaction shall constitute Net Cash Proceeds to be applied in accordance with "Certain Covenants—Limitation on Asset Sales" above.

"*Permitted Business*" means the business or businesses conducted by the Issuer and its Restricted Subsidiaries as of the Issue Date and any business ancillary, complementary or related thereto or any other business that would not constitute a substantial change to the general nature of its business from that carried on as of the Issue Date.

"*Permitted Indebtedness*" has the meaning set forth under clause (2) of "Certain Covenants—Limitation on Incurrence of Additional Indebtedness" above.

"*Permitted Investments*" means:

(1) Investments by the Issuer or any Restricted Subsidiary in any Person that is, or that result in any Person becoming, immediately after such Investment, a Restricted Subsidiary or constituting a merger or consolidation of such Person into the Issuer or with or into a Restricted Subsidiary;

(2) any Investment in the Issuer;

(3) Investments in cash and Cash Equivalents;

(4) any extension, modification or renewal of any Investments existing as of the Issue Date (but not Investments involving additional advances, contributions or other investments of cash or property or other increases thereof, other than as a result of the accrual or accretion of interest or original issue discount or payment-in-kind pursuant to the terms of such Investment as of the Issue Date);

(5) Investments permitted pursuant to clause (2)(b), (f) or (g) of "Certain Covenants—Limitation on Transactions with Affiliates";

(6) Investments received as a result of the bankruptcy or reorganization of any Person or taken in settlement of or other resolution of claims or disputes, and, in each case, extensions, modifications and renewals thereof;

(7) Investments made by the Issuer or its Restricted Subsidiaries as a result of non-cash consideration permitted to be received in connection with an Asset Sale made in compliance with the covenant described under "Certain Covenants—Limitation on Asset Sales";

(8) Investments in the form of Hedging Obligations or Compensation Related Hedging Obligations permitted under clause 2(d) of "Certain Covenants—Limitation on Incurrence of Additional Indebtedness;"

(9) Investments in existence on the Issue Date or made pursuant to binding commitments in effect on the Issue Date or any Investment consisting of any extension, modification or renewal of any Investment existing on the Issue Date; *provided* that the amount of any such Investment may be increased (a) as required by the terms of such Investment as in existence on the Issue Date or (b) as otherwise permitted by the Indenture;

(10) Investments by the Issuer or any Restricted Subsidiary in a Receivables Entity in connection with a Qualified Receivables Transaction which does not constitute an Asset Sale by virtue of clause (7) of the definition thereof; *provided*, *however*, that any such Investments are made only in the form of Receivables Assets;

(11) Investments in marketable securities or instruments, to fund the Issuer's or a Restricted Subsidiary's pension and other employee-related obligations in the ordinary course of business pursuant to compensation arrangements approved by the Board of Directors or senior management of the Issuer;

(12) any Investment that:

  (a) when taken together with all other Investments made pursuant to this clause (12) that are at the time outstanding (net of cash benefits to the Issuer or a Restricted Subsidiary from Investments pursuant to this clause (12)), does not exceed the greater of U.S.$250 million and 3% of Consolidated Tangible Assets; or

  (b) when taken together with all other Investments made pursuant to this clause (12) in any fiscal year that are at the time outstanding, does not exceed U.S.$100 million in any fiscal year;

(13) Investments in the Capital Stock of any Person other than a Restricted Subsidiary that are required to be held pursuant to an involuntary governmental order of condemnation, nationalization, seizure or expropriation or other similar order with respect to Capital Stock of such Person (prior to which order such Person was a Restricted Subsidiary); *provided* that such Person contests such order in good faith in appropriate proceedings;

(14) repurchases of Existing Senior Notes or the Notes;

(15) Investments in the SPV Perpetuals or the notes related thereto; *provided* that any payment or other contribution to one of the special purpose vehicles issuing the SPV Perpetuals in connection with such Investment is promptly paid or contributed to the Issuer or a Restricted Subsidiary following receipt thereof;

(16) any Investment that constitutes Indebtedness permitted under clause 2(g)(v) of "Certain Covenants—Limitation on Incurrence of Additional Indebtedness"; and

(17) (a) Investments to which the Issuer or any of its Restricted Subsidiaries is contractually committed as of the Issue Date in any Person other than a Subsidiary in which the Issuer or any of its Restricted Subsidiaries maintains an Investment in equity securities and

(b) Investments in any Person other than a Subsidiary in which the Issuer or any of its Restricted Subsidiaries maintains an Investment in equity securities up to U.S.$100 million in any calendar year minus the amount of any guarantees under clause (2)(q)(ii) under "Certain Covenants—Limitation on Incurrence of Additional Indebtedness."

"*Permitted Liens*" means any of the following:

(1) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics and materialmen incurred in the ordinary course of business for sums not yet due or the payment of which is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and for which such reserves or other appropriate provision, if any, as shall be required by GAAP shall have been made and any other liens created by operation of law;

(2) Liens Incurred or deposits made in the ordinary course of business in connection with (i) workers' compensation, unemployment insurance and other types of social security or (ii) other insurance maintained by the Issuer and its Subsidiaries in compliance with the Facilities Agreement (or any refinancing thereof);

(3) Liens for taxes, assessments and other governmental charges the payment of which is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and for which such reserves or other appropriate provision, if any, as shall be required by GAAP shall have been made:

(4) any attachment or judgment Lien, unless the judgment it secures shall not, within 60 days after the entry thereof, have been discharged or execution thereof stayed pending appeal, or shall not have been discharged within 60 days after the expiration of any such stay;

(5) (i) Liens existing on the Issue Date other than in respect of the Collateral and (ii) Liens in respect of the Collateral to the extent permitted by the first paragraph under "Security Interest" above;

(6) any Lien on property acquired by the Issuer or its Restricted Subsidiaries after the Issue Date that was existing on the date of acquisition of such property; *provided* that such Lien was not incurred in anticipation of such acquisition, and any Lien created to secure all or any part of the purchase price, or to secure Indebtedness incurred or assumed to pay all or any part of the purchase price, of property acquired by the Issuer or any of its Restricted Subsidiaries after the Issue Date; *provided*, *further*, that (A) any such Lien permitted pursuant to this clause (6) shall be confined solely to the item or items of property so acquired (including, in the case of any Acquisition of a corporation through the acquisition of 51% or more of the voting stock of such corporation, the stock and assets of any Acquired Subsidiary or Acquiring Subsidiary) and, if required by the terms of the instrument originally creating such Lien, other property which is an improvement to, or is acquired for specific use with, such acquired property; and (B) if applicable, any such Lien shall be created within nine months after, in the case of property, its acquisition, or, in the case of improvements, their completion;

(7) any Liens renewing, extending or refunding any Lien permitted by clause (5)(i) above; *provided* that such Lien is not extended to other property (or, instead, is only extended to equivalent property) and the principal amount of Indebtedness secured by such Lien immediately prior thereto is not increased or the maturity thereof reduced, except that the principal amount secured by any such Lien in respect of:

(a) hedging obligations or other derivatives where there are fluctuations in mark-to-market exposures of those hedging obligations or other derivatives,

(b) Indebtedness consisting of any "*Certificados Bursátiles de Largo Plazo*" or the Bancomext Facility, or any Refinancing thereof, where principal may increase by virtue of capitalization of interest, and

(c) the Banobras Facility to the extent additional amounts are drawn thereunder,

may be increased by the amount of such fluctuations, capitalizations or drawings, as the case may be;

(8) Liens on Receivables Assets or Capital Stock of a Receivables Subsidiary, in each case granted in connection with a Qualified Receivables Transaction;

(9) Liens granted pursuant to or in connection with any netting or set-off arrangements entered into in the ordinary course of business;

(10) any Lien permitted by the Trustee, acting on the instructions of at least 50% of the holders of Notes;

(11) any Lien granted by the Issuer or any of its Restricted Subsidiaries to secure Indebtedness under a Permitted Liquidity Facility; *provided* that: (i) such Lien is not granted in respect of the Collateral, and (ii) the maximum amount of such Indebtedness secured by such Lien does not exceed U.S.$500 million at any time; or

(12) in addition to the Liens permitted by the foregoing clauses (1) through (11), Liens securing obligations of the Issuer and its Restricted Subsidiaries that in the aggregate secure obligations in an amount not in excess of the greater of (i) 5% of Consolidated Tangible Assets and (ii) U.S.$700 million;

"*Permitted Liquidity Facility*" means a loan facility or facilities made available to the Issuer or any Restricted Subsidiary; *provided* that the aggregate principal amount of utilized and unutilized commitments under such facilities must not exceed U.S.$1 billion (or its equivalent in another currency) at any time.

"*Permitted Merger Jurisdiction*" has the meaning set forth in "Certain Covenants—Limitation on Merger, Consolidation and Sale of Assets" above.

"*Person*" means an individual, partnership, limited partnership, corporation, company, limited liability company, unincorporated organization, trust or joint venture, or a governmental agency or political subdivision thereof.

"*Pesos*" or "*Ps"* means the lawful money of Mexico.

"*Post-Petition Interest*" means all interest accrued or accruing after the commencement of any insolvency or liquidation proceeding (and interest that would accrue but for the commencement of any insolvency or liquidation proceeding) in accordance with and at the contract rate (including, without limitation, any rate applicable upon default) specified in the agreement or instrument creating, evidencing or governing any Indebtedness, whether or not, pursuant to applicable law or otherwise, the claim for such interest is allowed as a claim in such insolvency or liquidation proceeding.

"*Preferred Stock*" of any Person means any Capital Stock of such Person that has preferential rights over any other Capital Stock of such Person with respect to dividends, distributions or redemptions or upon liquidation.

"*Purchase Money Indebtedness*" means Indebtedness Incurred for the purpose of financing all or any part of the purchase price or cost of construction of any property other than Capital Stock; *provided*, that the aggregate principal amount of such Indebtedness does not exceed the lesser of the Fair Market Value of such property or such purchase price or cost, including any Refinancing of such Indebtedness that does not increase the aggregate principal amount (or accreted amount, if less) thereof as of the date of Refinancing.

"*Qualified Capital Stock*" means any Capital Stock that is not Disqualified Capital Stock and any warrants, rights or options to purchase or acquire Capital Stock that is not Disqualified Capital Stock that are not convertible into or exchangeable into Disqualified Capital Stock.

"*Qualified Receivables Transaction*" means any transaction or series of transactions that may be entered into by the Issuer or any Restricted Subsidiary pursuant to which the Issuer or any Restricted Subsidiary may sell, convey, assign or otherwise transfer to a Receivables Entity any Receivables Assets to obtain funding for the operations of the Issuer and its Restricted Subsidiaries:

(1) for which no term of any portion of the Indebtedness or any other obligations (contingent or otherwise) or securities Incurred or issued by any Person in connection therewith:

   (a) directly or indirectly provides for recourse to, or any obligation of, the Issuer or any Restricted Subsidiary in any way, whether pursuant to a Guarantee or otherwise, except for Standard Undertakings,

   (b) directly or indirectly subjects any property or asset of the Issuer or any Restricted Subsidiary (other than Capital Stock of a Receivables Subsidiary) to the satisfaction thereof, except for Standard Undertakings, or

   (c) results in such Indebtedness, other obligations or securities constituting Indebtedness of the Issuer or a Restricted Subsidiary, including following a default thereunder, and

(2) for which the terms of any Affiliate Transaction between the Issuer or any Restricted Subsidiary, on the one hand, and any Receivables Entity, on the other, other than Standard Undertakings and Permitted Investments, are no less favorable than those that could reasonably be expected to be obtained in a comparable transaction at such time on an arm's length basis from a Person that is not an Affiliate of the Issuer, and

(3) in connection with which, neither the Issuer nor any Restricted Subsidiary has any obligation to maintain or preserve a Receivable Entity's financial condition, cause a Receivables Entity to achieve certain levels of operating results, fund losses of a Receivables Entity, or except in connection with Standard Undertakings, purchase assets of a Receivables Entity.

"*Rating Agencies*" mean Fitch, Moody's and S&P. In the event that Fitch, Moody's or S&P is no longer in existence or issuing ratings, such organization may be replaced by a nationally recognized statistical rating organization (as defined in Rule 15c3-1(c)(2)(vi)(F) of the U.S. Securities Exchange of 1934 or any successor provision) designated by the Issuer with notice to the Trustee.

"*Receivables Assets*" means:

(1) accounts receivable, leases, conditional sale agreements, instruments, chattel paper, installment sale contracts, obligations, general intangibles, and other similar assets, in each case relating to goods, inventory or services of the Issuer and its Subsidiaries,

(2) equipment and equipment residuals relating to any of the foregoing,

(3) contractual rights, Guarantees, letters of credit, Liens, insurance proceeds, collections and other similar assets, in each case related to the foregoing, and

(4) proceeds of all of the foregoing.

"*Receivables Entity*" means a Receivables Subsidiary or any other Person not an Affiliate of the Issuer, in each case whose sole business activity is to engage in Qualified Receivables Transactions, including to issue securities or other interests in connection with a Qualified Receivables Transaction.

"*Receivables Subsidiary*" means an Unrestricted Subsidiary of the Issuer that engages in no activities other than Qualified Receivables Transactions and activities related thereto and that is designated by the Issuer as a Receivables Subsidiary. Any such designation by the Issuer will be evidenced to the Trustee by filing with the Trustee an Officer's Certificate of the Issuer.

"*Refinance*" means, in respect of any Indebtedness, to issue any Indebtedness in exchange for or to refinance, repay, redeem, replace, defease or refund such Indebtedness in whole or in part. "Refinanced" and "Refinancing" will have correlative meanings.

"*Refinancing Indebtedness*" means Indebtedness of the Issuer or any Restricted Subsidiary issued to Refinance any other Indebtedness of the Issuer or a Restricted Subsidiary so long as:

(1) the aggregate principal amount (or initial accreted value, if applicable) of such new Indebtedness as of the date of such proposed Refinancing does not exceed the aggregate principal amount (or accreted value as of such date, if applicable) of the Indebtedness being Refinanced (plus the amount of any premium required to be paid under the terms of the instrument governing such Indebtedness and the amount of reasonable expenses incurred by the Issuer in connection with such Refinancing);

(2) such new Indebtedness has:

   (a) a Weighted Average Life to Maturity that is equal to or greater than the Weighted Average Life to Maturity of the Indebtedness being Refinanced, and

   (b) a final maturity that is equal to or later than the final maturity of the Indebtedness being Refinanced or, in the case of Indebtedness without a stated maturity, December 14, 2017; and

(3) if the Indebtedness being Refinanced is:

   (a) Indebtedness of the Issuer, then such Refinancing Indebtedness will be Indebtedness of the Issuer and/or any Guarantor,

   (b) Indebtedness of a Guarantor, then such Refinancing Indebtedness will be Indebtedness of the Issuer and/or any Guarantor,

   (c) Indebtedness of any of the Restricted Subsidiaries, then such Refinancing Indebtedness will be Indebtedness of such Restricted Subsidiary, the Issuer and/or any Guarantor, and

   (d) Subordinated Indebtedness, then such Refinancing Indebtedness shall be subordinate to the Notes or the relevant Note Guarantee, if applicable, at least to the same extent and in the same manner as the Indebtedness being Refinanced.

Notwithstanding the foregoing, with respect to any hedging obligations or derivatives outstanding on the Issue Date in respect of the Axtel Share Forward Transaction, "Refinancing Indebtedness" shall mean any replacements, amendments or renewals thereof that are entered into on then prevailing market terms with the underlying amounts not greater than the original underlying amounts.

"*Restricted Payment*" has the meaning set forth under "Certain Covenants—Limitation on Restricted Payments" above.

"*Restricted Subsidiary*" means any Subsidiary of the Issuer which at the time of determination is not an Unrestricted Subsidiary.

"*Reversion Date*" has the meaning set forth under "Certain Covenants—Suspension of Covenants" above.

"*Revocation*" has the meaning set forth under "Certain Covenants—Limitation on Designation of Unrestricted Subsidiaries" above.

"*S&P*" means Standard & Poor's Ratings Group and any successor to its rating agency business.

"*Sale and Leaseback Transaction*" means any direct or indirect arrangement with any Person or to which any such Person is a party providing for the leasing to the Issuer or a Restricted Subsidiary of any property, whether owned by the Issuer or any Restricted Subsidiary at the Issue Date or later acquired, which has been or is to be sold or transferred by the Issuer or such Restricted Subsidiary to such Person or to any other Person by whom funds have been or are to be advanced on the security of such Property.

"*Security Agent*" means Wilmington Trust (London) Limited, as security agent under the Intercreditor Agreement.

"*Security Documents*" has the meaning set forth under "Security Interest" above.

"*Senior Indebtedness*" means (i) the Notes and any other Indebtedness of the Issuer or any Guarantor that ranks equal in right of payment with the Notes or the relevant Note Guarantee, as the case may be, or (ii) Indebtedness for borrowed money or constituting Capitalized Lease Obligations of any Restricted Subsidiary other than a Guarantor.

"*Significant Subsidiary*" means a Subsidiary of the Issuer constituting a "Significant Subsidiary" of the Issuer in accordance with Rule 1-02(w) of Regulation S-X under the Securities Act in effect on the date hereof.

"*Similar Business*" means (1) any business engaged in by the Issuer or any Restricted Subsidiary on the Issue Date, and (2) any business or other activities, including non-profit or charitable activities, that are reasonably similar, ancillary, complementary or related to, or a reasonable extension, development or expansion of, the businesses and activities in which the Issuer or any Restricted Subsidiary is engaged on the Issue Date, including, but not limited to, infrastructure projects, public works programs and consumer or supplier financing.

"*SPV Perpetuals*" means the perpetual debentures issued by special purpose vehicles in December 2006, February 2007 and March 2007, as amended or supplemented from time to time.

"*Standard Undertakings*" means representations, warranties, covenants, indemnities and similar obligations, including servicing obligations, entered into by the Issuer or any Subsidiary of the Issuer in connection with a Qualified Receivables Transaction, which are customary in similar non-recourse receivables securitization, purchase or financing transactions.

"*Subordinated Indebtedness*" means, with respect to the Issuer or any Guarantor, any Indebtedness of the Issuer or such Guarantor, as the case may be, which is expressly subordinated in right of payment to the Notes or the relevant Note Guarantee, as the case may be.

"*Subsidiary*" means with respect to any Person, any corporation, partnership, joint venture, limited liability company, trust, estate or other entity of which (or in which) more than fifty percent (50%) of (a) in the case of a corporation, the issued and outstanding Capital Stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether at the time Capital Stock of any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency that has not occurred and is not in the control of such Person), (b) in the case of a limited liability company, partnership or joint venture, the voting or other power to control the actions of such limited liability company, partnership or joint venture or (c) in the case of a trust or estate, the voting or other power to control the actions of such trust or estate, is at the time directly or indirectly owned or controlled by (X) such Person, (Y) such Person and one or more of its other Subsidiaries or (Z) one or more of such Person's other Subsidiaries. Unless the context otherwise requires, all references herein to a "Subsidiary" shall refer to a Subsidiary of the Issuer.

"*Successor Guarantor*" has the meaning set forth under "Certain Covenants—Limitation on Merger, Consolidation and Sale of Assets" above.

"*Successor Issuer*" has the meaning set forth under "Certain Covenants—Limitation on Merger, Consolidation and Sale of Assets" above.

"*Suspended Covenants*" has the meaning set forth under "Certain Covenants—Suspension of Covenants" above.

"*Suspension Date*" has the meaning set forth under "Certain Covenants—Suspension of Covenants" above.

"*Suspension Period*" has the meaning set forth under "Certain Covenants—Suspension of Covenants" above.

"*Taxes*" has the meaning set forth under "Additional Amounts" above.

"*Taxing Jurisdiction*" has the meaning set forth under "Additional Amounts" above.

"*Transportation Agreements*" means, in respect of any Person, any agreement or arrangement designed to protect such Person from fluctuations in prices related to transportation.

"*Trustee*" has the meaning set forth in the first paragraph of this Description of Notes.

"*Unrestricted Subsidiary*" means any Subsidiary of the Issuer designated as such pursuant to "Certain Covenants—Limitation on Designation of Unrestricted Subsidiaries" above. Any such Designation may be revoked by the Issuer, subject to the provisions of such covenant.

"*Voting Stock*" with respect to any Person, means securities of any class of Capital Stock of such Person entitling the holders thereof (whether at all times or only so long as no senior class of stock has voting power by reason of any contingency) to vote in the election of members of the Board of Directors (or equivalent governing body) of such Person.

"*Weighted Average Life to Maturity*" means, when applied to any Indebtedness at any date, the number of years (calculated to the nearest one-twelfth) obtained by dividing:

(1) the sum of the products obtained by multiplying:

   (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payment of principal or liquidation preference, as the case may be, including payment at final maturity, in respect thereof, by

   (b) the number of years (calculated to the nearest one-twelfth) which will elapse between such date and the making of such payment; by

(2) the then outstanding aggregate principal amount or liquidation preference, as the case may be, of such Indebtedness.

"*Wholly Owned Subsidiary*" means, for any Person, any Subsidiary (Restricted Subsidiary in the case of the Issuer) of which at least 99.5% of the outstanding Capital Stock (other than, in the case of a Subsidiary not organized in the United States, directors' qualifying shares or an immaterial amount of shares required to be owned by other Persons pursuant to applicable law) is owned by such Person or any other Person that satisfies this definition in respect of such Person.

## BOOK-ENTRY; DELIVERY AND FORM

### General

The Notes are being offered and sold only:

- to qualified institutional buyers in reliance on Rule 144A under the Securities Act ("Rule 144A Notes"), or
- to persons other than "U.S. persons" (as defined in Regulation S) in offshore transactions in reliance on Regulation S under the Securities Act ("Regulation S Notes").

Notes will be issued in fully registered form only in minimum denominations of U.S.$200,000 and integral multiples of U.S.$1,000 in excess thereof and may be issued in global form. Notes will be issued on the issue date therefor only against payment in immediately available funds.

Rule 144A Notes initially will be represented by a single permanent global certificate (which may be subdivided in denominations not less than U.S.$200,000 without interest coupons (the "Rule 144A Global Note"). Regulation S Notes initially will be represented by a single permanent global certificate (which may be subdivided in denominations not less than U.S.$200,000) without interest coupons (the "Regulation S Global Note" and together with the Rule 144A Global Note, the "Global Notes")).

