

Amphastar Pharmaceuticals, Inc.
Form DEF 14A
April 21, 2017
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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

PROXY STATEMENT PURSUANT TO SECTION 14(a) OF THE
SECURITIES EXCHANGE ACT OF 1934

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to §240.14a-11(c) or §240.14a-2

AMPHASTAR PHARMACEUTICALS, INC.

(Name of Registrant as Specified In Its Charter)

Payment of Filing Fee (Check the appropriate box):

No fee required.

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

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

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

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

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

Fee paid previously with preliminary materials.

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

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4)

Date Filed:

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AMPHASTAR PHARMACEUTICALS, INC.

11570 6TH STREET

RANCHO CUCAMONGA, CALIFORNIA 91730

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

To Be Held at 10:30 a.m. Pacific Time on Thursday, June 8, 2017

Dear Stockholders of Amphastar Pharmaceuticals, Inc.:

Please be advised that the 2017 annual meeting of stockholders (the “Annual Meeting”) of Amphastar Pharmaceuticals, Inc., a Delaware corporation, will be held on Thursday, June 8, 2017 at 10:30 a.m. Pacific Time, at 11570 6th Street, Rancho Cucamonga, California 91730, for the following purposes, as more fully described in the accompanying proxy statement:

- 1.To elect three Class I directors to serve until the 2020 annual meeting of stockholders and until their successors are duly elected and qualified;
- 2.To ratify the appointment of Ernst & Young LLP as our independent registered public accounting firm for our fiscal year ending December 31, 2017; and
- 3.To transact such other business as may properly come before the Annual Meeting or any adjournments or postponements thereof.

Our board of directors has fixed the close of business on April 17, 2017 as the record date for the Annual Meeting. Only stockholders of record on April 17, 2017 are entitled to notice of and to vote at the Annual Meeting. Further information regarding voting rights and the matters to be voted upon is presented in the accompanying proxy statement. If you plan on attending this year’s Annual Meeting as a stockholder, you must bring an admission ticket, as explained on page 3 of the proxy statement.

On or about April 28, 2017, we expect to mail to our stockholders a Notice of Internet Availability of Proxy Materials (the “Notice”) containing instructions on how to access our proxy statement and our 2017 annual report. This Notice provides instructions on how to vote via the Internet or by telephone and includes instructions on how to receive a paper copy of our proxy materials by mail. This proxy statement and our annual report can be accessed directly at the following Internet address:<http://ir.amphastar.com/annuals-proxies.cfm>. All you have to do is enter the control number located on your proxy card.

YOUR VOTE IS IMPORTANT. Whether or not you plan to attend the Annual Meeting, we urge you to submit your vote via the Internet, telephone or mail.

We appreciate your continued support of Amphastar Pharmaceuticals, Inc. and look forward to either greeting you personally at the Annual Meeting or receiving your proxy.

By order of the Board of Directors,

Jack Yongfeng Zhang
Chief Executive Officer, Chief Scientific Officer and Director

Mary Ziping Luo
Chief Operating Officer, Chief Scientist and Chairman

Rancho Cucamonga, California
April 21, 2017

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AMPHASTAR PHARMACEUTICALS, INC.

PROXY STATEMENT

FOR 2017 ANNUAL MEETING OF STOCKHOLDERS

To Be Held at 10:30 a.m. Pacific Time on Thursday, June 8, 2017

This proxy statement and the enclosed form of proxy are furnished in connection with the solicitation of proxies by our board of directors for use at the 2017 annual meeting of stockholders of Amphastar Pharmaceuticals, Inc., a Delaware corporation, and any postponements, adjournments or continuations thereof (the “Annual Meeting”). The Annual Meeting will be held on Thursday, June 8, 2017 at 10:30 a.m. Pacific Time, at 11570 6th Street, Rancho Cucamonga, California 91730. The Notice of Internet Availability of Proxy Materials (the “Notice”) containing instructions on how to access this proxy statement and our annual report is first being mailed on or about April 28, 2017 to all stockholders entitled to vote at the Annual Meeting.