The Global Notes will be deposited upon issuance with the Trustee as custodian for DTC and registered in the name of DTC or its nominee for credit to an account of a direct or indirect participant in DTC (including, Euroclear or Clearstream), as described below under "—Depositary Procedures."

Except as set forth below, the Global Notes may be transferred, in whole and not in part, only to another nominee of DTC or to a successor of DTC or its nominee. Beneficial interests in the Global Notes may not be exchanged for Notes in certificated form except in the limited circumstances described below under "—Exchange of Book-Entry Notes for Certificated Notes."

The Notes will be subject to certain restrictions on transfer and will bear restrictive legends as described under "Transfer Restrictions; Notice to Investors." In addition, transfers of beneficial interests in the Global Notes will be subject to the applicable rules and procedures of DTC and its direct or indirect participants (including those of Euroclear or Clearstream), which may change from time to time.

### Depositary Procedures

The following description of the operations and procedures of DTC, Euroclear and Clearstream is provided solely as a matter of convenience. These operations and procedures are solely within the control of the respective settlement systems and are subject to changes by them. The Issuer takes no responsibility for these operations and procedures and urges investors to contact the system or their participants directly to discuss these matters.

DTC has advised the Issuer that it is:

- a limited purpose trust company organized under the New York State Banking Law;
- a "banking organization" within the meaning of the New York State Banking Law;
- a member of the U.S. Federal Reserve System;
- a "clearing corporation" within the meaning of the New York Uniform Commercial Code; and
- a "clearing agency" registered under Section 17A of the Securities Exchange Act of 1934.

DTC was created to hold securities for its participating organizations (collectively, the "Participants") and to facilitate the clearance and settlement of transactions in those securities between Participants through electronic book-entry changes in accounts of its Participants. The Participants include securities brokers and dealers

(including the Initial Purchasers), banks, trust companies, clearing corporations and certain other organizations. Access to DTC's system is also available to other entities such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a Participant, either directly or indirectly (collectively, the "Indirect Participants"). Persons who are not Participants may beneficially own securities held by or on behalf of DTC only through the Participants or the Indirect Participants. DTC has no knowledge of the identity of beneficial owners of securities held by or on behalf of DTC. DTC's records reflect only the identity of Participants to whose accounts securities are credited. The ownership interests and transfer of ownership interests of each beneficial owner of each security held by or on behalf of DTC are recorded on the records of the Participants and Indirect Participants.

DTC has also advised the Issuer that, pursuant to procedures established by DTC:

- upon deposit of the Global Notes, DTC will credit the accounts of Participants designated by the Initial Purchasers with portions of the principal amount of the Global Notes; and
- ownership of these interests in Global Notes will be shown on, and the transfer of ownership of these interests will be effected only through, records maintained by DTC (with respect to the Participants) or by the Participants and the Indirect Participants (with respect to other owners of beneficial interests in Global Notes).

Investors in the Global Notes may hold their interests therein directly through DTC, if they are Participants in such system, or indirectly through organizations (including Euroclear and Clearstream) that are Participants or Indirect Participants in such system. Euroclear and Clearstream will hold interests in the Notes on behalf of their participants through customers' securities accounts in their respective names on the books of their respective depositaries. The depositaries, in turn, will hold interests in the Notes in customers' securities accounts in the depositaries' names on the books of DTC.

All interests in a Global Note, including those held through Euroclear or Clearstream, will be subject to the procedures and requirements of DTC. Those interests held through Euroclear or Clearstream will also be subject to the procedures and requirements of these systems. The laws of some states require that certain persons take physical delivery of certificates evidencing securities they own. Consequently, the ability to transfer beneficial interests in a Global Note to such persons will be limited to that extent. Because DTC can act only on behalf of Participants, which in turn act on behalf of Indirect Participants, the ability of beneficial owners of interests in a Global Note to pledge such interests to persons or entities that do not participate in the DTC system, or otherwise take actions in respect of such interests, may be affected by the lack of a physical certificate evidencing such interests. For certain other restrictions on the transferability of the Notes, see "—Exchange of Book-Entry Notes for Certificated Notes."

Except as described below, owners of an interest in the Global Notes will not have Notes registered in their names, will not receive physical delivery of Notes in certificated form and will not be considered the registered owners or holders thereof under the Indenture for any purpose.

Payments in respect of the principal of and premium, if any, and interest on a Global Note registered in the name of DTC or its nominee will be payable by the Trustee (or the paying agent if other than the Trustee) to DTC in its capacity as the registered holder under the Indenture. Under the terms of the Indenture, the Issuer and the Trustee will treat the persons in whose names Notes, including Global Notes, are registered as the owners of such Notes for the purpose of receiving payments and for all other purposes. Consequently, neither the Issuer the Trustee nor any agent of the Issuer or the Trustee has or will have any responsibility or liability for:

- any aspect of DTC's records or any Participant's or Indirect Participant's records relating to or payments made on account of beneficial ownership interests in Global Notes or for maintaining, supervising or reviewing any of DTC's records or any Participant's or Indirect Participant's records relating to the beneficial ownership interests in Global Notes; or
- any other matter relating to the actions and practices of DTC or any of its Participants or Indirect Participants.

DTC has advised the Issuer that its current practice, upon receipt of any payment in respect of securities such as the Notes (including principal and interest), is to credit the accounts of the relevant Participants with the payment on the payment date in amounts proportionate to their respective holdings in the principal amount of the relevant security as shown on the records of DTC, unless DTC has reason to believe it will not receive payment on that payment date. Payments by the Participants and the Indirect Participants to the beneficial owners of Notes will be governed by standing instructions and customary practices and will be the responsibility of the Participants or the Indirect Participants and will not be the responsibility of DTC, the Trustee or the Issuer. Neither the Issuer nor the Trustee will be liable for any delay by DTC or any of its Participants in identifying the beneficial owners of any Notes, and the Issuer and the Trustee may conclusively rely on and will be protected in relying on instructions from DTC or its nominee for all purposes.

Except for trades involving only Euroclear and Clearstream participants, Notes represented by Global Notes are expected to be eligible to trade in DTC's Same-Day Funds Settlement System, and any permitted secondary market trading activity in Notes represented by Global Notes will, therefore, be required by DTC to be settled in immediately available funds, subject in all cases to the rules and procedures of DTC and its Participants.

Subject to the transfer restrictions set forth under "Transfer Restrictions; Notice to Investors," transfers between Participants in DTC will be effected in accordance with DTC's procedures, and will be settled in same-day funds and transfers between participants in Euroclear and Clearstream will be effected in accordance with their respective rules and operating procedures.

Subject to compliance with the transfer restrictions applicable to the Notes described herein, cross-market transfers between the Participants, on the one hand, and Euroclear or Clearstream participants, on the other hand, will be effected through DTC in accordance with DTC's rules on behalf of Euroclear or Clearstream, as the case may be, by its respective depositary; however, such cross-market transactions will require delivery of instructions to Euroclear or Clearstream, as the case may be, by the counterparty in such system in accordance with the rules and procedures and within the established deadlines (Brussels time) of such system. Euroclear or Clearstream, as the case may be, will, if the transaction meets its settlement requirements, deliver instructions to its respective depositary to take action to effect final settlement on its behalf by delivering or receiving interests in the relevant Global Note from DTC, and making or receiving payment in accordance with normal procedures for same-day funds settlement applicable to DTC. Euroclear participants and Clearstream participants may not deliver instructions directly to the depositories for Euroclear or Clearstream.

Because of time zone differences, the securities account of a Euroclear or Clearstream participant purchasing an interest in a Global Note from a Participant in DTC will be credited and reported to the relevant Euroclear or Clearstream participant, during the securities settlement processing day (which must be a business day for Euroclear and Clearstream) immediately following the settlement date of DTC. DTC has advised the Issuer that cash received in Euroclear or Clearstream as a result of sales of interests in a Global Note by or through a Euroclear or Clearstream participant to a participant in DTC will be received with value on the settlement date of DTC but will be available in the relevant Euroclear or Clearstream cash account only as of the business day for Euroclear or Clearstream following DTC's settlement date.

DTC has advised the Issuer that it will take any action permitted to be taken by a holder of the Notes only at the direction of one or more Participants to whose account DTC has credited the interests in the Global Notes and only in respect of the portion of the aggregate principal amount of the Notes as to which that Participant or those Participants has or have given the relevant direction. However, if there is an Event of Default under the Notes, DTC reserves the right to exchange the Global Notes for legended notes in certificated form, and to distribute those notes to its Participants.

Although DTC, Euroclear and Clearstream have agreed to the foregoing procedures in order to facilitate transfers of interests in Global Notes among Participants, they are under no obligation to perform those procedures and may discontinue or change those procedures at any time. Neither the Issuer nor the Trustee nor

any of their respective agents will have any responsibility for the performance by DTC, Euroclear, Clearstream or their respective Participants or Indirect Participants of their respective obligations under the rules and procedures governing their operations.

The information in this section concerning DTC, Euroclear and Clearstream and their book-entry systems has been obtained from sources that the Issuer believes to be reliable, but the Issuer takes no responsibility for the accuracy thereof.

**Exchange of Book-Entry Notes for Certificated Notes**

A Global Note is exchangeable for certificated Notes in fully registered form without interest coupons ("Certificated Notes") only in the following limited circumstances:

- DTC notifies the Issuer that it is unwilling or unable to continue as depositary for the Global Note or DTC ceases to be a clearing agency registered under the Securities Exchange Act of 1934, as amended, at a time when DTC is required to be so registered in order to act as depositary, and in each case the Issuer fails to appoint a successor depositary within 90 days of such notice;
- upon the request of a holder thereof, if there shall have occurred and be continuing an Event of Default with respect to the Notes.

In all cases, Certificated Notes delivered in exchange for any Global Note or beneficial interests in a Global Note will be registered in the names, and issued in any approved denominations, requested by or on behalf of DTC (in accordance with its customary procedures) and will bear the applicable restrictive legend referred to in "Transfer Restrictions; Notice to Investors," unless the Issuer determines otherwise in accordance with the Indenture and in compliance with applicable law.

**Transfers Within and Between Global Notes**

Beneficial interests in a Regulation S Global Note may be transferred to a person who takes delivery in the form of a beneficial interest in the Rule 144A Global Note only if the transfer is made pursuant to Rule 144A and the transferor first delivers to the Trustee a certificate (in the form provided in the Indenture) to the effect that such transfer is being made to a person who the transferor reasonably believes is a QIB within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A and in accordance with all applicable securities laws of the states of the United States and other jurisdictions.

Beneficial interests in a Rule 144A Global Note may be transferred to a person who takes delivery in the form of a beneficial interest in a Regulation S Global Note only upon receipt by the Trustee of a written certification (in the form provided in the Indenture) from the transferor to the effect that such transfer is being made in accordance with Regulation S under the Securities Act.

Transfers of beneficial interests within a Global Note may be made without delivery of any written certification or other documentation from the transferor or the transferee.

Transfers of beneficial interests in a Regulation S Global Note for beneficial interests in the Rule 144A Global Note or vice versa will be effected by DTC by means of an instruction originated by the Trustee through the DTC Deposit/Withdraw at Custodian system. Accordingly, in connection with any transfer, appropriate adjustments will be made to reflect a decrease in the principal amount of the Regulation S Global Note and a corresponding increase in the principal amount of the Rule 144A Global Note or vice versa, as applicable. Any beneficial interest in one of the Global Notes that is transferred to a person who takes delivery in the form of an interest in another Global Note will, upon transfer, cease to be an interest in such Global Note and will become an interest in the other Global Note and, accordingly, will thereafter be subject to all transfer restrictions and other procedures applicable to beneficial interests in such other Global Note for so long as it remains such an interest. Such transfer shall be made on a delivery free of payment basis and the buyer and seller will need to arrange for payment outside the clearing system.

## TRANSFER RESTRICTIONS; NOTICE TO INVESTORS

The following is a summary of certain important legal matters relating to restrictions on transfer of your Notes. This summary does not purport to be complete and may not contain all the information that is important or relevant to you. You are advised to contact your own legal counsel prior to making any offer, sale, pledge or other transfer of the Notes.

### U.S. Securities Laws Transfer Restrictions

We have not registered the Notes under the Securities Act. Accordingly, this offering is being made in reliance upon an exemption from the registration requirements under the Securities Act; no registration statement has been filed with the SEC. This offering is only being made to persons (i) in the United States that are "qualified institutional buyers" or QIBs (as defined in Rule 144A under the Securities Act) in compliance with Rule 144A or (ii) outside the United States that are persons other than "U.S. persons," in offshore transactions meeting the requirements of Rule 903 or Rule 904 of Regulation S under the Securities Act. As used herein, the terms "offshore transaction" and "U.S. person" have the respective meanings given to them in Regulation S.

If you are unable to certify that you are either (a) a QIB or (b) not a "U.S. Person," as that term is defined in Rule 902 of Regulation S, you may not participate in this offering.

The Notes may not be offered or sold in the United States except pursuant to an effective registration statement under the Securities Act, in a transaction not subject to the registration requirements of the Securities Act or in accordance with an applicable exemption from the registration requirements of the Securities Act. We make no representation with respect to, and we assume no responsibility for, (i) the availability of an exemption from the registration requirements of the Securities Act with respect to offers and sales of the Notes or (ii) the circumstances under which the Notes may be lawfully offered or sold in the United States or to U.S. Persons.

### Representations; Restrictions on Resale

As a purchaser of the Notes offered hereby, by accepting the Notes, you will be deemed to have represented and agreed with the Issuer and the Initial Purchasers as follows (terms used herein that are defined in Rule 144A or Regulation S are used herein as defined therein):

(1) Such purchaser is not an "affiliate" of CEMEX within the meaning of Rule 144 under the Securities Act and is not acting on CEMEX's behalf, and such purchaser is purchasing the Notes for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account: (A) is a QIB and is acquiring the Notes for its own account or for the account of one or more QIBs and is aware that the sale of the Notes to it is being made in reliance on Rule 144A or (B) is not a U.S. person as defined in Regulation S and is acquiring the Notes in an offshore transaction in accordance with Regulation S;

(2) Such purchaser understands, acknowledges and agrees that the Notes have not been registered under the Securities Act and may not be offered, sold, pledged or otherwise transferred except in compliance with the registration requirements of the Securities Act and any other applicable securities law, pursuant to an exemption therefrom, or in a transaction not subject thereto, and in each case in compliance with the conditions for transfer in this offering memorandum;

(3) Such purchaser understands and agrees that the Notes are being offered only in a transaction not involving any public offering within the meaning of the Securities Act, and that any offer, resale, pledge or transfer of the Notes may be made only: (i) to the Issuer, (ii) for so long as the Notes are eligible for resale pursuant to Rule 144A, to a person who the seller reasonably believes is a QIB that is acquiring the Notes for its own account or for the account of one or more QIBs in a transaction meeting the requirements of Rule 144A, (iii) in an offshore transaction meeting the requirements of Rule 903 or

904 (as applicable) of Regulation S, (iv) pursuant to an exemption from registration under the Securities Act (if available), *provided* that as a condition to the registration of transfer of any Notes pursuant to this clause (iv) such purchaser shall provide the Issuer and the Trustee with respect to the Notes, a legal opinion, or such other evidence as the Trustee or the Issuer may require, as to compliance with any such exemption, or (v) pursuant to an effective registration statement under the Securities Act, in each case in accordance with any applicable securities laws of any state of the United States and any other jurisdiction, and such purchaser will, and each subsequent holder is required to, deliver to each person to whom this Note or interest therein is transferred a notice substantially to the effect hereof;

(4) The Notes will bear a legend to the following effect, unless the Issuer determines otherwise in compliance with applicable law:

"THE NOTES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (A)(1) TO THE ISSUER, (2) TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A AND TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS MADE IN RELIANCE ON RULE 144A, (3) IN AN OFFSHORE TRANSACTION COMPLYING WITH RULE 903 OR RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, (4) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT (IF AVAILABLE), OR (5) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND (B) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES. THIS LEGEND CAN ONLY BE REMOVED AT THE OPTION OF THE ISSUER."

(5) Such purchaser of Notes not acquired in an offshore transaction pursuant to Regulation S acknowledges that (a) it has received a copy of this offering memorandum, (b) it has been afforded an opportunity to request from the Issuer and to review, and it has received, all additional information considered by it to be necessary to verify the accuracy of the information herein, and (c) it has not relied on the Initial Purchasers or any persons affiliated with any of them in connection with its investigation of the accuracy of the information contained in this offering memorandum or its investment decision;

(6) Such purchaser in a sale that occurs outside the United States within the meaning of Regulation S, acknowledges that until the expiration of the "40-day distribution compliance period" within the meaning of Rule 903 of Regulation S under the Securities Act, any offer or sale of the Notes shall not be made by such purchaser to a U.S. person or for the account or benefit of a U.S. person within the meaning of Rule 902 under the Securities Act, except to a QIB in a transaction meeting the requirements of Rule 144A under the Securities Act;

WE WILL RELY, AND YOU ACKNOWLEDGE THAT WE AND OTHERS WILL RELY, UPON THE TRUTH AND ACCURACY OF THE FOREGOING ACKNOWLEDGEMENTS, REPRESENTATIONS AND AGREEMENTS. You agree that if any of the acknowledgments, representations or agreements deemed to have been made by your purchase of Notes are no longer accurate, you shall promptly notify us and the Initial Purchasers.

**Mexican Law Transfer Restrictions**

THE NOTES HAVE NOT BEEN AND WILL NOT BE REGISTERED WITH THE NATIONAL SECURITIES REGISTRY, MAINTAINED BY THE MEXICAN NATIONAL BANKING AND SECURITIES COMMISSION, AND MAY NOT BE OFFERED OR SOLD PUBLICLY IN MEXICO. THE NOTES,

HOWEVER, MAY BE OFFERED TO INSTITUTIONAL AND QUALIFIED INVESTORS, UNDER THE PRIVATE PLACEMENT EXEMPTION SET FORTH IN ARTICLE 8 OF THE MEXICAN SECURITIES MARKET LAW.

**Other Jurisdictions**

The distribution of this offering memorandum and the offer and sale or resale of the Notes may be restricted by law in certain jurisdictions. Persons into whose possession this offering memorandum comes are required by the Issuer to inform themselves about and to observe any such restrictions.

## IMPORTANT FEDERAL TAX CONSIDERATIONS

### United States Taxation

### U.S. Federal Income Tax Consequences

**TO ENSURE COMPLIANCE WITH UNITED STATES INTERNAL REVENUE SERVICE ("IRS") CIRCULAR 230, PROSPECTIVE HOLDERS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF OR REFERENCE TO U.S. FEDERAL TAX ISSUES IN THIS OFFERING MEMORANDUM IS NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED UNDER THE U.S. INTERNAL REVENUE CODE; (B) SUCH DISCUSSION IS BEING USED BY THE ISSUER IN CONNECTION WITH THE PROMOTION OR MARKETING OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) PROSPECTIVE HOLDERS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.**

The following discussion summarizes certain U.S. federal income tax consequences of the purchase, ownership and disposition of the Notes by a holder as of the date hereof. Except where noted, this summary deals only with Notes that are held as capital assets by a holder of the Notes that acquired the Notes upon original issuance at their initial offering price. This summary does not apply to investors subject to special rules, including:

- A dealer in securities,
- A trader in securities that elects to use a mark-to-market method of accounting for securities holdings,
- A tax-exempt organization,
- An insurance company,
- A person liable for alternative minimum tax,
- A person that holds the Notes as part of a straddle or a hedging or conversion transaction, or
- A U.S. Holder whose functional currency is not the U.S. dollar.

This discussion is based on the U.S. Internal Revenue Code of 1986, as amended, its legislative history, existing and proposed regulations, and published rulings and court decisions, all as in effect as of the date hereof, and all of which are subject to change, possibly with retroactive effect.

You are a "U.S. Holder" if you are a beneficial owner of the Notes and you are:

- An individual citizen or resident of the United States,
- A corporation (or other entity that is treated as a corporation for U.S. federal income tax purposes) that is created or organized in or under the laws of the United States or any state thereof (including the District of Columbia),
- An estate the income of which is subject to U.S. federal income tax regardless of its source, or
- A trust that (i) is subject to the primary supervision of a court within the United States and with respect to which one or more United States persons are authorized to control all substantial decisions or (ii) has a valid election in effect under applicable United States Treasury regulations to be treated as a United States person.

A "Non-U.S. Holder" is a beneficial owner of the Notes, other than a partnership or other entity taxable as a partnership for U.S. federal income tax purposes, that is not a U.S. Holder.

If a partnership holds the Notes, the U.S. federal income tax treatment of a partner will generally depend on the status of the partner and the tax treatment of the partnership. A partner in a partnership holding the Notes should consult its tax advisor with regard to the U.S. federal income tax treatment of its investment in the Notes.

EACH PROSPECTIVE INVESTOR SHOULD CONSULT ITS TAX ADVISORS AS TO THE U.S. FEDERAL, STATE, LOCAL, FOREIGN AND ANY OTHER TAX CONSEQUENCES TO IT OF THE PURCHASE, OWNERSHIP AND DISPOSITION OF THE NOTES.

## U.S. HOLDERS

### *Payment of Interest and Additional Amounts*

Interest on the Notes (including any Additional Amounts) generally will be taxable to a U.S. Holder as ordinary income at the time it is paid or accrued in accordance with such U.S. Holder's method of accounting for U.S. federal income tax purposes. A U.S. Holder may be entitled to deduct or credit against its U.S. federal income tax liability any foreign taxes withheld by the Issuer from payments on the Notes, subject to certain limitations (including that the election to deduct or credit foreign taxes applies to all of such U.S. Holder's foreign taxes for a particular tax year). The rules regarding the calculation and timing of foreign tax credits and, in the case of a U.S. Holder that elects to deduct foreign taxes, the availability of deductions are complex and depend upon a U.S. Holder's particular circumstances. Interest income on a Note generally will be considered foreign source income. Such income generally will constitute "passive category income" or, in the case of certain U.S. Holders, "general category income" for foreign tax credit purposes. U.S. Holders should consult independent tax advisors regarding the availability of the foreign tax credit in their particular circumstances.

### *Sale, Exchange, Retirement, or Other Disposition*

A U.S. Holder generally will recognize taxable gain or loss upon the sale, exchange, redemption, or other disposition of the Notes in an amount equal to the difference between the amount realized upon the disposition (other than any amount attributable to accrued interest not previously included in income, which will be taxable as ordinary interest income in the manner described above) and the U.S. Holder's adjusted tax basis in the Notes. A U.S. Holder's adjusted tax basis in a Note generally will be equal to the purchase price of such Note and decreased by any payments of principal received on the Note. Any gain or loss recognized on a disposition of Notes will be capital gain or loss, and will be long-term capital gain or loss if the Notes have been held for more than one year. Long-term capital gains recognized by individuals and certain other non-corporate U.S. Holders generally are eligible for reduced rates of taxation. Deductions in respect of capital losses are subject to limitations.

In most circumstances, gain realized by a U.S. Holder on the sale or other disposition of a Note will be treated as U.S. source for U.S. foreign tax credit limitation purposes.

### *Information Reporting and Backup Withholding*

In general, information reporting requirements will apply to certain payments of principal and interest on the Notes and to the proceeds from the sale of a Note unless the recipient is an exempt recipient (such as a corporation). Backup withholding at the applicable rate (currently 28%) will apply to the payments if a U.S. Holder fails to provide its taxpayer identification number and otherwise comply with the applicable requirements of the U.S. backup withholding rules.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules from a payment to a U.S. Holder may be refunded or credited against the U.S. Holder's U.S. federal income tax liability, if any, if the U.S. Holder timely provides the required information to the IRS.

**NON-U.S. HOLDERS**

A Non-U.S. Holder generally will not be subject to U.S. federal income or withholding tax on:

- interest (including any Additional Amounts) received in respect of the Notes, unless those payments are effectively connected with the conduct by the Non-U.S. Holder of a trade or business in the United States (and, if a treaty applies, those payments are attributable to the conduct of a trade or business through a permanent establishment or fixed base in the United States); or
- gain realized on the sale, exchange, redemption or retirement of the Notes, unless that gain is effectively connected with the conduct by the Non-U.S. Holder of a trade or business in the United States or, in the case of gain realized by an individual Non-U.S. Holder, that Non-U.S. Holder is present in the United States for 183 days or more in the taxable year of the disposition and certain other conditions are met.

Payments within the United States of principal and interest (including any Additional Amounts) to a Non-U.S. Holder will not be subject to backup withholding tax and information reporting requirements if an appropriate certification is provided by the Non-U.S. Holder to the payor and the payor does not have actual knowledge or reason to know that the certificate is incorrect.

**Mexican Taxation**

***General***

The following is a general summary of the principal Mexican federal income tax consequences of the purchase, ownership and disposition of the Notes by holders that are not residents of Mexico for tax purposes and that do not hold the Notes through a permanent establishment in Mexico for tax purposes, to which the holding of the Notes is attributable; for purposes of this summary, each such non-resident holder is a "foreign holder." This summary is based upon the provisions of the Mexican Federal Income Tax Law (*Ley del Impuesto Sobre la Renta*, or the "Mexican Income Tax Law") in effect on the date of this offering memorandum, all of which are subject to change or to different interpretations, which could affect the continued validity of this summary. This summary does not address all of the Mexican tax consequences that may be applicable to specific holders of the Notes, and does not purport to be a comprehensive description of all the Mexican tax considerations that may be relevant to a decision to purchase, own or dispose of the Notes. This summary does not describe any tax consequences arising under the laws of any state, municipality or taxing jurisdiction, other than the Mexican Federal Income Tax Law.

**Potential purchasers of the Notes, whether foreign holders or otherwise, should consult with their own tax advisors regarding the particular tax consequences of the purchase, ownership and disposition of the Notes under the laws of Mexico and any other jurisdiction or under any applicable double taxation treaty which is in effect.**

For purposes of Mexican taxation, an individual or corporation that does not satisfy the requirements to be considered a resident of Mexico for tax purposes, as described below, is deemed as a non-resident of Mexico for tax purposes and considered as a foreign holder for purposes of this summary.

An individual is a resident of Mexico, if such person has established his or her domicile in Mexico. When such person has a home in another country, the individual will be considered a resident of Mexico for tax purposes, if his/her center of vital interests is located in Mexico, which is deemed to occur if (i) more than 50% of such individual's total income, in any calendar year, is from a Mexican source, or (ii) such individual's principal center of professional activities is located in Mexico. Any Mexican nationals that are employed by the Mexican government, are deemed to be residents of Mexico, even if his/her center of vital interests is located outside of Mexico. Unless otherwise proven, Mexican nationals are deemed residents of Mexico for tax purposes.

A legal entity is a resident of Mexico if it maintains the principal administration of its business or the effective location of its management in Mexico.

A permanent establishment in Mexico of a foreign person will be regarded as a resident of Mexico for tax purposes, and such permanent establishment will be required to pay taxes in Mexico in accordance with applicable Mexican tax laws, in respect of any and all income attributable to such permanent establishment in Mexico.

***Taxation of Interest Payments***

Under the Mexican Income Tax Law, payments of interest (including original issue discount and premiums, which are deemed interest under the Mexican Income Tax Law) made by us or any of the Mexican Guarantors in respect of the Notes to a foreign holder, will be subject to a Mexican withholding tax assessed at a rate of 4.9%, if, as expected, the following requirements are satisfied:

- the Notes are placed outside Mexico through banks or broker-dealers, in a country with which Mexico has a treaty for the avoidance of double taxation in effect;
- a notice is filed by us with the CNBV describing the main characteristics of the Notes, pursuant to Article 7 of the Mexican Securities Market Law (*Ley del Mercado de Valores*); and
- the information requirements specified from time to time by the Tax Management Service (*Servicio de Administración Tributaria*) under its general rules, including, after completion of the offering of the Notes, certain information related to the Notes offering and this offering memorandum, are duly and timely complied with.

If any of such requirements is not met, the applicable withholding tax rate will be 10% or higher.

In addition, if the effective beneficiaries, whether directly or indirectly, severally or jointly with related parties, receiving more than 5% of the aggregate amount of each interest payment under the Notes are (i) shareholders holding more than 10% of our voting stock, directly or indirectly, severally or jointly with related parties, or (ii) corporations or other entities having more than 20% of their stock owned, directly or indirectly, jointly or severally, by persons related to us, the Mexican withholding tax will be applied at a rate of 30% or higher.

In the event that we or any of the Mexican Guarantors are required to withhold taxes at a rate higher than 10% due to any change in the Mexican Income Tax Law or in the official interpretation or application thereof after the issue date, we or the Mexican Guarantors may, at our option, redeem in whole, but not in part, the Notes, as described under "Description of Notes—Optional redemption—Optional Redemption for Changes in Withholding Taxes."

Payments of interest made by us or the Mexican Guarantors in respect of the Notes to non-Mexican pension or retirement funds will be exempt from Mexican withholding taxes if:

- the relevant fund is organized pursuant to the laws of its country of residence and is the effective beneficiary of the interest payment;
- such income is exempt from income taxes in such country; and
- such fund is registered with the Tax Management Service for these purposes.

Holders or beneficial owners of the Notes may be requested, subject to specified exemptions and limitations, to provide certain information or documentation necessary to enable us to apply the appropriate Mexican withholding tax rate on interest payments under the Notes made by us or any of the Mexican Guarantors to such holders or beneficial owners. In the event that the specified information or documentation concerning the

holder or beneficial owner, if requested, is not timely or completely provided, we or the Mexican Guarantors may withhold Mexican tax from that interest payment on the Notes to that holder or beneficial owner at the maximum applicable rate, and our or the Mexican Guarantors' obligation to pay Additional Amounts relating to those withholding taxes would be limited as described under "Description of Notes—Additional Amounts."

***Taxation of Principal Payments***

Under the Mexican Income Tax Law, payments of principal made by us or any of the Mexican Guarantors in respect of the Notes to a foreign holder will not be subject to any Mexican withholding tax.

***Taxation of Dispositions and Acquisitions of the Notes***

Under the Mexican Income Tax Law, gains resulting from the sale or disposition of the Notes by a foreign holder to another foreign holder are not taxable in Mexico. Gains resulting from the sale of the Notes by a foreign holder to a purchaser who is a resident of Mexico for tax purposes, or to a foreign holder deemed to have a permanent establishment in Mexico for tax purposes, will be subject to Mexican federal income or other taxes pursuant to the rules described above in respect of interest payments. The acquisition of the Notes at a discount by a foreign holder will be deemed interest income (in respect of such discount), and subject to Mexican withholding taxes, if the seller is a resident of Mexico for tax purposes or a foreign resident deemed to have a permanent establishment in Mexico for tax purposes.

***Other Mexican Taxes***

Under current Mexican tax laws, there are no estate, inheritance, succession or gift taxes generally applicable to the purchase, ownership or disposition of the Notes by a foreign holder. Gratuitous transfers of the Notes in certain circumstances may result in the imposition of Mexican income taxes upon the recipient. There are no Mexican stamp, issuer registration or similar taxes or duties payable by foreign holders of the Notes with respect to the Notes.

**Spanish Taxation**

***General***

The following is solely a general description of certain Spanish withholding tax obligations of CEMEX España in connection with payments under the Note Guarantee to holders of the Notes that are not deemed to be tax resident in Spain and that are not acting, for the purposes of the Notes, through a permanent establishment located in Spain (hereinafter, the "Non-Spanish Holders"). The following does not purport to be an analysis of the tax law and practice currently applicable in Spain and, in particular, it does not purport to be an analysis of any other tax aspect related to the issue of the Notes different from that referred to above. Prospective purchasers of the Notes are advised to consult their own tax advisors as to the tax consequences of purchasing, holding and disposing of the Notes. This section is based upon Spanish law as in effect on the date of this offering memorandum as well as on administrative interpretation thereof and is subject to any change in law that may take place after such date or that may have retrospective effect.

***Taxation of Payments under the Note Guarantee***

Additional Provision Two of Law 13/1985 of May 25 on Investment Ratios, Own Funds and Information Obligations of Financial Intermediaries (*Ley 13/1985, de 25 de Mayo, de coeficientes de inversión, recursos propios y obligaciones de información de los intermediarios financieros*), as amended, establishes rules governing the issuance of preference shares and other debt instruments by Spanish financial entities and Spanish non-financial listed entities, whether directly or through a group subsidiary incorporated either in Spain or in a European Union Member State (other than tax havens as defined in Royal Decree 1080/1991 of July 5, 1991, as amended). Since the Issuer is not incorporated in Spain or in a European Union Member State, these rules will not apply to the issue of the Notes.

Payments made under the Note Guarantee by CEMEX España to Non-Spanish Holders could be characterized as an indemnity and made free and clear of and without withholding or deduction in Spain.

In the event that CEMEX España is required to make any withholding tax on interest payments under the Note Guarantee, no withholding tax in Spain would be due to the extent that the Non-Spanish Holders are (i) tax resident in a EU Member State (other than Spain) that obtain the interest income either directly or through a permanent establishment located in a EU Member State (other than Spain), *provided* that such Non-Spanish Holders do not obtain the interest income through a country or territory that qualifies as a tax haven for the purposes of Spanish law; or (ii) tax resident in a country which has entered into a convention for the avoidance of double taxation with Spain which provides for a full exemption from Spanish tax with respect to interest income, and provided that, in both cases, the Non-Spanish Holders evidence their tax residence within the meaning of the relevant convention for the avoidance of double taxation (if any) by means of a certificate of tax residence issued by the relevant tax authorities within the year prior to any interest under the Notes and the Note Guarantee becoming due or payable. In any other case, the withholding tax would be levied at the applicable rate (currently 21% for amounts paid during 2013, and 19% for amounts paid from 2014, according to Additional Provision Three of Royal Legislative Decree 5/2004 of November 28 on Non-Residents Income Tax—*Real Decreto Legislativo 5/2004 de 28 noviembre del Impuesto sobre la Renta de No Residentes*).

***Others***

The acquisition and transfer of the Notes will be exempt from indirect taxes in Spain, i.e. exempt from Transfer Tax, Stamp Duty and Value Added Tax.

**Netherlands Taxation**

***General***

This section provides a general summary of Netherlands tax consequences of holders investing in the Notes. It describes the general tax consequences of the payments of interest and principal to the holders of the Notes under the Note Guarantee by a Dutch Guarantor as Dutch tax resident Guarantor. This summary provides general information only, is not meant to be complete and is restricted to the matters of Netherlands taxation stated therein. The information given below is neither intended as tax advice nor purports to describe all of the tax considerations that may be relevant to a prospective purchaser of the Notes.

The prospective purchasers of the Notes should consult their own tax advisors with regard to the Netherlands tax consequences of investing in the Notes and of receiving payment of interest and principal under the Note Guarantee from a Dutch Guarantor as Dutch tax resident Guarantor.

This summary is based on the tax legislation, published case law, and other regulations in the Netherlands as currently in effect, without prejudice to any amendments introduced at a later date and implemented with or without retroactive effect.

It has been assumed that the holders of the Notes do not hold a substantial shareholding interest (*aanmerkelijk belang*) in the Issuer, nor in a Dutch Guarantor. Generally speaking, an interest in the share capital of the Issuer or a Dutch Guarantor should not be considered a substantial interest, if the holder of such interest, and, if the holder is an individual, his or her spouse, registered partner, certain other relatives or certain persons sharing the holder's household, do not hold, alone or together, whether directly or indirectly, the ownership of, or certain rights over, shares or rights resembling shares representing five percent or more of the total issued and outstanding capital, or the issued and outstanding capital of any class of shares, of the Issuer or of a Dutch Guarantor.

Furthermore, it has been assumed that the Notes and income received or deemed received or capital gains derived or deemed derived therefrom are not attributable to employment activities of the holders of the Notes.

***Withholding tax***

All payments of interest, including payments of Additional Amounts, and principal to the holders of the Notes under the Note Guarantee by a Dutch Guarantor as Dutch tax resident Guarantor can be made without withholdings or deductions for or because of any taxes, duties or charges of any nature whatsoever that are or may be withheld or assessed by the Netherlands tax authorities, any political subdivision thereof or therein or any of their representatives, agents or delegates.

***Taxes on income and capital gains***

*Residents of the Netherlands*

Income derived or deemed derived from the Notes or a gain realized on the disposal or the redemption of the Notes, by a holder of the Notes who is a resident of the Netherlands and who is subject to Netherlands corporate income tax, is generally taxable in the Netherlands. Income derived or deemed derived from the Notes or a gain realized on the disposal or the redemption of the Notes, by a holder of the Notes who is an individual and who is a resident or a deemed resident of the Netherlands or has opted to be treated as a resident of the Netherlands, may, amongst others, be subject to Netherlands income tax at progressive individual income tax rates, if:

i. the individual carries on a business, or is deemed to carry on a business, for example pursuant to a co-entitlement to the net value of an enterprise (*medegerechtigde*), to the assets of which the Notes are attributable, or

ii. such income or gain qualifies as income from miscellaneous activities (*resultaat uit overige werkzaamheden*), which include activities with respect to the Notes that exceed regular, active portfolio management (*normaal actiefvermogensbeheer*).

If the conditions in the paragraphs i or ii above do not apply to an individual holder of the Notes, actual received income derived from the Notes or gains realized on the disposal or the redemption of the Notes are, in general, not taxable as such. Instead, such holder of the Notes will be taxed at a flat rate on deemed income from 'savings and investments' (*sparen en beleggen*). The holder of the Notes will then have to include the fair market value of the Notes in the basis on which the deemed income is calculated.

*Non-residents of the Netherlands*

A holder of the Notes who is neither resident nor deemed to be resident of the Netherlands nor has opted to be treated as a resident of the Netherlands and who derives income from the Notes, or who realizes a gain on the disposal or the redemption of the Notes, is not subject to Netherlands taxation on income or capital gains, unless, amongst others:

i. such holder carries on a business, or is deemed to carry on a business or part thereof, for example pursuant to a co-entitlement to the net value of an enterprise (*medegerechtigde*), through a permanent establishment or a permanent representative in the Netherlands to which the Notes are attributable;

ii. the holder is an individual, and such income or gain qualifies as income from miscellaneous activities in the Netherlands (*resultaat uit overige werkzaamheden in Nederland*), which include activities with respect to the Notes that exceed regular, active portfolio management (*normaal, actief vermogensbeheer*).

If the non-resident holder of the Notes becomes subject to Netherlands taxation, as it meets the requirements as set out above, the right to levy tax may be reduced under an applicable double taxation treaty.

***Taxation of gifts and inheritances***

*Residents of the Netherlands*

Generally, gift and inheritance tax is due in the Netherlands in respect of the acquisition of the Notes by way of a gift by, or on the death of, a holder of the Notes who is a resident or deemed to be a resident of the

Netherlands for purposes of Dutch gift and inheritance tax at the date of the gift or his or her death. An individual of Dutch nationality is deemed to be a resident of the Netherlands for purposes of Netherlands gift and inheritance tax if he or she has resided in the Netherlands at any time during the 10 years preceding the date of the gift or his or her death.

An individual of any other nationality is deemed to be a resident of the Netherlands for purposes of Dutch gift tax only if he or she has been residing in the Netherlands at any time during the 12 months preceding the date of the gift.

*Non-residents of the Netherlands*

No gift or inheritance tax arises in the Netherlands on the transfer by way of gift or inheritance of the Notes, if the donor or deceased at the time of the gift or death is neither a resident nor a deemed resident of the Netherlands.

**French Taxation**

***General***

The statements herein regarding taxation are based on the laws in force in France as of the date of this offering memorandum and are subject to any change in law. The following summary does not purport to be a comprehensive description of all the tax considerations which may be relevant to a decision to purchase, own or dispose of, the Notes. Each prospective holder or beneficial owner of Notes should consult its own tax advisor as to the French tax consequences of any investment in, or ownership and disposition of, the Notes.

***Taxation of interest payments made by the Issuer or any Guarantor to French tax resident individuals***

Interest and other similar income paid to French tax resident individuals are included in their income taxable in France and subject to (i) the progressive personal income tax rate and (ii) social contributions (*CSG*, *CRDS* and other related contributions) at an aggregate rate of 15.5 per cent.

Pursuant to Articles 125 A and 125 D of the French *Code général des impôts*, subject to certain exceptions, interest and other similar income paid to French tax resident individuals are subject to a 24 per cent. French withholding tax applicable at the time of the payment, which is deductible from their French personal income tax in respect of the year in which the payment has been made. Social contributions (*CSG*, *CRDS* and other related contributions) are also levied by way of withholding tax at an aggregate rate of 15.5 per cent. on interest and other similar income paid to French tax resident individuals.

In accordance with the double taxation treaty signed by the French and Mexican governments on November 7, 1991, where payments of interest and other similar income to French tax resident individuals are subject to a Mexican withholding tax, such French tax resident individuals are entitled to a tax credit equal to the Mexican tax within the limit of the French income tax applicable to such interest and other similar income.

***Taxation of interest payments made to non-French tax residents***

*Payments made by the Issuer or any Guarantor other than CEMEX France*

Since neither the Issuer nor the Guarantors (other than CEMEX France) is a resident of France, and *provided* that none of them maintains a permanent establishment in France, interest payments made by the Issuer or any Guarantor (other than CEMEX France) to non-French tax residents will not fall within the scope of Article 125 A of the French *Code général des impôts* and accordingly will not be subject to any withholding tax in France.

*Payments made by CEMEX France as Guarantor under the Notes Guarantee*

There is no direct authority under French law on the withholding tax status of payments made by CEMEX France as Guarantor under the Notes Guarantee. Hence, the statements below are based on the interpretation of general French tax principles. Any future legislative, judicial or administrative development may affect, potentially with retroactive effect, such statements.

In accordance with one interpretation of French tax law, payments made by CEMEX France as Guarantor to the holders of the Notes in relation to the payment obligations of the Issuer under the Notes (the "Guarantee Payments") may be treated as a payment in lieu of payments to be made by the Issuer with respect to the Notes. Under this interpretation, such Guarantee Payments would, whilst not free from doubt, not fall within the scope of the rules set out under Article 125 A III of the French *Code général des impôts* by reason of the Issuer not being a resident of France and *provided* that the Issuer does not maintain a permanent establishment in France. In the event Guarantee Payments would fall within the scope of Article 125 A III of the French *Code général des impôts*, they would be exempt from withholding tax under the safe harbor rule summarized below.

In accordance with another interpretation, any Guarantee Payment would be treated as an indemnity payment independent from the payments to be made by the Issuer with respect to the Notes. The French tax authorities generally consider that an indemnity payment is of the same nature as of the payment which was owed by the person whose failure has caused the payment of the indemnity. Under this interpretation, any Guarantee Payment made by CEMEX France would be treated as an interest or principal payment and would be eligible to the tax exemption set forth in Article 125 A III of the French *Code général des impôts* under safe harbor rule summarized below.

Pursuant to Article 125 A III of the French *Code général des impôts*, interest and similar income with respect to notes issued by a company, established in, or tax resident of, France, such as the Notes, are not subject to withholding tax in France (and accordingly such payments do not give the right to any tax credit from any French source), unless the payment is made in a non-cooperative country or territory (*État ou territoire non coopératif*) ("NCCT") within the meaning of Article 238-0A of the French *Code général des impôts*, in which case a 75 percent. withholding tax applies unless the debtor demonstrates that the transaction has a principal purpose and effect that is different from the generation of income in the NCCT (the "safe harbor" or "*clause de sauvegarde*").

Pursuant to the *Bulletin Officiel des Finances Publiques-Impôts* BOI-RPPM-RCM-30-10-20-50-20120912 n°70, certain categories of securities are deemed to fall within the safe harbor when:

i. notes are offered by means of a public offer within the meaning of Article L. 411 -11 of the French *Code monétaire* et financier or pursuant to an equivalent offer in a State other than a NCCT. For this purpose, an "equivalent offer" means any offer requiring the registration or submission of an offer document by or with a foreign securities market authority; or

ii. notes are admitted to trading on a regulated market or on a French or foreign multilateral securities trading system, *provided* that such market or system is not located in a NCCT, and the operation of such market is carried out by a market operator or an investment services provider, or by such other similar foreign entity, *provided further that* such market operator, investment services provider or entity is not located in a NCCT; or

iii. notes are admitted, at the time of their issue, to the clearing operations of a central depositary or of a securities clearing and delivery and payments systems operator within the meaning of Article L. 561-2 of the French Code monétaire et financier, or of one or more similar foreign depositaries or operators provided that such depositary or operator is not located in a NCCT.

Since the Note will be admitted to trading on the Global Exchange Market of the Irish Stock Exchange, the Notes shall benefit from the above safe harbor rule and accordingly be exempt from the withholding tax set out under Article 125 A III of the French *Code général des impôts*.

**United Kingdom Taxation**

The following statements on U.K. taxation relate only to the incidence of U.K. withholding tax on payments in respect of interest made by CEMEX UK as a guarantor under the terms of its guarantee. The statements are based on current U.K. law and H.M Revenue & Customs practice and such provisions may be repealed, revoked or modified, possibly with retrospective effect so as to result in U.K. tax consequences different from those described below. The statements relate only to the position of those persons who are the absolute beneficial owners of the Notes and who hold those Notes as an investment. They may not apply to special situations, such as those of dealers or traders in securities. Prospective holders are urged to contact their tax advisors for specific advice relating to their particular circumstances.

Although the position of payments made under a guarantee is not clear, CEMEX has been advised, based on a consideration of the reported cases, that any payments in respect of interest made by CEMEX UK as a guarantor under the terms of its guarantee, may be subject to United Kingdom withholding tax (currently at 20%), subject to any available exemption or relief. This treatment depends on whether the payments in respect of interest paid by CEMEX UK as a guarantor under the terms of its guarantee have the character of interest or of annual payments, and if so whether the interest or annual payments would be regarded as having a U.K. source. If the payments are treated as payments of interest made by CEMEX UK under its guarantee, while the debt securities are listed on a "recognized stock exchange" and therefore are "quoted eurobonds", there should be no United Kingdom withholding tax. An application has been made to list the Notes on the Global Exchange Market of the Irish Stock Exchange which is a "recognised stock exchange" for these purposes—however, no assurance can be given that such listing will be approved or maintained.

If a payment by CEMEX UK as a guarantor under the terms of its guarantee is made to a holder of a Note and is subject to withholding tax, CEMEX UK would be required under the Indenture to pay additional amounts to the holder with respect to that withholding in the circumstances more particularly described and subject to the exceptions set forth under the caption "Description of Notes—Additional Amounts." In particular (but without limitation to the generality of the foregoing), if the withholding could have been avoided by the holder making a declaration or providing certain information but the holder fails to do so it will be noted that no additional amount need be paid. The holder should also note that the right to redeem the debt securities more particularly described under the caption "Description of Notes—Optional Redemption" would not apply as a result of CEMEX UK becoming obliged to pay such additional amounts subject to exceptions described under that caption.

**Swiss Taxation**

***General***

This section provides a general summary of Swiss tax consequences of holders investing in the Notes. It describes the general tax consequences of the payments of interest and principal to the holders of the Notes under the Note Guarantee by CEMEX Research Group as Swiss tax resident Guarantor. This summary provides general information only, is not meant to be complete and is restricted to the matters of Swiss taxation stated therein. The information given below is neither intended as tax advice nor purports to describe all of the tax considerations that may be relevant to a prospective purchaser of the Notes.

The prospective purchasers of the Notes should consult their own tax advisors with regard to the Swiss tax consequences of purchasing, holding and disposing of the Notes and of receiving payment of interest and principal under the Note Guarantee from CEMEX Research Group as Swiss tax resident Guarantor. This section is based upon Swiss law as in effect on the date of this offering memorandum, as well as, on administrative interpretation thereof and is subject to any change in law that may take place after such date or that may have retrospective effect.

Furthermore, it has been assumed that the Notes and income received or deemed received or capital gains derived or deemed derived therefrom are not attributable to employment activities of the holders of the Notes.

***Withholding tax***

Under certain qualifications, all payments, inter alia, of interest and principal to the holders of the Notes under the Note Guarantee by CEMEX Research Group as Swiss tax resident Guarantor are subject to Swiss withholding tax regardless of the recipient's place of residency under the applicable tax laws.

***Taxes on income and capital gains***

*Residents of Switzerland*

Income derived or deemed derived from the Notes, by a holder of the Notes who is an individual and who is a resident or a deemed resident of Switzerland, may, amongst others, be subject to Swiss income tax at progressive individual income tax rates. Gain realized on the disposal of the Notes, by a holder of the Notes who is an individual and who is a resident or a deemed resident of Switzerland, may, amongst others, be subject to Swiss income tax at progressive individual income tax rates, if:

i. the individual carries on a business, or is deemed to carry on a business, to the assets of which the Notes are attributable, or

ii. such income or gain qualifies as income from miscellaneous activities, which include activities with respect to the Notes that exceed regular, active portfolio management.

If the conditions in the paragraphs i or ii above do not apply to an individual holder of the Notes, gains realized on the disposal of the Notes are, in general, not taxable as such (*Privater Kapitalgewinn*).

*Non-residents of Switzerland*

A holder of the Notes who is neither resident nor deemed to be resident of Switzerland and who derives income from the Notes, or who realizes a gain on the disposal or the redemption of the Notes, is not subject to Swiss taxation on income or capital gains, unless, amongst others:

i. such holder carries on a business, or is deemed to carry on a business or part thereof through a permanent establishment or a permanent representative in Switzerland to which the Notes are attributable; and/or

ii. the holder is an individual, and such income or gain qualifies as income from miscellaneous activities in Switzerland which include activities with respect to the Notes that exceed regular, active portfolio management.

***Taxes on wealth***

*Residents of Switzerland*

For a holder of the Notes who is resident or deemed to be resident of Switzerland, the tax value of the Notes, which will be generally assessed by the Swiss Federal tax authority, is subject to Swiss taxation.

*Non-residents of Switzerland*

A holder of the Notes who is neither resident nor deemed to be resident of Switzerland and who holds Notes is not subject to Swiss wealth taxation unless, amongst others, such holder carries on a business, or is deemed to carry on a business or part thereof through a permanent establishment or a permanent representative in Switzerland to which the Notes are attributable.

***Taxation of gifts and inheritances***

*Residents of Switzerland*

Generally, gift and inheritance tax is due in Switzerland in respect of the acquisition of the Notes by way of a gift by, or on the death of, a holder of the Notes who is a resident or deemed to be a resident of Switzerland for purposes of Swiss gift and inheritance tax at the date of the gift or his or her death.

*Others*

The acquisition and transfer of the Notes are subject to Swiss stamp duties (transfer tax) if, at minimum, one party of the transfer is a security dealer (*Effektenhändler*) according to the Swiss stamp duties law (*Bundesgesetz über die Stempelabgaben, StG*).

The acquisition and transfer of the Notes will be exempt from Swiss value added tax (*Mehrwertsteuer*).

**European Union Savings Directive**

Under the European Union Council Directive 2003/48/EU on the taxation of savings income, European Union Member States are required to provide to the tax authorities of another European Union Member State details of payments of interest (or similar income) paid by a person within its jurisdiction to an individual resident in that other Member State. However, for a transitional period, Luxembourg and Austria are instead required (unless during that period they elect otherwise) to operate a withholding system in relation to such payments (the ending of such transitional period being dependent upon the conclusion of certain agreements relating to information exchange with certain other countries). A number of non-European Union countries and territories, including Switzerland, have agreed to adopt similar measures (a withholding system in the case of Switzerland). A consultation process is currently underway within the European Union in relation to the scope of the Directive and, in particular, whether the Directive should also extend to payments channelled through intermediate entities and/or to payments considered to be of an interest-like nature.

There is a Paying Agent in the United States. If a payment were to be made or collected through a European Union Member State that has opted for a withholding system and an amount of, or in respect of, tax were to be withheld from that payment, neither the Issuer, nor any Guarantor, nor any Paying Agent would be obliged to pay additional amounts with respect to the Notes as a result of the imposition of such withholding tax.

## PLAN OF DISTRIBUTION

BBVA Securities Inc., Citigroup Global Markets Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated and RBS Securities Inc. are acting as joint bookrunners of the offering and Initial Purchasers. Subject to the terms and conditions stated in the purchase agreement dated the date of this offering memorandum, each Initial Purchaser named below has severally agreed to purchase, directly or through any of its affiliates, and the Issuer has agreed to sell to that Initial Purchaser or to its relevant affiliate, the principal amount of the Notes set forth opposite the Initial Purchaser's name.

| Initial Purchaser | Principal Amount of Notes |
|---|---|
| BBVA Securities Inc. | U.S.$ 125,000,000 |
| Citigroup Global Markets Inc. | 125,000,000 |
| Merrill Lynch, Pierce, Fenner & Smith Incorporated | 125,000,000 |
| RBS Securities Inc. | 125,000,000 |
| Total | U.S.$ 500,000,000 |

The purchase agreement provides that the obligations of the Initial Purchasers to purchase the Notes are subject to approval of legal matters by counsel and to other conditions. The Initial Purchasers must purchase all the Notes if they purchase any of the Notes.

The Initial Purchasers propose to resell the Notes at the offering price set forth on the cover page of this offering memorandum within the United States to qualified institutional buyers (as defined in Rule 144A) in reliance on Rule 144A and outside the United States to non-U.S. persons in reliance on Regulation S. See "Transfer Restrictions; Notice to Investors." The price at which the Notes are offered may be changed at any time without notice.

We expect that delivery of the Notes will be made to investors on or about October 2, 2013, which will be the fifth business day following the date of this offering memorandum (such settlement being referred to as "T+5"). Under Rule 15c6-1 under the U.S. Securities Exchange Act of 1934, trades in the secondary market are required to settle in three business days, unless the parties to any such trade expressly agree otherwise. Accordingly, purchasers who wish to trade Notes prior to the delivery of the Notes hereunder will be required, by virtue of the fact that the Notes initially settle in T+5, to specify an alternate settlement arrangement at the time of any such trade to prevent a failed settlement. Purchasers of the Notes who wish to trade the Notes prior to their date of delivery hereunder should consult their advisors.

The Notes have not been registered under the Securities Act or any state securities laws and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons (as defined in Regulation S) except in transactions exempt from, or not subject to, the registration requirements of the Securities Act. See "Transfer Restrictions; Notice to Investors."

In addition, until 40 days after the commencement of this offering, an offer or sale of Notes within the United States by a dealer (whether or not participating in the offering) may violate the registration requirements of the Securities Act unless the dealer makes the offer or sale in compliance with Rule 144A or another exemption from registration under the Securities Act.

The Issuer and the Guarantors have agreed that, for a period of 30 days following the date of this offering memorandum, neither the Issuer nor the Guarantors will, without the prior written consent of the Initial Purchasers, which consent shall not be unreasonably withheld, offer, sell, contract to sell, pledge or otherwise dispose of or enter into any transaction which is designed to, or might reasonably be expected to, result in the disposition (whether by actual disposition or effective economic disposition due to cash settlement or otherwise)

by the Issuer or the Guarantors or any person in privity with the Issuer or the Guarantors, directly or indirectly, or announce the offering of, any debt securities in the international capital markets that are issued or guaranteed by the Issuer or any of the Guarantors; *provided, however*, that the foregoing will not restrict the ability of the Issuer or any of the Guarantors to offer, sell, contract to sell, pledge or otherwise dispose of or announce an offering of the Other Notes or CBs in the local Mexican market and to enter into securitization transactions.

The Notes will constitute a new class of securities with no established trading market. We have applied to have the Notes listed on the Irish Stock Exchange and to trade them on the Global Exchange Market of such exchange. However, we cannot assure you that the prices at which the Notes will sell in the market after this offering will not be lower than the initial offering price or that an active trading market for the Notes will develop and continue after this offering. The Initial Purchasers have advised us that they currently intend to make a market in the Notes. However, they are not obligated to do so and they may discontinue any market-making activities with respect to the Notes at any time without notice. Accordingly, we cannot assure you as to the liquidity of, or the trading market for, the Notes.

In connection with the offering of the Notes, the Initial Purchasers may engage in overallotment, stabilizing transactions and syndicate covering transactions. Overallotment involves sales in excess of the offering size, which creates a short position for the Initial Purchasers. Stabilizing transactions involve bids to purchase the Notes in the open market for the purpose of pegging, fixing or maintaining the price of the Notes. Syndicate covering transactions involve purchases of the Notes in the open market after the distribution has been completed in order to cover short positions. Stabilizing transactions and syndicate covering transactions may have the effect of preventing or retarding a decline in the market price of the Notes or cause the price of the Notes to be higher than it would otherwise be in the absence of those transactions. If the Initial Purchasers engage in stabilizing or syndicate covering transactions, they may discontinue them at any time.

Purchases to cover short positions and stabilizing purchases, as well as other purchases by the Initial Purchasers for their own accounts, may have the effect of preventing or retarding a decline in the market price of the Notes. They may also cause the price of the Notes to be higher than the price that would otherwise exist in the open market in the absence of these transactions. The Initial Purchasers may conduct these transactions in the over-the-counter market or otherwise. If the Initial Purchasers commence any of these transactions, they may discontinue them at any time.

The Initial Purchasers and/or their affiliates have provided in the past to us and our affiliates and may provide from time to time in the future certain commercial banking, financial advisory, investment banking and other services for us and such affiliates in the ordinary course of their business, including in connection with the Other Notes, for which they have received and may continue to receive customary fees and commissions. In particular, certain of the Initial Purchasers and/or their affiliates are initial purchasers for the offering of the Other Notes and may hold 2016 Notes, 2017 Notes and/or 2014 Notes, which may be purchased or repaid with proceeds of the offerings. In addition, from time to time, certain of the Initial Purchasers and/or their affiliates may effect transactions for their own account or the accounts of their customers, and hold on behalf of themselves or their customers, long or short positions in our debt or equity securities or loans, and may do so in the future.

If any of the Initial Purchasers or their affiliates has a lending relationship with us or our affiliates, certain of those Initial Purchasers or their affiliates routinely hedge their credit exposure to us or our affiliates consistent with their customary risk management policies. In addition, it is likely that certain other of those Initial Purchasers and/or its affiliates will hedge their credit exposure. Typically, these Initial Purchasers and their affiliates would hedge such exposure by entering into transactions which consist of either the purchase of credit default swaps or the creation of short positions in our or our affiliates' securities, including potentially the Notes offered hereby. Any such credit default swaps or short positions could adversely affect future trading prices of the Notes offered hereby. The Initial Purchasers or their affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or financial instruments and may, or recommend clients that they advise, hold long and/or short positions in such securities and financial instruments.

We have agreed to indemnify the Initial Purchasers against certain liabilities, including liabilities under the Securities Act, or to contribute to payments that the Initial Purchasers may be required to make because of any of those liabilities.

**Notice to Prospective Investors in the European Economic Area**

In relation to each member state of the European Economic Area that has implemented the Prospectus Directive (each, a relevant member state), an offer of securities described in this offering memorandum may not be made to the public in that relevant member state other than:

- to any legal entity which is a qualified investor as defined in the Prospectus Directive;
- to fewer than 150 natural or legal persons (other than qualified investors as defined in the Prospectus Directive), as permitted under the Prospectus Directive, subject to obtaining the prior consent of the relevant dealer or dealers nominated by us for any such offer; or
- in any other circumstances falling within Article 3(2) of the Prospectus Directive,

*provided* that no such offer of securities shall require us or any initial purchaser to publish a prospectus pursuant to Article 3 of the Prospectus Directive.

For purposes of this provision, the expression an "offer of securities to the public" in any relevant member state means the communication in any form and by any means of sufficient information on the terms of the offer and the securities to be offered so as to enable an investor to decide to purchase or subscribe for the securities, as the expression may be varied in that member state by any measure implementing the Prospectus Directive in that member state, and the expression "Prospectus Directive" means Directive 2003/71/EC (and amendments thereto, including the 2010 PD Amending Directive, to the extent implemented in the relevant member state) and includes any relevant implementing measure in each relevant member state. The expression 2010 PD Amending Directive means Directive 2010/73/EU.

The sellers of the securities have not authorized and do not authorize the making of any offer of securities through any financial intermediary on their behalf, other than offers made by the Initial Purchasers with a view to the final placement of the securities as contemplated in this offering memorandum. Accordingly, no purchaser of the securities, other than the Initial Purchasers, is authorized to make any further offer of the securities on behalf of the sellers or the Initial Purchasers.

**Notice to Prospective Investors in the United Kingdom**

This offering memorandum is only being distributed to, and is only directed at, persons in the United Kingdom that are (i) investment professionals falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the "Order") or (ii) high net worth entities, and other persons to whom it may lawfully be communicated, falling within Article 49(2)(a) to (d) of the Order (each such person being referred to as a "relevant person"). This offering memorandum and its contents should not be distributed, published or reproduced (in whole or in part) or disclosed by recipients to any other persons in the United Kingdom. Any person in the United Kingdom that is not a relevant person should not act or rely on this document or any of its contents.

Each Initial Purchaser has represented and agreed that:

(a) it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the Financial Services and Markets Act 2000 (the "FSMA")) received by it in connection with the issue or sale of the Notes in circumstances in which Section 21(1) of the FSMA does not apply to the Issuer; and

(b) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the Notes in, from or otherwise involving the United Kingdom.

**Notice to Prospective Investors in Canada**

The Notes may be sold only to purchasers purchasing as principal that are both "accredited investors" as defined in National Instrument 45-106 Prospectus and Registration Exemptions and "permitted clients" as defined in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations. Any resale of the Notes must be made in accordance with an exemption from the prospectus requirements and in compliance with the registration requirements of applicable securities laws.

**Notice to Prospective Investors in France**

Neither this offering memorandum nor any other offering material relating to the Notes described in this offering memorandum has been submitted to the clearance procedures of the *Autorité des Marchés Financiers* or of the competent authority of another member state of the European Economic Area and notified to the *Autorité des Marchés Financiers.* The Notes have not been offered or sold and will not be offered or sold, directly or indirectly, to the public in France. Neither this offering memorandum nor any other offering material relating to the Notes has been or will be:

- released, issued, distributed or caused to be released, issued or distributed to the public in France; or
- used in connection with any offer for subscription or sale of the Notes to the public in France.

Such offers, sales and distributions will be made in France only:

- to qualified investors (*investisseurs qualifiés*) and/or to a restricted circle of investors (*cercle restreint d'investisseurs*), in each case investing for their own account, all as defined in, and in accordance with, articles L.411-2, D.411-1, D.411-2, D.734-1, D.744-1, D.754-1 and D.764-1 of the French *Code monétaire et financier*;
- to investment services providers authorized to engage in portfolio management on behalf of third parties; or
- in a transaction that, in accordance with article L.411-2-I-1°-or-2°-or 3° of the French *Code monétaire et financier* and article 211-2 of the General Regulations (*Règlement Général*) of the *Autorité des Marchés Financiers*, does not constitute a public offer (*appel public à l'épargne*).

The Notes may be resold directly or indirectly, only in compliance with articles L.411-1, L.411-2, L.412-1 and L.621-8 through L.621-8-3 of the French *Code monétaire et financier*.

**Notice to Prospective Investors in Hong Kong**

The Notes may not be offered or sold in Hong Kong by means of any document other than (i) in circumstances which do not constitute an offer to the public within the meaning of the Companies Ordinance (Cap. 32, Laws of Hong Kong), or (ii) to "professional investors" within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder, or (iii) in other circumstances which do not result in the document being a "prospectus" within the meaning of the Companies Ordinance (Cap. 32, Laws of Hong Kong) and no advertisement, invitation or document relating to the Notes may be issued or may be in the possession of any person for the purpose of issue (in each case whether in Hong Kong or elsewhere), which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the laws of Hong Kong) other than with respect to Notes which are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors"

within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder.

**Notice to Prospective Investors in Japan**

The Notes offered in this offering memorandum have not been registered under the Securities and Exchange Law of Japan. The Notes have not been offered or sold and will not be offered or sold, directly or indirectly, in Japan or to or for the account of any resident of Japan, except (i) pursuant to an exemption from the registration requirements of the Securities and Exchange Law and (ii) in compliance with any other applicable requirements of Japanese law.

**Notice to Prospective Investors in Singapore**

This offering memorandum has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this offering memorandum and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the Notes may not be circulated or distributed, nor may the Notes be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the Securities and Futures Act, Chapter 289 of Singapore (the "SFA"), (ii) to a relevant person pursuant to Section 275(1), or any person pursuant to Section 275(1A), and in accordance with the conditions specified in Section 275 of the SFA, or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA, in each case subject to compliance with conditions set forth in the SFA.

Where the Notes are subscribed or purchased under Section 275 of the SFA by a relevant person which is:

- a corporation (which is not an accredited investor (as defined in Section 4A of the SFA)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or
- a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary of the trust is an individual who is an accredited investor, shares, debentures and units of shares and debentures of that corporation or the beneficiaries' rights and interest (howsoever described) in that trust shall not be transferred within six months after that corporation or that trust has acquired the Notes pursuant to an offer made under Section 275 of the SFA except:
- to an institutional investor (for corporations, under Section 274 of the SFA) or to a relevant person defined in Section 275(2) of the SFA, or to any person pursuant to an offer that is made on terms that such shares, debentures and units of shares and debentures of that corporation or such rights and interest in that trust are acquired at a consideration of not less than S$200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or other assets, and further for corporations, in accordance with the conditions specified in Section 275 of the SFA;
- where no consideration is or will be given for the transfer; or
- where the transfer is by operation of law.

**Notice to Prospective Investors in Switzerland**

The Notes may not and will not be publicly offered, distributed or re-distributed in or from Switzerland and neither this document nor any other solicitation for investments in the Notes may be communicated or distributed in Switzerland in any way that could constitute a public offering within the meaning of Articles 1156 or 652a of the Swiss Code of Obligations. The Notes are not a collective investment within the meaning of the Federal Collective Investment Schemes Act of June 23, 2006 (*Bundesgesetz über die kollektiven Kapitalanlagen*, *KAG*).

This document may not be copied, reproduced, distributed or passed on to others without the Global Coordinator's prior written consent. This document is not a prospectus within the meaning of Articles 1156 and 652a of the Swiss Code of Obligations or a listing prospectus according to article 27 of the Listing Rules of the Swiss Exchange and may not comply with the information standards required thereunder. We will not apply for a listing of the Notes on any Swiss stock exchange or other Swiss regulated market and this document may not comply with the information required under the relevant listing rules. The Notes offered hereby have not been and will not be registered with the Swiss Federal Financial Market Supervisory Authority (FINMA) and have not been and will not be authorized under the Federal Collective Investment Schemes Act of June 23, 2006 (*Bundesgesetz über die kollektiven Kapitalanlagen*, *KAG*). The investor protection afforded by the Federal Collective Investment Schemes Act (*Bundesgesetz über die kollektiven Kapitalanlagen*, *KAG*) does not extend to acquirers of the Notes.

## INDEPENDENT AUDITORS

The consolidated financial statements of CEMEX, S.A.B. de C.V. and its subsidiaries as of December 31, 2012 and 2011, and for each of the years in the three-year period ended December 31, 2012, have been audited by KPMG Cárdenas Dosal, S.C., independent auditors, as stated in their report incorporated by reference herein.

KPMG Cárdenas Dosal, S.C., independent auditors, is a member of the Association of Public Accountants of Mexico (*Colegio de Contadores Públicos de México, A.C.*).

## GENERAL INFORMATION

The issuance of the Notes was duly authorized by the board of directors of the Issuer on February 28, 2013, April 25, 2013 and September 26, 2013. The issuances of the Note Guarantees were duly authorized by resolutions of the respective boards (or equivalent body), and/or shareholders, as the case may be, CEMEX España on July 24, 2013 and September 30, 2013, New Sunward on July 31, 2013 and September 27, 2013, CEMEX Asia on July 31, 2013 and September 27, 2013, CEMEX Corp. on July 29, 2013 and September 26, 2013, CEMEX Egyptian Investments on July 31, 2013 and September 27, 2013, CEMEX Egyptian Investments II on July 31, 2013 and September 27, 2013, CEMEX France on July 25, 2013 and September 27, 2013, CEMEX Research Group on July 31, 2013 and September 26, 2013, CEMEX Shipping on July 31, 2013 and September 27, 2013, and CEMEX UK on July 31, 2013 and September 27, 2013. Pursuant to CEMEX México's, CEMEX Concretos' and Empresas Tolteca's respective *estatutos sociales* (by-laws) and applicable Mexican law, CEMEX México, CEMEX Concretos and Empresas Tolteca are authorized to execute and deliver their respective Note Guarantees.

Other than as disclosed in this offering memorandum, there has been no material adverse change in our prospects since December 31, 2012, being the date of our last published audited financial statements. Other than as disclosed in this offering memorandum, there has been no significant change in our financial or trading position since June 30, 2013.

The amount of outstanding shares of the Guarantors not owned directly or indirectly by the Issuer are immaterial. All Guarantors are fully consolidated into the Issuer's consolidated financial statements. Such consolidated financial statements include both Guarantor and non-Guarantor subsidiaries and, as the non-Guarantor subsidiaries make up a material amount of our Operating EBITDA and our total stockholders' equity, may be of limited use in assessing the financial position of the Guarantors. The financial and operational policies of such Guarantors are aligned with those of the Issuer and its other consolidated direct and indirect subsidiaries.

We estimate that the expenses related to the admission of the Notes to trading on the Global Exchange Market will be approximately €5,000.

### CEMEX, S.A.B. de C. V.

CEMEX, S.A.B. de C.V. is a Mexican corporation, a holding company (parent) of entities whose main activities are oriented to the construction industry, through the production, marketing, distribution and sale of cement, ready-mix concrete, aggregates and other construction materials. CEMEX, S.A.B. de C.V. is a public stock corporation with variable capital (*sociedad anónima bursátil de capital variable*) organized under the laws of Mexico on May 28, 1920. The business address of the directors is Avenida Ricardo Margáin Zozaya # 325, Colonia Valle del Campestre, San Pedro Garza García, Nuevo León, 66265 México.

CEMEX, S.A.B. de C.V. was founded in 1906 and was registered with the Mercantile Section of the Public Register of Property and Commerce in Monterrey, N.L., México in 1920 for a period of 99 years. In 2002 this period was extended to the year 2100. The shares of CEMEX, S.A.B. de C.V. are listed on the Mexican Stock Exchange as CPOs. Each CPO represents two series "A" shares and one series "B" share of common stock of CEMEX, S.A.B. de C.V. In addition, CEMEX, S.A.B. de C.V. shares and CPOs are listed on the New York

Stock Exchange ("NYSE") and trade in the form of American Depositary Shares or "ADSs" under the symbol "CX." Each ADS represents ten CPOs.

As of August 31, 2013, CEMEX, S.A.B. de C.V. had 22,844,405,722 subscribed and paid Series A shares and 11,422,202,861 subscribed and paid Series B shares of capital stock, and our capital stock consisted of 34,266,608,583 subscribed and paid shares. In connection with our 2012 annual general ordinary shareholders' meeting held on March 21, 2013, our shareholders approved (i) an increase in the variable portion of our capital stock of up to 369 million shares (equivalent to 123 million CPOs or 12.3 million ADSs), which will be kept in CEMEX, S.A.B. de C.V.'s treasury and be used to preserve the rights of note holders pursuant to CEMEX, S.A.B. de C.V.'s issuance of convertible notes, (ii) a recapitalization of retained earnings issuing shares equivalent to approximately 437.5 million CPOs or 43.7 million ADSs will be allocated to shareholders on a pro-rata basis, (iii) a reduction of the variable portion of our capital in an amount of Ps14,223.50 as a result of the cancellation of 5,122,614 shares that were not placed within 24 months as authorized at CEMEX, S.A.B. de C.V.'s extraordinary shareholders' meeting held on September 4, 2009 and (iv) an increase in the variable portion of our capital stock of up to 1,500 million shares (equivalent to 500 million CPOs or 50 million ADSs), which will be kept in CEMEX, S.A.B. de C.V.'s treasury and be used for issuances pursuant to CEMEX, S.A.B. de C.V.'s stock compensation programs.

As of the date of this offering memorandum, the members of the board of directors of CEMEX, S.A.B. de C.V. are Lorenzo H. Zambrano, Armando J. García Segovia, Rodolfo García Muriel, Rogelio Zambrano Lozano, Tomás Milmo Santos, Roberto Luis Zambrano Villarreal, Dionisio Garza Medina, José Manuel Rincón Gallardo Puron, Francisco Javier Fernández Carbajal and Rafael Rangel Sostmann. Ramiro G. Villarreal is the Corporate Secretary and not a member of the board of directors of CEMEX, S.A.B. de C.V.

Except as disclosed herein, there are no potential conflicts of interest between any duties of any of the members of the administrative, management or supervisory bodies of CEMEX, S.A.B. de C.V. towards CEMEX, S.A.B. de C.V. and their private interests and/or other duties.

**CEMEX España**

CEMEX España is a corporation (*sociedad anónima*) formed under the laws of Spain on April 30, 1917 for an indefinite period of time under the name of Compañia Valenciana de Cementos Portland, S.A. CEMEX España's registered address is Hernández de Tejada 1, 28027 Madrid, Spain. CEMEX España's Spanish tax identification number is A46004214, and its registry information is Hoja M-156542, Tomo-9744, Folio-166. The main telephone number for CEMEX España is +34 91 377 9200.

CEMEX España is an indirect majority-owned subsidiary of CEMEX, S.A.B. de C.V. CEMEX España is a holding company for most of our international operations outside of Mexico. In Spain, through its subsidiaries, it operates in the building materials industry as a producer of cement, ready-mix, aggregates and other related building materials.

As of August 31, 2013, CEMEX España has issued 1,327,051,780 shares of capital stock, of which approximately 99.88% is held by CEMEX, S.A.B. de C.V., directly and indirectly, through New Sunward. Approximately 0.12% is held by third parties. The shares of CEMEX España held by CEMEX, S.A.B. de C.V., directly or indirectly, are pledged as part of the Collateral (except 0.244% owned by CEMEX España).

The members of the board of directors of CEMEX España are Ignacio Madridejos Fernández, Jaime Muguiro Domínguez, Jaime Ruiz de Haro, New Sunward, represented by Juan Pelegrí y Girón, and New Sunward Holding Financial Ventures B.V., represented by Rüdiger Kuhn. Juan Pelegrí y Girón also serves as Secretary-non-member of the board of directors of CEMEX España.

**CEMEX México**

CEMEX México was incorporated under the laws of Mexico on July 8, 1968 for a period of 99 years under the name of Instalaciones Santos, S.A. In January 1982 its name was changed to Serto Construcciones, S.A., and in August 1987 it was transformed into a *sociedad anónima de capital variable*. In 1999, several of CEMEX, S.A.B. de C.V.'s direct and indirect subsidiaries were merged into Serto, and Serto's name was changed to CEMEX México, S.A. de C.V. CEMEX México's registered address is Avenida Constitución 444 Pte., Monterrey, N.L., México, 64000. CEMEX México's taxpayer identification number is CME-820101-LJ4.

CEMEX México is a direct subsidiary of CEMEX, S.A.B. de C.V. and is both a holding company for most of our operating companies in Mexico and an operating company involved in the manufacturing and marketing of cement, plaster, gypsum, groundstone and other construction materials and cement by-products in Mexico. As of December 31, 2012, the Operating EBITDA of CEMEX México (excluding its subsidiaries) was Ps9,865 million, representing approximately 29% of our Operating EBITDA, and the stockholders' equity of CEMEX México (excluding its subsidiaries) was Ps46,757 million, representing approximately 30% of our total stockholders' equity.

Other than as disclosed or incorporated by reference in this offering memorandum, we do not believe there are any risks specific to CEMEX México that could impact its Note Guarantee, nor are there any encumbrances on the assets of CEMEX México that could materially affect its ability to meet its obligations under its Note Guarantee.

As of December 31, 2012 and as of August 31, 2013, CEMEX México has issued 64,809,618,499 shares of capital stock, and 99.88% of said shares were endorsed in favor of Banamex, as trustee of Trust No. 111517-9, as part of the Collateral. The rest of the shares are held by CEMEX, Inc.

The members of the board of directors of CEMEX México are Carlos Fernando Muñoz Olea, Fernando Ruíz Arredondo, Guillermo Zambrano Villarreal, Jorge García Segovia, Lorenzo H. Zambrano, Lorenzo Milmo Zambrano, Luis Santos De la Garza, Marcelo Zambrano Lozano, Paul Suberville Tron, Roberto Zambrano Villarreal, Rodolfo García Muriel and Tomás Milmo Santos. The Alternate Managers are: Fernando Ángel González Oliveri, Francisco J. Garza Zambrano, Luis Santos Theriot, Marcos Suberville Tron, Ramiro G. Villarreal Morales, Rogelio Zambrano Lozano, and Víctor Manuel Romo. José Manuel Rincón Gallardo is the Statutory Examiner and Luis Santos de la Garza is the Corporate Secretary and a member of the board of directors of CEMEX México. The Alternate Statutory Examiner is Guillermo García Naranjo.

**New Sunward**

New Sunward is a private company with limited liability formed under the laws of the Netherlands on May 1, 2000 for an indefinite period of time. New Sunward's registered address is Claude Debussylaan 26, 13th floor, 1082 MD, Amsterdam, The Netherlands.

New Sunward is an indirect wholly-owned subsidiary of CEMEX, S.A.B. de C.V. and is a holding company for an approximate 99.48% interest in the outstanding capital stock of CEMEX España, our main operating subsidiary in Spain and holding company for most of our international operations outside of Mexico.

New Sunward has authority to issue a total of 1,500,000 shares of capital stock. As of August 31, 2013, New Sunward has issued 1,212,698 shares of capital stock, which are held by CEMEX International Finance Company, CEMEX TRADEMARKS HOLDING Ltd., Corporación Gouda and Mexcement. The shares of New Sunward are pledged as part of the Collateral.

The members of the board of directors of New Sunward are Paola Andrea Hernández Chavez, Juan Pelegrí y Girón and Jakob Pieter Everwijn.

**CEMEX Asia**

CEMEX Asia is a private company with limited liability formed under the laws of the Netherlands on June 16, 2005 for an indefinite period of time. CEMEX Asia's registered address is Claude Debussylaan 26, 13th floor, 1082 MD, Amsterdam, The Netherlands.

CEMEX Asia is a direct wholly-owned subsidiary of CEMEX España.

CEMEX Asia has authority to issue a total of 900 shares of capital stock. As of August 31, 2013, CEMEX Asia has issued 181 shares of capital stock, all of which are held by CEMEX España.

The sole managing director of CEMEX Asia is CEMEX Egyptian Investments, represented by any two of Paola Andrea Hernandez Chavez, Juan Pelegrí y Girón and/or Jakob Pieter Everwijn.

**CEMEX Concretos**

CEMEX Concretos is a private company incorporated under the laws of the Mexico as of July 5, 1965 for a period of 99 years. CEMEX Concretos's registered address is Avenida Constitución #444 Pte., Col. Centro, C.P. 64000, Monterrey, Nuevo León, México.

CEMEX Concretos is an indirect majority-owned subsidiary of CEMEX, S.A.B. de C.V. CEMEX Concretos is a holding and operating company and it operates in the building material industry as a ready-mix producer and distributor. As of August 31, 2013, CEMEX Concretos has issued a total of 6,490,958,132 shares of capital stock, all of which are held by CEMEX México, Empresas Tolteca, CEMEX, S.A.B. de C.V., Interamerican Investments Inc., CEMEX, Inc., Proveedora Mexicana de Materiales, S.A. de C.V. and third party investors.

The members of the board of directors of CEMEX Concretos are Lorenzo H. Zambrano, Ramiro G. Villarreal Morales, Fernando A. González Olivieri and Rafael Garza Lozano.

**CEMEX Corp.**

CEMEX Corp. is a private corporation formed under the laws of the State of Delaware for an indefinite period of time. CEMEX Corp.'s registered address is The Corporation Trust Company, 1209 Orange Street, City of Wilmington, New Castle County, Delaware 19801, USA.

CEMEX Corp. is an indirect wholly-owned subsidiary of CEMEX, S.A.B. de C.V. CEMEX Corp. is a holding company of shares of our main affiliates in the United States, including the shares of CEMEX, Inc.

CEMEX Corp. has authority to issue a total of 50,000 shares of capital stock divided into 25,000 shares of common stock and 25,000 shares of preferred stock. As of August 31, 2013, CEMEX Corp. had issued 4,833 shares of common stock, all of which are held by Sunbelt Investments Inc., and 5-8/10 shares of series A preferred stock and 69 shares of series B preferred stock, all of which are held by Sunbelt Investments Inc., and one super voting share of preferred stock held by CEMEX Holdings Inc. Both Sunbelt Investments Inc. and CEMEX Holdings Inc. are indirect subsidiaries of CEMEX, S.A.B. de C.V.

The members of the board of directors of CEMEX Corp. are Guillermo Francisco Hernández Morales and Jesus Alejandro Benavides de la Garza.

**CEMEX Egyptian Investments**

CEMEX Egyptian Investments is a private company with limited liability formed under the laws of the Netherlands on December 11, 1998 for an indefinite period of time. CEMEX Egyptian Investments' registered address is Claude Debussylaan 26, 13th floor, 1082 MD, Amsterdam, The Netherlands.

CEMEX Egyptian Investments is a direct wholly-owned subsidiary of CEMEX Investments Africa and Middle East ApS, which is a direct wholly-owned subsidiary of CEMEX España.

CEMEX Egyptian Investments has authority to issue a total of 200 shares of capital stock. As of August 31, 2013, CEMEX Egyptian Investments has issued 45 shares of capital stock, all of which are held by CEMEX Investments Africa and Middle East ApS.

The members of the board of directors of CEMEX Egyptian Investments are Paola Andrea Hernandez Chavez, Juan Pelegrí y Girón and Jakob Pieter Everwijn.

**CEMEX Egyptian Investments II**

CEMEX Egyptian Investments II is a private company with limited liability formed under the laws of the Netherlands on June 6, 2013 for an indefinite period of time. CEMEX Egyptian Investments II's registered address is Claude Debussylaan 26, 13th floor, 1082 MD, Amsterdam, The Netherlands.

CEMEX Egyptian Investments II is a direct wholly-owned subsidiary of CEMEX Investments Africa and Middle East APS, which is a direct wholly-owned subsidiary of CEMEX España.

As of August 31, 2013, CEMEX Egyptian Investments II has issued one share of capital stock, par value €1.00, which is held by CEMEX Investments Africa and Middle East APS.

The sole managing director of CEMEX Egyptian Investments II is CEMEX Egyptian Investments, represented by any two of Paola Andrea Hernandez Chavez, Juan Pelegrí y Girón and Jakob Pieter Everwijn.

**CEMEX France**

CEMEX France was formerly incorporated as a limited liability company (*société à responsabilité limitée*) under the laws of France for a period of 99 years from January 20, 1985 under the name of Société Gestion Francazal Entreprises (SOGEFE). Following the merger of RMC France with and into Société Gestion Francazal Entreprises, the name of the company was changed to CEMEX France Gestion on October 31, 2007.

CEMEX France is now a simplified form joint stock company (*société par actions simplifiée*) governed by the laws of France with a share capital of EUR 666,719,000, whose registered office is located at 2 Rue du Verseau—Zone SILIC-94150 Rungis, France, and incorporated with the Créteil Trade and Companies Register under the number 334 533 288.

CEMEX France is a direct wholly-owned subsidiary of CEMEX España and is also a holding company for CEMEX operating companies in France, which operate in the building materials industry as ready-mix concrete and aggregates producers.

As of August 31, 2013, CEMEX France had issued 666,719 shares of capital stock, of which 100% is held by CEMEX directly and indirectly through its subsidiaries.

CEMEX España (represented by Mr. Ignacio Madridejos Fernandez, President of said company), sole shareholder of CEMEX France, has appointed Mr. Michel ANDRE as President (*Président*) of CEMEX France Gestion.

**CEMEX Research Group**

CEMEX Research Group is a private company formed under the laws of Switzerland for an indefinite period of time. CEMEX Research Group's registered address is Römerstrasse 13, 2555 Brügg bei Biel, Switzerland.

CEMEX Research Group is a direct wholly-owned subsidiary of CEMEX España. CEMEX Research Group operates a research and development center and is the owner of the main part of the intangible assets of the CEMEX Group including, *inter alia*, processes, know-how, formulae, software and patents.

As of August 31, 2013, CEMEX Research Group has an issued share capital of CHF 1,935,747,000 represented by 1,935,747 shares, each with a nominal value of CHF 1,000, all of which are held by CEMEX España.

The members of the board of directors of CEMEX Research Group are Marc Grüninger, David José Rodríguez Soto, Sebastien Matthey and Iván Sánchez Ugarte.

**CEMEX Shipping**

CEMEX Shipping is a private company with limited liability formed under the laws of the Netherlands on September 16, 2004 for an indefinite period of time. CEMEX Shipping's registered address is Claude Debussylaan 26, 13th floor, 1082 MD, Amsterdam, The Netherlands.

CEMEX Shipping is a direct wholly-owned subsidiary of CEMEX España.

CEMEX Shipping has authority to issue a total of 900 shares of capital stock. As of August 31, 2013, CEMEX Shipping has issued 182 shares of capital stock, all of which are held by CEMEX España.

The sole managing director of CEMEX Shipping is CEMEX Egyptian Investments, represented by any two of Paola Andrea Hernandez Chavez, Juan Pelegrí y Girón and Jakob Pieter Everwijn.

**CEMEX UK**

CEMEX UK is a private unlimited company with shares and is formed under the laws of England and Wales (with company registration number 5196131) for an indefinite period of time. CEMEX UK's registered address is CEMEX House, Coldharbour Lane, Thorpe, Egham, Surrey, TW20 8TD.

CEMEX UK is an indirect wholly-owned subsidiary of CEMEX, S.A.B. de C.V. CEMEX UK is the holding company of shares in CEMEX Investments Limited, which is the holding company of shares of our main operating companies in the United Kingdom.

As of August 31, 2013, CEMEX UK has issued 379,522,749 "A" Ordinary shares, which are held by CEMEX España and CEMEX France, and 171,800,856 "B" Ordinary shares, which are held by CEMEX France. Both CEMEX España and CEMEX France are indirect subsidiaries of CEMEX, S.A.B. de C.V.

The members of the board of directors of CEMEX UK are Jesus V. Gonzalez Herrera, Christopher A. Leese, Derek M. O'Donnell, Juan Pelegrí y Girón, Lex H. Russell, Jason A. Smalley and Larry J. Zea Betancourt.

**Empresas Tolteca**

Empresas Tolteca is a private company incorporated under the laws of Mexico as of July 20, 1989 for a period of 99 years. Empresas Tolteca's registered address is Avenida Constitución #444 Pte., Col. Centro, C.P. 64000, Monterrey, Nuevo León, México.

Empresas Tolteca is an indirect subsidiary of CEMEX, S.A.B. de C.V. Empresas Tolteca is a holding company.

As of August 31, 2013 Empresas Tolteca has issued a total of 1,830,401,235 shares of capital stock, all of which are held by CEMEX México and CEMEX, S.A.B. de C.V.

The members of the board of directors of Empresas Tolteca are Lorenzo H. Zambrano, Ramiro G. Villarreal Morales, Fernando A. González Olivieri and Rafael Garza Lozano.

**ANNEX A**

## CONSOLIDATED LEVERAGE RATIO

The definition of "Consolidated Leverage Ratio" comes from the 2009 Financing Agreement, as in effect immediately prior to giving effect to the amendment and restatement thereof on September 17, 2012, and is to be used solely for purposes of calculating the Consolidated Leverage Ratio in the context of determining whether a Partial Covenant Suspension Event has occurred.

"**2012 CB Amount**" means an aggregate amount equal to the Relevant Existing Financial Indebtedness maturing on or prior to the 2012 CB Maturity Date.

"**2012 CB Maturity Date**" means the final maturity date of the Relevant Existing Financial Indebtedness maturing in September, 2012 (being 21 September, 2012).

"**Acceptable Bank**" means:

(a) a bank or financial institution which has a rating for its long-term unsecured and non credit-enhanced debt obligations of A- or higher by S&P or A- or higher by Fitch or A3 or higher by Moody's or a comparable rating from an internationally recognised credit rating agency;

(b) any other bank or financial institution in a jurisdiction in which a member of the Group conducts commercial operations where such member of the Group, in the ordinary course of trading, subscribes for certificates of deposit issued by such bank or financial institution; or

(c) any other bank or financial institution approved by the Administrative Agent.

"**Accession Letter**" means a document substantially in the form set out in Schedule 4 (*Form of Accession Letter*) of the 2009 Financing Agreement.

"**Additional Guarantor**" means a company that becomes an Additional Guarantor in accordance with Clause 28 (*Changes to the Obligors*) of the 2009 Financing Agreement.

"**Additional Security Provider**" means a company that becomes an Additional Security Provider in accordance with Clause 28 (*Changes to the Obligors*) of the 2009 Financing Agreement.

"**Administrative Agent**" means Citibank International PLC, as administrative agent of the Finance Parties (other than itself) under the 2009 Financing Agreement.

"**Affiliate**" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

"**Applicable GAAP**" means:

(a) in the case of the Issuer, Mexican FRS or, if adopted by the Issuer in accordance with Clause 22.3 (*Requirements as to financial statements*) of the 2009 Financing Agreement, IFRS;

(b) in the case of CEMEX España, Spanish GAAP or, if adopted by CEMEX España in accordance with Clause 22.3 (*Requirements as to financial statements*) of the 2009 Financing Agreement, IFRS; and

(c) in the case of any other Obligor, the generally accepted accounting principles applying to it in the country of its incorporation or in a jurisdiction agreed to by the Administrative Agent or, if adopted by the relevant Obligor, IFRS.

"**Authorised Signatory**" means, in relation to any Obligor, any person who is duly authorised and in respect of whom the Administrative Agent has received a certificate signed by a director or another Authorised

Signatory of such Obligor setting out the name and signature of such person and confirming such person's authority to act.

"**Banobras Facility**" means a revolving loan agreement (*Contrato de Apertura de Crédito en Cuenta Corriente*) between CEMEX CONCRETOS, S.A. de C.V., as borrower and Banco Nacional de Obras y Servicios Públicos, Sociedad Nacional de Crédito, Institución de Banca de Desarrollo, as lender ("**Banobras**"), in an aggregate principal amount equal to Mex$5,000,000,000.00 (five billion pesos), dated April 22, 2009, which was formalized by means of public deeds number 116,380 and 116,381 dated April 22, 2009, granted before Mr. José Angel Villalobos Magaña, notary public number 9 for Mexico, Federal District, as such facility may be amended from time to time.

"**Base Currency**" means US dollars.

"**Base Currency Amount**" means on any date:

(a) in relation to an amount or Exposure denominated in the Base Currency, that amount or the amount of that Exposure; and

(b) in relation to an amount or Exposure denominated in a currency other than the Base Currency, that amount or the amount of that Exposure converted into the Base Currency at:

  (i) for the purposes of determining the Majority Participating Creditors, the exchange rate displayed on the appropriate Reuters screen at or about 11:00 a.m. on the date on which such determination is made (or if the agreed page is replaced or services cease to be available, the Administrative Agent may specify another page or service displaying the appropriate rate after consultation with the Issuer and the Participating Creditors); and

  (ii) for all other purposes, the exchange rate displayed on the appropriate Reuters screen at or about 11:00 a.m. on the date which is five Business Days before that date (or if the agreed page is replaced or services cease to be available, the Administrative Agent may specify another page or service displaying the appropriate rate after consultation with the Issuer and the Participating Creditors).

"**Bilateral Bank Facilities**" means the facilities described in Part IB of Part II of Schedule 1 (*The Original Participating Creditors*) of the 2009 Financing Agreement.

"**Borrower**" means an Original Borrower unless it has ceased to be a Borrower in accordance with Clause 28.2 (*Resignation of a Borrower*) of the 2009 Financing Agreement.

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in London, Madrid, New York, Amsterdam and Mexico City (in the case of Mexico City, if applicable, as specified by a governmental authority), and:

(a) (in relation to any date for payment or lending or purchase of, or the determination of an interest rate or rate of exchange in relation to, a currency other than euro) the principal financial centre of the country of that currency; or

(b) (in relation to any date for payment or lending or purchase of, or the determination of an interest rate or rate of exchange in relation to, euro) any TARGET Day.

"**Business Plan**" means the five year business plan of the Group delivered in conjunction with the 2009 Financing Agreement.

"**Capital Expenditure**" means any expenditure or obligation in respect of expenditure which, in accordance with Applicable GAAP of the Issuer, is treated as capital expenditure (and including the capital element of any

expenditure or obligation incurred in connection with a Capital Lease) (and, solely for the purposes of paragraph (c) of Clause 23.2 (*Financial condition*) of the 2009 Financing Agreement, the maximum amount of Capital Expenditure of the Group permitted in the Financial Year ending on or about 31 December 2009 will be increased by an amount not exceeding $50,000,000 in aggregate to the extent necessary to take into account currency fluctuations or additional costs and expenses contemplated by (or that have occurred since the date of) the Business Plan).

"**Capital Lease**" means, as to any person, the obligations of such person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of the Issuer under Applicable GAAP and the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with Applicable GAAP of the Issuer.

"**Capital Stock**" means any and all shares, interests, participations or other equivalents (however designed) of capital stock of a corporation, any and all equivalent ownership interests in a person (other than a corporation) and any and all warrants, rights or options to purchase any of the foregoing.

"**Cash Equivalent Investments**" means at any time:

(a) certificates of deposit maturing within one year after the relevant date of calculation and issued by an Acceptable Bank;

(b) any investment in marketable debt obligations issued or expressly guaranteed by the government of Mexico, the United States of America (or any state thereof (including any political subdivision of such state)), the United Kingdom, any member state of the European Economic Area or any Participating Member State or any member state of NAFTA (or any other jurisdiction in which a member of the Group conducts commercial operations if that member of the Group makes investments in such debt obligations in the ordinary course of its trading) or by an instrumentality or agency of any of them having an equivalent credit rating, maturing within one year after the relevant date of calculation and not convertible or exchangeable to any other security;

(c) commercial paper not convertible into or exchangeable for any other security:

  (i) for which a recognised trading market exists;

  (ii) issued by an issuer incorporated in Mexico, the United States of America (or any state thereof (including any political subdivision of such state)), the United Kingdom, any member state of the European Economic Area or any Participating Member State or any member state of NAFTA (or any other jurisdiction in which a member of the Group makes investments in such debt obligations in the ordinary course of trading);

  (iii) which matures within one year after the relevant date of calculation; and

  (iv) which has a credit rating of either A-1 or higher by S&P or F1 or higher by Fitch or P-1 or higher by Moody's, or, if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;

(d) sterling bills of exchange eligible for rediscount at the Bank of England and accepted by an Acceptable Bank (or their dematerialised equivalent);

(e) any investment in money market funds which (i) have a credit rating of either A-1 or higher by S&P or F1 or higher by Fitch or P-1 or higher by Moody's, (ii) which invest substantially all their assets in securities of the types described in paragraphs (a) to (d) above and (f) and (g) below and (iii) can be turned into cash on not more than 30 days' notice; or

(f) any deposit issued by any of Nacional Financiera, S.N.C., Banco Nacional de Comercio Exterior, S.N.C., Banco National de Obras y Sevicios Publicos, S.N.C. or any other development bank controlled by the Mexican government;

(g) any other debt instrument rated "investment grade" (or the local equivalent thereof according to local criteria in a country in which any member of the Group conducts commercial operations and in which local pensions are permitted by law to invest) with maturities of 12 months or less from the date of acquiring such investment;

(h) investments in mutual funds, managed by banks or financial institutions, with a local currency credit rating of at least MxAA by S&P or equivalent by any other reputable local rating agency, that invest principally in marketable direct obligations issued by the Mexican government, or issued by any agency or instrumentality thereof; and

(i) any other debt security, certificate of deposit, commercial paper, bill of exchange, investment in money market funds or material funds approved by the Majority Participating Creditors,

in each case, to which any member of the Group is alone (or together with other members of the Group) beneficially entitled at that time and which is not issued or guaranteed by any member of the Group or subject to any Security (other than Security arising under the Transaction Security Documents).

"**CB Cash Replenishment Amount**" means, for a particular Relevant Prepayment Period, the amount of cash in hand of the Issuer on a consolidated basis to be applied by the Issuer to the CB Reserve pursuant to paragraph (b) of Clause 13.3 (*Mandatory prepayments: Certificados Bursatiles Reserve*) of the 2009 Financing Agreement at any time during that Relevant Prepayment Period provided that such amount, together with the CB Disposal Proceeds Replenishment Amount applicable to that Relevant Prepayment Period, may not exceed the CB Reserve Shortfall at that time.

"**CB Disposal Proceeds Replenishment Amount**" means for a particular Relevant Prepayment Period, the amount of any Disposal Proceeds received by any member of the Group during that Relevant Prepayment Period to be applied by the Issuer to the CB Reserve pursuant to paragraph (b) of Clause 13.3 (*Mandatory prepayments: Certificados Bursatiles Reserve*) of the 2009 Financing Agreement *provided* that such amount, together with the CB Cash Replenishment Amount applicable to that Relevant Prepayment Period, may not exceed the CB Reserve Shortfall at that time.

"**CB Reserve**" means the reserve created by the Issuer or any of its Subsidiaries for the purposes of holding the proceeds of any Permitted Fundraising that, as set out in the relevant CB Reserve Certificate, are to be applied in accordance with Clause 13.3 (*Mandatory prepayments: Certificados Bursatiles Reserve*) of the 2009 Financing Agreement.

"**CB Reserve Certificate**" means a certificate signed by a Responsible Officer of the Issuer setting out, with respect to a Permitted Fundraising the net cash proceeds of which are to be applied in accordance with Clause 13.3 (*Mandatory prepayments: Certificados Bursatiles Reserve*) of the 2009 Financing Agreement:

(a) the amount of proceeds from the relevant Permitted Fundraising that the Issuer wishes to be applied to the CB Reserve (such amount to not exceed the aggregate amount of the Relevant Existing Financial Indebtedness that is due to mature within the Relevant Prepayment Period to which it applies); and

(b) specific details of the Relevant Existing Financial Indebtedness to which any amounts are designated by the Issuer to be applied including the total aggregate amount of such Relevant Existing Financial Indebtedness and the date on which such Relevant Existing Financial Indebtedness matures.

"**CB Reserve Shortfall**" means at any time, for a particular Relevant Prepayment Period, an amount equal to the lower of:

(a) the aggregate amount of (A) any voluntary prepayments made to Participating Creditors pursuant to Clause 12.2 (*Voluntary prepayment of Exposures*) of the 2009 Financing Agreement from proceeds standing to the credit of the CB Reserve in that Relevant Prepayment Period and (B) the 2012 CB Amount; and

(b) the principal amount of any Relevant Existing Financial Indebtedness then outstanding in that Relevant Prepayment Period.

"**Change of Control**" means that the beneficial ownership (within the meaning of Rule 13d-3 promulgated by the SEC under the Securities Exchange Act of 1934, as amended) of 20 per cent. or more in voting power of the outstanding voting stock of the Issuer is acquired by any person, *provided* that the acquisition of beneficial ownership of capital stock of the Issuer by Lorenzo H. Zambrano or any member of his immediate family shall not constitute a Change of Control.

"**Charged Property**" means all of the assets of the Security Providers which from time to time are, or are expressed to be, the subject of the Transaction Security.

"**Compliance Certificate**" means a certificate substantially in the form set out in Schedule 5 (*Form of Compliance Certificate*) of the 2009 Financing Agreement.

"**Consolidated Coverage Ratio**" means, on any date of determination, the ratio of (a) EBITDA for the one (1) year period ending on such date to (b) Consolidated Interest Expense for the one (1) year period ending on such date.

"**Consolidated Debt**" means, at any date, the sum (without duplication) of (a) the aggregate amount of all Debt of the Issuer and its Subsidiaries at such date, which shall include the amount of any recourse in respect of Inventory Financing permitted under paragraph (e) of the definition of Permitted Financial Indebtedness, *plus* (b) to the extent not included in Debt, the aggregate net mark-to-market amount of all derivative financing in the form of equity swaps outstanding at such date (except to the extent such exposure is cash collateralized to the extent permitted under the Finance Documents).

"**Consolidated Funded Debt**" means, for any period, Consolidated Debt less the sum (without duplication) of (i) all obligations of such person to pay the deferred purchase price of property or services, (ii) all obligations of such person as lessee under Capital Leases, and (iii) all obligations of such person with respect to product invoices incurred in connection with export financing.

"**Consolidated Interest Expense**" means, for any period, the sum of the (1) total gross cash and non cash interest expense of the Issuer and its consolidated Subsidiaries relating to Consolidated Funded Debt of such persons, (2) any amortization or accretion of debt discount or any interest paid on Consolidated Funded Debt of such person and its Subsidiaries in the form of additional Financial Indebtedness (but excluding any amortization of deferred financing and debt issuance costs), (3) the net costs under Treasury Transactions in respect of interest rates (but excluding amortization of fees), (4) any amounts paid in cash on preferred stock, and (5) any interest paid or accrued in respect of Consolidated Funded Debt without a maturity date, regardless of whether considered interest expense under Applicable GAAP of the Issuer. For purposes of calculating Consolidated Interest Expense for the Reference Period ending 30 June 2010, $131,406,696.17 shall be deducted, constituting the amount of interest paid in respect of perpetual debentures on 1 July 2009 for the period ending 30 June 2009.

"**Consolidated Leverage Ratio**" means, on any date of determination, the ratio of (a) Consolidated Funded Debt on such date to (b) EBITDA for the one (1) year period ending on such date.

"**Core Bank Facilities**" means the Syndicated Bank Facilities, the Bilateral Bank Facilities and the Promissory Notes.

"**Creditor's Representative**" means:

(a) with respect to each of the Syndicated Bank Facilities, the person appointed as the agent of the creditors in relation to such Facility under the Existing Finance Documents relating to such Facility;

(b) with respect to each other Core Bank Facility, the Participating Creditor with an Exposure under that Facility; and

(c) with respect to each USPP Note, the Participating Creditor with an Exposure under that USPP Note.

"**Debt**" of any person means, without duplication, (i) all obligations of such person for borrowed money, (ii) all obligations of such person evidenced by bonds, debentures, notes or other similar instruments, including the perpetual bonds, (iii) the aggregate net mark-to-market of Treasury Transactions (except to the extent such exposure is cash collateralized to the extent permitted under the Finance Documents) of such person but excluding Treasury Transactions relating to the rate or price of energy or any commodity, (iv) all obligations of such person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of trading, (v) all obligations of such person as lessee under Capital Leases, (vi) all Debt of others secured by Security on any asset of such person, up to the value of such asset, (vii) all obligations of such person with respect to product invoices incurred in connection with export financing, (viii) all obligations of such person under repurchase agreements for the stock issued by such person or another person, (ix) all obligations of such person in respect of Inventory Financing permitted under paragraph (e) of the definition of Permitted Financial Indebtedness and (x) all guarantees of such person in respect of any of the foregoing *provided*, *however*, that for the purposes of calculating the Consolidated Funded Debt element of the Consolidated Leverage Ratio, Relevant Convertible/Exchangeable Obligations shall be excluded from each of the foregoing paragraphs (i) to (x) inclusive (*provided* that, in the case of outstanding Financial Indebtedness under any Relevant Convertible/Exchangeable Obligations (1) only the principal amount thereof shall be excluded and (2) such exclusion shall apply only for so long as such amounts remain subordinated in accordance with the terms of that definition) and (b) amounts falling within paragraph (v) of the definition of Excluded Fundraising Proceeds, for the period in which they are held by the Issuer or any member of the Group pending application in accordance with the terms of the 2009 Financing Agreement, shall be deducted from the aggregate Debt calculation resulting from this definition. For the avoidance of doubt, all letters of credit, banker's acceptances or similar credit transactions, including reimbursement obligations in respect thereof are not Debt until they are required to be funded.

"**Debt Documents**" means the Finance Documents, the "Refinancing Documents" (as defined in the Intercreditor Agreement) and the "Noteholder Documents" (as defined in the Intercreditor Agreement).

"**Debt Reduction Satisfaction Date**" means the first date following 30 September 2010 on which:

(a) the Base Currency Amount of the Exposures of Participating Creditors under the Facilities (calculated as at the date that any reduction of Exposures occurs and in accordance with the 2009 Financing Agreement) has been reduced by an aggregate amount equal to at least U.S.$1,000,000,000 compared to the Exposures of Participating Creditors under the Facilities as at 30 September 2010; and

(b) the amount of Consolidated Funded Debt is at least U.S.$1,000,000,000 (or its equivalent in any other currency) lower than the level of Consolidated Funded Debt as at 30 September 2010 (for the avoidance of doubt, when used in this sub-paragraph, Consolidated Funded Debt shall not include any Relevant Convertible/Exchangeable Obligations),

with notification of the occurrence of such date being provided by the Parent delivering a certificate to the Administrative Agent signed by an Authorised Signatory confirming that (a) and (b) above have been met.

"**Delegate**" means any delegate, agent, attorney or co-trustee appointed by the Security Agent.

"**Discontinued EBITDA**" means, for any period, the sum for Discontinued Operations of (a) operating income (*utilidad de operación*), and (b) depreciation and amortization expense, in each case determined in accordance with Applicable GAAP of the Issuer consistently applied for such period.

"**Discontinued Operations**" means operations that are accounted for as discontinued operations pursuant to Applicable GAAP of the Issuer for which the Disposal of such assets has not yet occurred.

"**Disposal**" means a sale, lease, license, transfer, loan or other disposal by a person of any asset (including shares in any Subsidiary or other company), undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions).

"**Disposal Proceeds**" means:

(a) the cash consideration received by any member of Group (including any amount received from a person who is not a member of the Group in repayment of intercompany debt save to the extent that the creditor in respect of the intercompany debt is obliged to repay that amount to the purchaser at or about completion of the Disposal) for any Disposal;

(b) any proceeds of any Disposal received in the form of Marketable Securities that are required to be disposed of for cash (after deducting reasonable expenses incurred by the party disposing of those Marketable Securities to persons other than members of the Group) pursuant to the criteria set out at paragraph (h) of the definition of Permitted Disposal; and

(c) any proceeds of any Disposal received in any other form to the extent disposed of or otherwise converted into cash within 90 days of receipt; and

(d) any consideration falling within paragraphs (i) to (iii) above that is received by any member of the Group from the Disposal of assets of the Group in Venezuela prior to the date of the 2009 Financing Agreement,

but excluding any Excluded Disposal Proceeds and, in every case, after deducting:

(i) any reasonable expenses which are incurred by the disposing party of such assets with respect to that Disposal to persons who are not members of the Group;

(ii) any Tax incurred and required to be paid by the disposing party in connection with that Disposal (as reasonably determined by the disposing party on the basis of rates existing at the time of the disposal and taking account of any available credit, deduction or allowance);

"**EBITDA**" means, for any period, the sum for the Issuer and its Subsidiaries, determined on a consolidated basis of (a) operating income (*utilidad de operacion*), and (b) depreciation and amortization expense, in each case determined in accordance with Applicable GAAP of the Issuer, subject to the adjustments herein, consistently applied for such period and adjusted for Discontinued EBITDA as follows: if the amount of Discontinued EBITDA is a positive amount, then EBITDA shall increase by such amount, and if the amount of Discontinued EBITDA is a negative amount, then EBITDA shall decrease by the absolute value of such amount. For the purposes of calculating EBITDA for any applicable period pursuant to any determination of the Consolidated Leverage Ratio (but not the Consolidated Coverage Ratio): (A) (i) if at any time during such applicable period the Borrower or any of its Subsidiaries shall have made any Material Disposal, the EBITDA for such applicable period shall be reduced by an amount equal to the EBITDA (if positive) attributable to the property that is the subject of such Material Disposal for such applicable period (but when the Material Disposal is by way of lease, income received by the Issuer or any of its Subsidiaries under such lease shall be included in EBITDA) and (ii) if at any time during such applicable period the Issuer or any of its Subsidiaries shall have made any Material Acquisition, EBITDA for such applicable period shall be calculated after giving *pro forma* effect thereto as if such Material Acquisition had occurred on the first day of such applicable period. Additionally, if since the beginning of such applicable period any person that subsequently shall have become a Subsidiary or was merged or consolidated with the Issuer or any of its Subsidiaries as a result of a Material Acquisition occurring during such applicable period shall have made any Material Disposal or Material Acquisition of property that would have required an adjustment pursuant to clause (i) or (ii) above if made by the Issuer or any of its Subsidiaries during such applicable period, EBITDA for such period shall be calculated after giving *pro forma* effect thereto as if such Material Disposal or Material Acquisition had occurred on the first day of such applicable period; and (B) EBITDA will be recalculated by multiplying each month's EBITDA by the Ending Exchange Rate and dividing the amount obtained thereto by the exchange rate used by the Issuer in

preparation of its monthly financial statements in accordance with Applicable GAAP of the Issuer to convert $ into Mexican pesos (such recalculated EBITDA being the "**Recalculated EBITDA**").

"**Ending Exchange Rate**" means the exchange rate at the end of a Reference Period for converting $ into Mexican pesos as used by the Issuer and its auditors in preparation of the Issuer's financial statements in accordance with Applicable GAAP of the Issuer.

"**Excluded Disposal Proceeds**" means any CB Disposal Proceeds Replenishment Amount and the proceeds of any Disposal of:

(a) inventory or trade receivables in the ordinary course of trading of the disposing entity;

(b) assets pursuant to a Permitted Securitisation programme existing as at the date of the 2009 Financing Agreement (or any rollover or extension of such a Permitted Securitisation);

(c) any asset from any member of the Group to another member of the Group on arm's length terms and for fair market or book value;

(d) any assets the consideration for which (when aggregated with the consideration for any related Disposals) is less than $5,000,000 (or its equivalent in any other currency);

(e) assets leased or licensed to any director, officer or employee of any member of the Group in connection with and as part of the ordinary course of the service or employment arrangements of the Group;

(f) Marketable Securities (other than Marketable Securities received as consideration for a Disposal as envisaged in paragraphs (ii) and (iii) of the definition of Disposal Proceeds); and

(g) any cash or other assets arising out of or in connection with any Permitted Put/Call Transaction, including, but not limited to any settlement, disposal, transfer, assignment, closeout or other termination of such Permitted Put/Call Transaction.

"**Excluded Fundraising Proceeds**" means the proceeds of:

(a) a Permitted Fundraising falling within paragraph (f)(i) of the definition of Permitted Financial Indebtedness entered into for the purpose of refinancing or extending the maturity of Existing Financial Indebtedness falling within paragraph (a) of the definition thereof (or paragraph (b) of the definition thereof, to the extent that it relates to Short Term Certificados Bursatiles) (and, in the case of a refinancing, where the proceeds that would, but for this paragraph (i), constitute "Permitted Fundraising Proceeds," are actually applied for such purpose as soon as reasonably practicable (and in any event within 90 days) following receipt of those proceeds by any member of the Group);

(b) a Permitted Fundraising falling within paragraph (f)(ii) of the definition of Permitted Financial Indebtedness entered into for the purpose of refinancing or extending the maturity of Existing Financial Indebtedness falling within paragraphs (a) to (e) of the definition thereof (and, in the case of a refinancing, where the proceeds that would, but for this paragraph (ii), constitute "Permitted Fundraising Proceeds," are actually applied for such purpose as soon as reasonably practicable (and in any event within 90 days) following receipt of those proceeds by any member of the Group).

(c) any transaction between members of the Group;

(d) Permitted Securitisations;

(e) prior to the Debt Reduction Satisfaction Date, a Permitted Fundraising falling within paragraph (c) of that definition or, after the Debt Reduction Satisfaction Date, a Permitted Fundraising falling within paragraphs (a), (b) or (c) of that definition *provided* that any Relevant Existing Financial Indebtedness due to mature within the particular Relevant Prepayment Period and the proceeds of such Permitted Fundraising are to be applied in accordance with Clause 13.3 (*Mandatory prepayments: Certificados Bursatiles Reserve*) of the 2009 Financing Agreement;

(f) subject to Clause 13.4(ii) of the 2009 Financing Agreement, a Permitted Fundraising falling within paragraph (c) of that definition and applied or to be applied in accordance with Clause 13.4 (*Mandatory prepayments: Relevant Convertible/Exchangeable Obligations*) of the 2009 Financing Agreement; and

(g) a Permitted Fundraising arising out of or in connection with any Permitted Put/Call Transaction, including, but not limited to, any settlement, disposal, transfer, assignment, close-out or other termination of such Permitted Put/Call Transaction.

"**Executive Compensation Plan**" means any stock option plan, restricted stock plan or retirement plan which the Issuer or any other Obligor customarily provides to its employees, consultants and directors.

"**Existing Facility Agreements**" means the facility agreements and other documents described in Part II, Schedule 1 (*The Original Participating Creditors*) of the 2009 Financing Agreement.

"**Existing Finance Documents**" means each Existing Facility Agreement, the USPP Note Guarantee, the "Finance Documents" as defined in any Existing Facility Agreement and the "Facility Transaction Documents" as defined in Exhibit H to the NY Law Amendment Agreement (but in each case excluding any document that is designated a "**Finance Document**" or "**Facility Transaction Document**" by an Obligor and the relevant Creditor's Representative under an Existing Facility Agreement after the date of the 2009 Financing Agreement).

"**Existing Financial Indebtedness**" means:

(a) the Financial Indebtedness described in Part I of Schedule 10 (*Existing Financial Indebtedness*) of the 2009 Financing Agreement *provided* that the principal amount of such Financial Indebtedness does not increase above the principal amount outstanding as at the date of the 2009 Financing Agreement (except by the amount of any capitalised interest under any facility or instrument that provided for capitalisation of interest on those terms as at the date of the 2009 Financing Agreement) less the amount of any repayments and prepayments made in respect of such Financial Indebtedness;

(b) the Financial Indebtedness described in Part II of Schedule 10 (*Existing Financial Indebtedness*) of the 2009 Financing Agreement and any Short-Term Certificados Bursatiles, working capital or other operating facilities that replace or refinance such Financial Indebtedness;

(c) the Financial Indebtedness described in Part III of Schedule 10 (*Existing Financial Indebtedness*) of the 2009 Financing Agreement and any Capital Leases that replace (and relate to the same or similar assets as) such Financial Indebtedness;

(d) the Financial Indebtedness described in Part IV of Schedule 10 (*Existing Financial Indebtedness*) of the 2009 Financing Agreement and any Inventory Financing or factoring arrangements that replace (and relate to the same or similar assets as) such Financial Indebtedness; and

(e) the Banobras Facility and any other facility that replaces or refinances such facility *provided* that any such replacement or refinancing facility is (i) with a development bank controlled by the Mexican Government or (ii) with any other financial institution to finance public works or infrastructure assets,

*provided* that (i) the aggregate principal amount of such Existing Financial Indebtedness falling under each of paragraphs (b) to (e) of this definition shall not be increased above the principal amount of Financial Indebtedness committed or capable of being drawn down under the Financial Indebtedness referred to in that paragraph of this definition as at the date of the 2009 Financing Agreement (except by the amount of any capitalised interest under any facility or instrument that provided for capitalisation of interest on those terms as at the date of the 2009 Financing Agreement) and (ii), for the avoidance of doubt, any refinancing or replacement of Existing Financial Indebtedness falling within paragraphs (b) to (d) above need not satisfy the requirements of paragraph (f) of the definition of Permitted Financial Indebtedness.

"**Exposure**" means, at any time:

(a) in relation to a Participating Creditor and a Syndicated Bank Facility or Bilateral Bank Facility, that Participating Creditor's participation in Loans made under the relevant Facility at that time;

(b) in relation to Participating Creditor and a Promissory Note, the principal amount owed to that Participating Creditor under that Promissory Note at that time; and

(c) in relation to a Participating Creditor and a USPP Note, the principal amount owed to that Participating Creditor under that USPP Note at that time.

"**Facility**" means a Core Bank Facility and each USPP Note.

"**Fee Letter**" means any letter or agreement between the Administrative Agent or Security Agent and the Issuer setting out (i) the upfront fee and (ii) the level of fees payable in respect of the services and obligations performed by those agents under the relevant New Finance Documents.

"**Finance Document**" means each New Finance Document and each Existing Finance Document.

"**Finance Party**" means the Administrative Agent, the Security Agent, each Creditor's Representative or a Participating Creditor.

"**Financial Indebtedness**" means any indebtedness for or in respect of:

(a) moneys borrowed and debit balances at banks or other financial institutions;

(b) any acceptance under any acceptance credit or bill discounting facility (or dematerialised equivalent);

(c) any amount raised pursuant to a note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument (including, without limitation, any perpetual bonds);

(d) the amount of any liability in respect of any lease or hire purchase contract which would (in accordance with Applicable GAAP of the Issuer) be treated as a finance or capital lease;

(e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis and meet any requirement for de-recognition under Applicable GAAP of the Issuer);

(f) any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the mark-to-market value (or, if any actual amount is due as a result of the termination or close-out of that Treasury Transaction, that amount) shall be taken into account);

(g) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;

(h) any amount raised by the issue of redeemable shares which are redeemable (other than at the option of the issuer) before the Termination Date or are otherwise classified as borrowings under Applicable GAAP of the Issuer;

(i) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets or services and payment is due more than 60 days after the date of supply;

(j) any arrangement pursuant to which an asset sold or otherwise disposed of by that person may be re-acquired by a member of the Group (whether following the exercise of an option or otherwise) and any Inventory Financing;

(k) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing or otherwise classified as borrowings under Applicable GAAP of the Issuer; and

(l) the amount of any liability in respect of any guarantee for any of the items referred to in paragraphs (a) to (k) above.

"**Financial Quarter**" means the period commencing on the day after one Quarter Date and ending on the next Quarter Date.

"**Financial Year**" means the annual accounting period of the Issuer ending on or about 31 December in each year.

"**Fitch**" means Fitch Ratings Limited or any successor thereto from time to time.

"**Group**" means the Issuer and each of its Subsidiaries for the time being.

"**Guarantors**" means the Original Guarantors and any Additional Guarantor other than any Original Guarantor or Additional Guarantor which has ceased to be a Guarantor pursuant to Clause 28.4 (*Resignation of Guarantor*) of the 2009 Financing Agreement and has not subsequently become an Additional Guarantor pursuant to Clause 28.3 (*Additional Guarantors and Additional Security Providers*) of the 2009 Financing Agreement and "Guarantor" means any of them.

"**Holding Company**" means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

"**IFRS**" means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

"**Intellectual Property**" means:

(a) any patents, trademarks, service marks, designs, business names, copyrights, design rights, data-base rights, inventions, knowhow and other intellectual property rights and interests, whether registered or unregistered; and

(b) the benefit of all applications and rights to use such assets of each member of the Group.

"**Intercreditor Agreement**" means the intercreditor agreement dated on or about the date of the 2009 Financing Agreement and made between, among others, the Issuer, Wilmington Trust (London) Limited as Security Agent, Citibank International PLC as Administrative Agent, the Participating Creditors and any other creditors of the Group that may accede to it from time to time in accordance with its terms, as such agreement may be amended from time to time.

"**Inventory Financing**" means a financing arrangement pursuant to which a member of the Group sells inventory to a bank or other institution (or a special purpose vehicle or partnership incorporated or established by or on behalf of such bank or other institution or an Affiliate of such bank or other institution) and has an obligation to repurchase such inventory to the extent that it is not sold to a third party within a specified period.

"**Joint Venture**" means any joint venture entity, whether a company, unincorporated firm, undertaking, association, joint venture or partnership or any other entity.

"**Joint Venture Investment**" has the meaning given to such term in sub-paragraph (b) (ii) of the definition of Permitted Joint Venture.

"**Loan**" means:

(a) in relation to a Syndicated Bank Facility or Bilateral Bank Facility, a loan made or to be made under such Facility or the principal amount outstanding for the time being of that loan; and

(b) in relation to a Promissory Note, the Exposure of the Participating Creditors for the time being under that Promissory Note.

"**Majority Participating Creditors**" means, at any time, a Participating Creditor or Participating Creditors the Base Currency Amount of whose Exposures under the Facilities at that time aggregate 66.67 per cent. or more of the Base Currency Amount of all the Exposures of the Participating Creditors under all of the Facilities at that time.

"**Marketable Securities**" means securities (whether equity, debt or other securities) which are listed on a stock exchange or for which a trading market exists (whether on market or over the counter) but excluding: (A) shares in any member of the Group, and (B) any shares in Axtel, S.A.B. de C.V.

"**Material Acquisition**" means any (a) acquisition of property or series of related acquisitions of property that constitutes assets comprising all or substantially all of an operating unit, division or line of business or (b) acquisition of or other investment in the Capital Stock of any Subsidiary or any person which becomes a Subsidiary or is merged or consolidated with the Borrower or any of its Subsidiaries, in each case, which involves the payment of consideration by the Borrower and its Subsidiaries in excess of $100,000,000 (or the equivalent in other currencies).

"**Material Disposal**" means any Disposal of property or series of related Disposals of property that yields gross proceeds to the Issuer or any of its Subsidiaries in excess of $100,000,000 (or the equivalent in other currencies).

"**Mexican FRS**" means Mexican Financial Reporting Standards (*Normas de Información Financiera*) as in effect from time to time and consistent with those used in the preparation of the most recent audited financial statements referred to in Clause 22.1 (Financial Statements).

"**Mexican pesos**," "**Mex$**," "**MXN**" and "**pesos**" means the lawful currency of Mexico.

"**Mexico**" means the United Mexican States.

"**Moody's**" means Moody's Investor Services Limited or any successor to its ratings business.

"**NAFTA**" means the North American Free Trade Agreement.

"**New Finance Document**" means the 2009 Financing Agreement, the NY Law Amendment Agreement, the Intercreditor Agreement, each Transaction Security Document, any Accession Letter, any Fee Letter, any Resignation Letter and any other document designated as a "**New Finance Document**" by the Administrative Agent and the Issuer.

"**New Equity Securities**" means

(a) The U.S.$977.5 million aggregate principal amount of 3.25% convertible subordinated notes due 2016, including U.S.$177.5 million notes issued pursuant to an over-allotment option in connection with those subordinated notes due 2016; and

(b) U.S.$690 million aggregate principal amount of 3.75% convertible subordinated notes due 2018, including U.S.$90 million notes issued pursuant to an over-allotment option in connection with those subordinated notes due 2018.

in each case, issued on 15 March 2011 by the Issuer.

"**NY Law Amendment Agreement**" means the omnibus amendment agreement dated on or about the date of the 2009 Financing Agreement between, among others, the Issuer and the Participating Creditors with

Exposures under those Existing Facility Agreements (other than the USPP Note Agreement) that are governed by the laws of the State of New York, as such agreement may be amended from time to time.

"**Obligors**" means the Borrowers, the Guarantors and the Security Providers and "**Obligor**" means any of them.

"**Original Borrowers**" means, together with the Issuer, the Subsidiaries of the Issuer listed in Part I of Schedule 1 (*The Original Parties*) of the 2009 Financing Agreement as borrowers or issuers.

"**Original Financial Statements**" means (a) in relation to the Issuer, its audited unconsolidated and consolidated financial statements for its Financial Year ended 31 December 2008 accompanied by an audit opinion of KPMG Cardenas Dosal, S.C.; (b) in relation to CEMEX España, its audited consolidated financial statements for its financial year ended 31 December 2008; and (c) in relation to any other borrower or guarantor under the 2009 Financing Agreement, its most recent annual financial statements (audited, if available).

"**Original Guarantors**" means the Subsidiaries of the Issuer listed in Part I of Schedule 1 (*The Original Parties*) of the 2009 Financing Agreement as guarantors, together with the Issuer.

"**Original Participating Creditors**" means the financial institutions and noteholders listed in Part II of Schedule 1 (*The Original Participating Creditors*) of the 2009 Financing Agreement as creditors.

"**Original Security Providers**" means the Subsidiaries of the Issuer listed in Part I of Schedule 1 (*The Original Parties*) of the 2009 Financing Agreement as security providers.

"**Participating Creditor**" means:

(a) any Original Participating Creditor; and

(b) any person which has become a Party in accordance with Clause 27 (*Changes to the Participating Creditors*), of the 2009 Financing Agreement,

which in each case has not ceased to be a Party in accordance with the terms of the 2009 Financing Agreement.

"**Participating Member State**" means any member state of the European Union that adopts or has adopted the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

"**Party**" means a party to the 2009 Financing Agreement.

"**Permitted Acquisition**" means:

(a) an acquisition by a member of the Group of an asset sold, leased, transferred or otherwise disposed of by another member of the Group in circumstances constituting a Permitted Disposal;

(b) an acquisition of shares or securities pursuant to a Permitted Share Issue;

(c) an acquisition of cash or securities which are Cash Equivalent Investments;

(d) an acquisition to which a member of the Group is contractually committed as at the date of the 2009 Financing Agreement, with the material terms of those acquisitions requiring consideration payable in excess of $10,000,000 described in the list delivered to the Administrative Agent under paragraph 4(f) of Part I (Initial Conditions Precedent) of Schedule 2 of the 2009 Financing Agreement (*provided* that there has been or is no material change to the terms of such acquisition subsequent to the date of the 2009 Financing Agreement);

(e) the incorporation of a company which on incorporation becomes a member of the Group or which is a special purpose vehicle, whether a member of the Group or not;

(f) an acquisition that constitutes a Permitted Joint Venture;

(g) an acquisition of assets and, if applicable, cash, in exchange for other assets and, if applicable, cash, of equal or higher value *provided* that: (i) the cash element of any such acquisition must not be more than 20 per cent. of the aggregate consideration for the acquisition; and (ii) the maximum aggregate market value of the assets acquired pursuant to all such transactions must not be more than $100,000,000 (or its equivalent in any other currency) in any Financial Year;

(h) any acquisition of shares of the Issuer pursuant to an obligation in respect of any Executive Compensation Plan;

(i) any other acquisition consented to by the Administrative Agent acting on the instructions of the Majority Participating Creditors;

(j) an acquisition of shares in the Issuer to the extent that a member of the Group has an obligation to deliver such shares to any holder(s) of convertible securities falling within paragraph (f)(i) of the definition of Permitted Financial Indebtedness pursuant to the terms of such convertible securities; and

(k) any other acquisition of a company, of shares, securities or a business or undertaking (or, in each case, any interest in any of them) *provided* that the aggregate amount of the consideration for such acquisitions (when aggregated with the aggregate amount of Joint Venture Investment falling within paragraph (b)(iii)(1) of the definition of Permitted Joint Venture in that Financial Year) does not exceed $100,000,000 (or its equivalent in any other currencies) in any Financial Year.

"**Permitted Disposal**" means any sale, lease, licence, transfer or other disposal which, except in the case of Disposals as between members of the Group, is on arm's length terms:

(a) of trading stock or cash made by any member of the Group in the ordinary course of trading of the disposing entity;

(b) of any asset by a member of the Group (the "**Disposing Company**") to another member of the Group (the "**Acquiring Company**"), but if:

(i) the Disposing Company is an Obligor, the Acquiring Company must also be an Obligor;

(ii) the Disposing Company had given Transaction Security over the asset, the Acquiring Company must give equivalent Transaction Security over that asset; and

(iii) the Disposing Company is a Guarantor, the Acquiring Company must be a Guarantor guaranteeing at all times an amount no less than that guaranteed by the Disposing Company,

*provided* that the conditions set out in paragraphs (i), (ii) and (iii) above shall only apply if the applicable assets are shares or if all or substantially all of the assets of the Disposing Company are being disposed of;

(c) of obsolete or redundant vehicles, machinery, parts and equipment in the ordinary course of trading;

(d) of cash or Cash Equivalent Investments for cash or in exchange for other Cash Equivalent Investments;

(e) constituted by a licence of Intellectual Property in the ordinary course of trading;

(f) to a Joint Venture, to the extent permitted by Clause 24.17 (*Joint ventures*) of the 2009 Financing Agreement;

(g) arising as a result of any Permitted Security;

(h) of any shares in a member of the Group (*provided* that all such shares in that entity owned by a member of the Group are the subject of the Disposal) or of any other asset, in each case on arm's length terms and for full market value where:

(i) no less than 85 per cent. of the consideration for the Disposal is payable to the Group in cash or Marketable Securities paid or received by a member of the Group at completion of the Disposal (*provided* that where a portion of that 85 per cent. is comprised of Marketable Securities, those Marketable Securities must be disposed of for cash to a person that is not a member of the Group within 90 days of completion);

(ii) if the aggregate consideration for the Disposal (when aggregated with the consideration for any related Disposals) is equal to 5 per cent. or more of the value of consolidated assets of the Group, the Issuer has delivered to the Administrative Agent a certificate signed by an Authorised Signatory confirming that, on a *pro forma* basis, assuming that the Disposal had been completed and the proceeds had been applied in accordance with Clause 13 (*Mandatory Prepayment*) of the 2009 Financing Agreement immediately prior to the first day of the most recent Reference Period for which a Compliance Certificate has been or is required to have been delivered under the 2009 Financing Agreement, the Issuer would have been in compliance with the financial covenants in paragraphs (a) and (b) of Clause 23.2 (*Financial condition*) of the 2009 Financing Agreement as at the last day of the most recent Reference Period for which a Compliance Certificate has been or is required to have been delivered under the 2009 Financing Agreement; and

(iii) the Disposal Proceeds received by members of the Group are applied (to the extent required) in accordance with Clause 13 (*Mandatory prepayment*) of the 2009 Financing Agreement;

(i) of any asset compulsorily acquired by a governmental authority *provided* that the Disposal Proceeds received by members of the Group are applied (to the extent required) in accordance with Clause 13 (*Mandatory prepayment*) of the 2009 Financing Agreement;

(j) of any receivables disposed of pursuant to a factoring or similar receivables financing arrangement that is otherwise permitted under the 2009 Financing Agreement (including, for the avoidance of doubt, the Banobras Facility);

(k) of any inventory disposed of pursuant to an Inventory Financing or similar arrangement that is otherwise permitted under the 2009 Financing Agreement;

(l) of any plant or equipment disposed of pursuant to a sale and lease-back arrangement that is otherwise permitted under the 2009 Financing Agreement;

(m) of any asset to which a member of the Group was contractually committed as at the date of the 2009 Financing Agreement, with all material terms of those disposals which relate to the disposal of assets with a value of at least $10,000,000 being described in Schedule 14 (*Disposals*) of the 2009 Financing Agreement (*provided* that there has been or is no material change to the terms of such Disposal subsequent to the date of the 2009 Financing Agreement);

(n) of receivables disposed of pursuant to a Permitted Securitisation;

(o) of land or buildings arising as a result of lease or licence in the ordinary course of its trading;

(p) of any shares of the Issuer pursuant to an obligation in respect of any Executive Compensation Plan;

(q) of shares, common equity securities in the Issuer or reference property in connection with the same to the extent that a member of the Group has an obligation to deliver such shares, common equity securities or reference property to any holder(s) of convertible or exchangeable securities falling within paragraph (f)(i) of the definition of Permitted Financial Indebtedness pursuant to the terms of such convertible or exchangeable securities or to any counterparty pursuant to the terms of any Permitted Put/Call Transaction;

(r) of assets and, if applicable, cash in exchange for other assets and, if applicable, cash, of equal or higher value *provided* that: (i) the cash element of any such Disposal must not be more than 20 per cent. of the aggregate consideration for the Disposal; and (ii) the maximum aggregate market value of all assets disposed of in such transactions must not be more than $100,000,000 (or its equivalent in any other currencies) in any Financial Year; or

(s) otherwise approved by the Administrative Agent acting on the instructions of the Majority Participating Creditors.

"**Permitted Financial Indebtedness**" means Financial Indebtedness:

(a) incurred or arising under the Finance Documents;

(b) that is Existing Financial Indebtedness;

(c) owed to a member of the Group;

(d) that constitutes a Permitted Securitisation;

(e) arising under Capital Leases, factoring arrangements, Inventory Financing arrangements or export credit facilities for the purchase of equipment (*provided* that any Security granted in relation to any such facility relates solely to equipment, the purchase of which was financed under such Facility) or pursuant to sale and lease-back transactions *provided* that the maximum aggregate Financial Indebtedness of members of the Group under such transactions (excluding any Existing Financial Indebtedness) does not exceed $350,000,000 at any time;

(f) arising:

(i) pursuant to an issuance of bonds, notes or other debt securities, or of convertible or exchangeable securities by:

(A) in the case of bonds, notes or other debt securities or convertible or exchangeable securities issued to refinance or replace Existing Financial Indebtedness falling within Part I of Schedule 10 (Existing Financial Indebtedness) of the 2009 Financing Agreement, one or more Obligors (other than CEMEX Materials LLC and CEMEX, Inc.) or the same member of the Group (including, where applicable, CEMEX Materials LLC and CEMEX, Inc.) that issued the relevant Existing Financial Indebtedness that is being refinanced or replaced (whether acting as co-issuers or otherwise but, for the avoidance of doubt, with several liability only); or

(B) in the case of bonds, notes or other debt securities or convertible or exchangeable securities issued so as to be applied in repayment or prepayment of the Exposures of the Participating Creditors under the Facilities, one or more Obligors (other than CEMEX Materials LLC and CEMEX, Inc.) whether acting as co-issuers or otherwise,

(and, for the avoidance of doubt, such securities may be issued with an original issue discount) on the capital markets in each case subscribed or paid for in full in cash on issue (unless such securities are exchanged on issue for other securities that constitute Existing Financial Indebtedness falling within paragraph (a) of the definition thereof on issue) *provided* that (other than any conversion into common equity securities of the Issuer) no principal repayments are scheduled (and no call options can be exercised) in respect thereof until after the Termination Date;

(ii) under a loan facility in respect of which the only borrowers are:

(A) in the case of loan facilities entered into to refinance or replace Existing Financial Indebtedness falling within Part I of Schedule 10 (*Existing Financial Indebtedness*) of the 2009 Financing Agreement one or more Obligors (other than CEMEX Materials LLC and

CEMEX, Inc.) or the same member of the Group (including, where applicable, CEMEX Materials LLC and CEMEX, Inc.) that borrowed the relevant Existing Financial Indebtedness that is being refinanced or replaced, (whether acting as joint or multiple borrowers but for the avoidance of doubt, with several liability only); or

(B) in the case of loan facilities entered into so as to refinance or replace the Exposures of the Participating Creditors under the Facilities, one or more Obligors (other than CEMEX Materials LLC and CEMEX, Inc.) whether acting as joint or multiple borrowers,

*provided* that no principal repayments are scheduled (and no mandatory prepayment obligations arise save as a result of unlawfulness affecting a creditor in respect of such loan facility) in respect thereof until after the Termination Date,

and further *provided* that (1) the terms applicable to such issuance under paragraph (f)(i) (excluding pricing, but including, without limitation, as to prepayments, representations, covenants, events of default, guarantees and security) taken as a whole are no more restrictive or onerous than the terms applicable to the Facilities, and the terms applicable to such incurrence under paragraph (f)(ii) (excluding pricing, but including, without limitation, as to prepayments, representations, covenants, events of default, guarantees and security) are no more restrictive or onerous than the terms applicable to the Facilities; (2) the proceeds of such issuance or incurrence are applied (to the extent required) in accordance with Clause 13 (*Mandatory prepayment*) of the 2009 Financing Agreement; (3) ) if proceeds of such issuance or incurrence are, to the extent required under the 2009 Financing Agreement, being used to replace or refinance (x) Financial Indebtedness which shares in the Transaction Security or (y) the CEMEX España Euro Notes, such Financial Indebtedness issued or incurred shall be entitled to share in the Transaction Security in accordance with (and on the terms of) the Intercreditor Agreement, *provided* that in the case of Financial Indebtedness issued or incurred to replace or refinance the CEMEX España Euro Notes, such Financial Indebtedness shall only be entitled to share in the Transaction Security if, prior to the first replacement or refinancing of the CEMEX España Euro Notes, the Debt Reduction Satisfaction Date has occurred; and (4) for the avoidance of doubt, any refinancing or replacement of Existing Financial Indebtedness falling within paragraphs (b) to (d) of the definition of Existing Financial Indebtedness need not satisfy the requirements of this paragraph (f);

(g) that constitutes a Permitted Liquidity Facility;

(h) that becomes Financial Indebtedness solely as a result of any change in Applicable GAAP of the Issuer after the date of the 2009 Financing Agreement and that existed prior to the date of such change in Applicable GAAP of the Issuer (or that replaces, and is on substantially the same terms as, such Financial Indebtedness);

(i) of any person acquired by a member of the Group pursuant to an acquisition falling within paragraphs (d) or (f) of the definition of Permitted Acquisition *provided* that: (i) such Financial Indebtedness existed prior to the date of the acquisition and was not incurred, increased or extended in contemplation of, or since, the acquisition; and (ii) the aggregate amount of any such Financial Indebtedness of members of the Group does not exceed $100,000,000 at any time;

(j) under Treasury Transactions entered into in accordance with Clause 24.26 (*Treasury Transactions*) of the 2009 Financing Agreement;

(k) incurred pursuant to or in connection with any cash pooling or other cash management agreements in place with a bank or financial institution, but only to the extent of offsetting credit balances of the Issuer or its Subsidiaries pursuant to such cash pooling or other cash management arrangement;

(l) constituting Financial Indebtedness for taxes levied, assessments due and other governmental charges required to be paid as a matter of law or regulation in the ordinary course of trading;

(m) that constitutes a Permitted Joint Venture;

(n) approved by the Administrative Agent acting on the instructions of the Majority Participating Creditors; and

(o) that, when aggregated with the principal amount of any other Financial Indebtedness not falling within paragraphs (a) to (n) above, does not exceed $200,000,000 (or its equivalent in other currencies) in aggregate at any time.

"**Permitted Fundraising**" means:

(a) any issuance of equity securities by the Issuer paid for in full in cash on issue (and, for the avoidance of doubt, such securities may be issued with an original issue discount) and not redeemable on or prior to the Termination Date and where such issue does not lead to a Change of Control;

(b) any issuance of equity-linked securities issued by any member of the Group that are linked solely to, and result only in the issuance of, equity securities of the Issuer otherwise entitled to be issued under this definition (and that do not, for the avoidance of doubt, result in the issuance of any equity securities by such member of the Group) and that are paid for in full in cash on issue (and, for the avoidance of doubt, such securities may be issued with an original issue discount) and where such issue does not lead to a Change of Control (*provided* that such securities do not provide for the payment of interest in cash and are not redeemable on or prior to the Termination Date); and

(c) any incurrence of Financial Indebtedness falling within paragraph (f) of the definition of Permitted Financial Indebtedness.

"**Permitted Fundraising Proceeds**" means the cash proceeds received by any member of the Group from a Permitted Fundraising other than Excluded Fundraising Proceeds after deducting:

(i) any reasonable expenses which are incurred by the relevant member(s) of the Group with respect to that Permitted Fundraising owing to persons who are not members of the Group; and

(ii) any Tax incurred and required to be paid by the relevant member(s) of the Group with respect to that Permitted Fundraising (as reasonably determined by the relevant member(s) of the Group on the basis of rates existing at the time and taking account of any available credit, deduction or allowance).

"**Permitted Joint Venture**" means any investment in any Joint Venture where:

(a) such investment exists or a member of the Group is contractually committed to such investment at the date of the 2009 Financing Agreement and, if the value of the Group's investment in such Joint Venture is $50,000,000 or greater (as shown in the Original Financial Statements of the Issuer) is detailed in Schedule 12 (Permitted Joint Ventures) of the 2009 Financing Agreement; or

(b) such investment is made after the date of the 2009 Financing Agreement and:

(i) either the investment has been consented to by the Administrative Agent acting on the instructions of the Majority Participating Creditors or the Joint Venture is engaged in a business substantially the same as that carried on by the Group; and

(ii) in any Financial Year of the Issuer, the aggregate of:

(1) all amounts subscribed for shares in, lent to, or invested in all such Joint Ventures by any member of the Group;

(2) the contingent liabilities of any member of the Group under any guarantee given in respect of the liabilities of any such Joint Venture; and

(3) the market value of any assets transferred by any member of the Group to any such Joint Venture,

minus

(4) from and including 1 January 2010, an amount up to, but not exceeding, $100,000,000 (or its equivalent in other currencies) in any Financial Year that represents all cash amounts received by any member of the Group (i) relating to dividends, repayment of loans or distributions of any other nature in respect of any such Joint Ventures in that Financial Year and (ii) as a result of or in relation to any disposals of shares, interests or participations, divestments, capital reductions or any similar decreases of interest in any such Joint Ventures in that Financial Year,

does not exceed $100,000,000 (or its equivalent in other currencies) or such greater amount as the Administrative Agent (acting on the instructions of the Majority Participating Creditors) may agree (such amount being the "**Joint Venture Investment**"); and

(iii) the Issuer has (by written notice to the Administrative Agent prior to the end of the Financial Year in which the investment is made) designated the Joint Venture Investment as counting against:

(1) paragraph (k) of the definition of Permitted Acquisition; or

(2) the maximum amount of Capital Expenditure permitted in that Financial Year under paragraph (c) of Clause 23.2 (*Financial condition*) of the 2009 Financing Agreement.

"**Permitted Liquidity Facilities**" means a loan facility or facilities made available to one or more members of the Group by one or more Participating Creditors (or their respective Affiliates) *provided* that the aggregate principal amount of utilised and unutilised commitments under such facilities must not exceed $1,000,000,000 (or its equivalent in any other currency) at any time.

"**Permitted Put/Call Transaction**" means any call option, call spread, capped call transaction, put option, put spread, capped put transaction or any combination of the foregoing and/or any other Treasury Transaction or transactions having a similar effect to any of the foregoing, in each case entered into, sold or purchased not for speculative purposes but for the purposes of managing specific risks or exposures associated with any issuance of Relevant Convertible Securities/Exchangeable Obligations.

"**Permitted Securitisations**" means a transaction or series of related transactions providing for the securitisation of receivables and related assets by the Issuer or its Subsidiaries, including a sale at a discount, *provided* that (i) such receivables have been transferred, directly or indirectly, by the originator thereof to a person that is not a member of the Group in a manner that satisfies the requirements for an absolute conveyance (or, where the originator is organised in Mexico, a true sale), and not merely a pledge, under the laws and regulations of the jurisdiction in which such originator is organised; and (ii) except for customary representations, warranties, covenants and indemnities, such sale, transfer or other securitisation is carried out on a non-recourse basis or on a basis where recovery is limited solely to the collection of the relevant receivables.

"**Permitted Security**" means:

(A) Security for taxes, assessments and other governmental charges the payment of which is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and for which such reserves or other appropriate provision, if any, as shall be required by Applicable GAAP of the Issuer shall have been made;

(B) Security granted pursuant to or in connection with any netting or set-off arrangements entered into in the ordinary course of trading (including, for the avoidance of doubt, any cash pooling or cash management arrangements in place with a bank or financial institution falling within paragraph (k) of the definition of Permitted Financial Indebtedness);

(C) statutory liens of landlords and liens of carriers, warehousemen, mechanics and materialment incurred in the ordinary course of business for sums not yet due or the payment of which is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and for which such

reserves or other appropriate provision, if any, as shall be required by Applicable GAAP of the Issuer shall have been made;

(D) liens incurred or deposits made in the ordinary course of business in connection with (1) workers' compensation, unemployment insurance and other types of social security, or (2) other insurance maintained by the Group in accordance with Clause 24.9 (*Insurance*) of the 2009 Financing Agreement;

(E) any attachment or judgment lien, unless the judgment it secures shall not, within 60 days after the entry thereof, have been discharged or execution thereof stayed pending appeal, or shall not have been discharged within 60 days after the expiration of any such stay;

(F) Security and Quasi-Security existing on the date of the 2009 Financing Agreement as described in Schedule 6 (*Existing Security and Quasi-Security*) of the 2009 Financing Agreement (or any replacement of Security or Quasi-Security in accordance with paragraph 3 of Schedule 15 (*Hedging Parameters*) of the 2009 Financing Agreement or any equivalent Security or Quasi-Security for Existing Financial Indebtedness that is a refinancing or replacement of Existing Financial Indebtedness) *provided* that the principal amount secured thereby is not increased (save that principal amounts secured by Security or Quasi-Security in respect of:

(1) Treasury Transactions where there are fluctuations in the mark-to-market exposures of those Treasury Transactions;

(2) Existing Financial Indebtedness under paragraph (a) of the definition where principal may increase by virtue of capitalisation of interest; and,

(3) the Banobras Facility, where further drawings may be made *provided* that the maximum amount outstanding under such facility does not exceed Mex$5,000,000,000 at any time,

may be increased by the amount of such fluctuations or capitalisations, as the case may be);

(G) any Security or Quasi-Security permitted by the Administrative Agent, acting on the instructions of the Majority Participating Creditors;

(H) any Security created or deemed created pursuant to a Permitted Securitisation;

(I) any Security granted by any member of the Group to secure Financial Indebtedness under a Permitted Liquidity Facility *provided* that: (1) such Security is not granted in respect of assets that are the subject of the Transaction Security; and (2) the maximum aggregate amount of the Financial Indebtedness secured by such Security does not exceed $500,000,000 at any time;

(J) any Security granted by the Issuer or any member of the Group incorporated in Mexico in favour of a Mexican development bank (sociedad *nacional de crédito*) controlled by the government of Mexico (including Banco Nacional de Comercio Exterior, S.N.C., and Banco Nacional de Obras y Sevicios Publicos, S.N.C.) securing indebtedness of the members of the Group in an aggregate additional amount of such indebtedness not exceeding $250,000,000 (or its equivalent in any other currency);

(K) any Security or Quasi-Security granted in connection with any Treasury Transaction, excluding any Treasury Transaction described in Schedule 6 (*Existing Security and Quasi-Security*) of the 2009 Financing Agreement, that constitutes Permitted Financial Indebtedness *provided* that the aggregate value of the assets that are the subject of such Security or Quasi-Security does not exceed $200,000,000 (or its equivalent in other currencies) at any time;

(L) Security or Quasi-Security granted or arising over receivables, inventory, plant or equipment that are the subject of an arrangement falling within paragraph (e) of the definition of Permitted Financial Indebtedness;

(M) the Transaction Security including, for the avoidance of doubt, any sharing in the Transaction Security referred to in paragraph (f) of the definition of Permitted Financial Indebtedness;

(N) any Quasi-Security that is created or deemed created on shares of the Issuer under paragraph (q) of the definition of Permitted Disposals by virtue of such shares being held on trust for the holders of the convertible securities pending exercise of any conversion option, where such Quasi-Security is customary for such transaction;

(O) in addition to the Security and Quasi-Security permitted by the foregoing paragraphs (A) to (N), Security or Quasi-Security securing indebtedness of the Issuer and its Subsidiaries (taken as a whole) not in excess of $500,000,000.

"**Permitted Share Issue**" means:

(a) a Permitted Fundraising falling within paragraphs (a) or (b) of the definition thereof;

(b) an issue of shares by a member of the Group which is a Subsidiary of the Issuer to another member of the Group or the Issuer (and, where the member of the Group has a minority shareholder, to that minority shareholder on a pro rata basis) where (if the existing shares of the Subsidiary are the subject of the Transaction Security) the newly-issued shares also become subject to the Transaction Security on the same terms;

(c) an issue of shares by the Issuer to comply with an obligation in respect of any Executive Compensation Plan; or

(d) an issue of common equity securities of the Issuer either (i) by the Issuer or (ii) to any member of the Group where the Issuer or that member of the Group has an obligation to deliver such shares to a counterparty pursuant to the terms of a Permitted Put/Call Transaction or an obligation to deliver such shares to the holder(s) of convertible or exchangeable securities falling within paragraph (f)(i) of the definition of Permitted Financial Indebtedness pursuant to the terms of such convertible or exchangeable securities.

"**Promissory Notes**" means the promissory notes described in Part II of Schedule 1 (*The Original Participating Creditors*) of the 2009 Financing Agreement.

"**Quarter Date**" means each of 31 March, 30 June, 30 September and 31 December.

"**Quasi Security**" means an arrangement or transaction in which the Issuer or any Subsidiary:

(i) sells, transfers or otherwise disposes of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor or any other member of the Group;

(ii) sells, transfers or otherwise disposes of any of its receivables on recourse terms;

(iii) enters into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or

(iv) enters into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

"**Receiver**" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Properties.

"**Reference Period**" means a period of four consecutive Financial Quarters.

"**Relevant Convertible/Exchangeable Obligations**" means: (a) any Financial Indebtedness incurred by any person the terms of which provide that satisfaction of the principal amount owing under such Financial Indebtedness (whether on or prior to its maturity and whether as a result of bankruptcy, liquidation or other

default by such person or otherwise) shall occur solely by delivery of shares or common equity securities in the Issuer; and (b) any Financial Indebtedness under any Subordinated Optional Convertible Securities.

"**Relevant Existing Financial Indebtedness**" means any Existing Financial Indebtedness set out in:

(i) paragraph (a) of the definition of Existing Financial Indebtedness to the extent that it relates to Part I.C (*Mexican Public Debt Instruments*) of Schedule 10 (*Existing Financial Indebtedness*) of the 2009 Financing Agreement; and/or

(ii) paragraph (b) of the definition of Existing Financial Indebtedness to the extent it relates to Part II.A (*Short Term Certificados Bursatiles*) of Schedule 10 (*Existing Financial Indebtedness*) of the 2009 Financing Agreement and any Short-Term Certificados Bursatiles that replace or refinance such Existing Financial Indebtedness.

"**Relevant Prepayment Period**" means the period commencing on the date of receipt of the proceeds of a Permitted Fundraising by a member of the Group and ending on the later of:

(a) the date falling 364 days thereafter; and

(b) the 2012 CB Maturity Date.

"**Resignation Letter**" means a document substantially in the form set out in Part I of Schedule 11 (*Form of Resignation Letter*) of the 2009 Financing Agreement.

"**Responsible Officer**" means the Chief Financial Officer and/or Chief Controlling Officer of the Issuer or a person holding equivalent status (or higher).

"**S&P**" means Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc., or any successor thereto from time to time.

"**SEC**" means the U.S. Securities Exchange Commission and any successor thereto.

"**Secured Parties**" means each Finance Party from time to time to the 2009 Financing Agreement and any Receiver or Delegate.

"**Security**" means a mortgage, charge, pledge, lien, security trust or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"**Security Agent**" means Wilmington Trust (London) Limited as security agent of the Secured Parties.

"**Security Providers**" means the Original Security Providers and any Additional Security Provider other than any Original Security Provider or Additional Security Provider which has ceased to be a Security Provider pursuant to Clause 28.6 (*Resignation of a Security Provider*) of the 2009 Financing Agreement and has not subsequently become an Additional Security Provider pursuant to Clause 28.3 (*Additional Guarantors and Additional Security Providers*) of the 2009 Financing Agreement, and "**Security Provider**" means any of them.

"**Short-Term Certificados Bursatiles**" means any securities with a term of not more than 12 months issued by the Issuer in the Mexican capital markets with the approval of the Mexican National Banking and Securities Banking and Securities Commission and listed on the Mexican Stock Exchange.

"**Spanish GAAP**" means the Spanish General Accounting Plan (*Plan general Contable*) approved by Royal Decree 1514/2007 as in effect from time to time and consistent with those used in the preparation of the most recent audited financial statements referred to in Clause 22.1 (*Financial Statements*) of the 2009 Financing Agreement.

"**Subordinated Optional Convertible Securities**" means any Financial Indebtedness incurred by any member of the Group meeting the requirements of paragraph (f)(i) of the definition of Permitted Financial Indebtedness (including that no principal repayments are scheduled (and no call options can be exercised) until after the Termination Date) (which may, for the avoidance of doubt, include a fundraising the proceeds of which are applied in accordance with Clause 13.4 (*Mandatory prepayments: Relevant Convertible/Exchangeable Obligations*) of the 2009 Financing Agreement)) the terms of which provide that such indebtedness is capable of optional conversion into equity securities of the Issuer and that repayment of principal and accrued but unpaid interest thereon is subordinated (under terms customary for an issuance of such Financial Indebtedness) to all senior Financial Indebtedness of the Issuer (including, but not limited to, all Exposures of Participating Creditors) except for: (i) indebtedness that states, or is issued under a deed, indenture, agreement or other instrument that states, that it is subordinated to or ranks equally with any Subordinated Optional Convertible Securities and (ii) indebtedness between or among members of the Group.

"**Subsidiary**" means in relation to any company or corporation, a company or corporation:

(a) which is controlled, directly or indirectly, by the first mentioned company or corporation;

(b) more than half the issued share capital of which is beneficially owned, directly or indirectly by the first mentioned company or corporation; or

(c) which is a Subsidiary of another Subsidiary of the first mentioned company or corporation,

and for this purpose, a company or corporation shall be treated as being controlled by another if that other company or corporation is able to direct its affairs and/or to control the composition of its board of directors or equivalent body.

"**Syndicated Bank Facilities**" means the facilities described in Part IA of Part II of Schedule 1 (*The Original Participating Creditors*) of the 2009 Financing Agreement.

"**TARGET2**" means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system, which utilizes a single shared platform and which was launched on 19 November 2007.

"**TARGET Day**" means any day on which TARGET2 is open for the settlement of payments in euro.

"**Tax**" means any tax, levy, impost, duty or other charge, deduction or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

"**Termination Date**" means 14 February 2014.

"**Transaction Security**" means the Security created or expressed to be created in favour of the Security Agent pursuant to the Transaction Security Documents.

"**Transaction Security Documents**" means each of the documents listed as being a Transaction Security Document in paragraph 2(e) of Part I of Schedule 2 (*Conditions Precedent*) of the 2009 Financing Agreement and any document required to be delivered to the Administrative Agent under paragraph 3(d) of Part II of Schedule 2 (*Conditions Precedent*) of the 2009 Financing Agreement together with any other document entered into by any Obligor creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Obligors under any of the Finance Documents (and any other Debt Documents).

"**Treasury Transactions**" means any derivatives transaction (i) that is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option,

credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, weather index transaction or forward purchase or sale of a security, commodity or other financial instrument or interest (including any option with respect to any of these transactions), (ii) that is a type of transaction that is similar to any transaction referred to in clause (i) above that is currently, or in the future becomes, recurrently entered into in the financial markets and that is a forward, swap, future, option or other derivative (including one or more spot transactions that are equivalent to any of the foregoing) on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or deliveries are to be made or (iii) that is a combination of these transactions, it being understood that any Executive Compensation Plan permitted by the 2009 Financing Agreement is not a Treasury Transaction.

"**USPP Note**" means a note issued under the USPP Note Agreement.

"**USPP Note Agreement**" means the consolidated, amended and restated note purchase agreement described in Part II of Schedule 1 (*Original Participating Creditors*) of the 2009 Financing Agreement.

"**USPP Note Guarantee**" means the consolidated, amended and restated note guarantee granted in favour of the USPP Noteholders.

"**USPP Noteholders**" means the holders from time to time of the notes issued pursuant to the USPP Note Agreement.

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## IRISH LISTING AGENT

**Arthur Cox Listing Services Limited**
**Earlsfort Centre**
**Earlsfort Terrace**
**Dublin 2**
**Ireland**

**U.S.$500,000,000**

# CEMEX, S.A.B. DE C.V.

## Floating Rate Senior Secured Notes due 2018

***Unconditionally Guaranteed by***

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**October 7, 2013**