The information provided in the “question and answer” format below is for your convenience only and is merely a summary of the information contained in this proxy statement. You should read this entire proxy statement carefully. Information contained on, or that can be accessed through, our website is not intended to be incorporated by reference into this proxy statement and references to our website address in this proxy statement are inactive textual references only.

What matters am I voting on?

You will be voting on:

- the election of three Class I directors to serve until the 2020 annual meeting of stockholders and until their successors are duly elected and qualified;
- a proposal to ratify the appointment of Ernst & Young LLP as our independent registered public accounting firm for our fiscal year ending December 31, 2017; and
- any other business as may properly come before the Annual Meeting.

How does the board of directors recommend I vote on these proposals?

Our board of directors recommends a vote:

- “FOR” the election of Jason B. Shandell, Richard Koo and Floyd F. Petersen as Class I directors; and
- “FOR” the ratification of the appointment of Ernst & Young LLP as our independent registered public accounting firm for our fiscal year ending December 31, 2017.

Who is entitled to vote?

Holders of our common stock as of the close of business on April 17, 2017, the record date, may vote at the Annual Meeting. As of the record date, there were 45,864,555 shares of our common stock outstanding. In deciding all matters at the Annual Meeting, each stockholder will be entitled to one vote for each share of

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our common stock held by them on the record date. We do not have cumulative voting rights for the election of directors.

Registered Stockholders. If shares of our common stock are registered directly in your name with our transfer agent, you are considered the stockholder of record with respect to those shares, and the Notice was provided to you directly by us. As the stockholder of record, you have the right to grant your voting proxy directly to the individuals listed on the proxy card or to vote in person at the Annual Meeting.

Street Name Stockholders. If shares of our common stock are held on your behalf in a stock brokerage account or by a bank or other nominee, you are considered the beneficial owner of those shares held in “street name,” and the Notice was forwarded to you by your broker or nominee, who is considered the stockholder of record with respect to those shares. As the beneficial owner, you have the right to direct your broker or nominee as to how to vote your shares. Beneficial owners are also invited to attend the Annual Meeting. However, since a beneficial owner is not the stockholder of record, you may not vote your shares of our common stock in person at the Annual Meeting unless you follow your broker’s procedures for obtaining a legal proxy. If you request a printed copy of our proxy materials by mail, your broker or nominee will provide a voting instruction card for you to use. Throughout this proxy, we refer to stockholders who hold their shares through a broker, bank or other nominee as “street name stockholders.”

How many votes are needed for approval of each proposal?

- Proposal No. 1: Each director to be elected by the stockholders of the corporation shall be elected by the affirmative vote of a majority of the votes cast with respect to such director by the shares present or represented by proxy at the Annual Meeting at which a quorum is present and entitled to vote thereon. “Majority of the votes cast” means that the number of votes cast “for” a candidate for director exceeds the number of votes cast “against” that director. Stockholders will be given the choice to cast votes “for” or “against” the election of each director or to “abstain” from such vote. Please note that abstentions are considered votes present and entitled to vote on this proposal, and thus, will have the same effect as a vote “against” the proposal. Broker non-votes will have no effect on the outcome of this proposal.
- Proposal No. 2: The ratification of the appointment of Ernst & Young LLP requires the affirmative vote of a majority of the voting power of the shares present or represented by proxy at the Annual Meeting at which a quorum is present and entitled to vote thereon. Please note that abstentions are considered votes present and entitled to vote on this proposal, and thus, will have the same effect as a vote “against” the proposal. Broker non-votes will have no effect on the outcome of this proposal.

What is a quorum?

A quorum is the minimum number of shares required to be present at the Annual Meeting for the Annual Meeting to be properly held under our amended and restated bylaws and Delaware law. The presence, in person or by proxy, of a majority of all issued and outstanding shares of our common stock entitled to vote at the Annual Meeting will constitute a quorum at the Annual Meeting. Abstentions, withhold votes and broker non-votes are counted as shares present and entitled to vote for purposes of determining a quorum.

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How do I vote?

If you are a stockholder of record, there are four ways to vote:

- by Internet at <http://www.proxyvote.com>, 24 hours a day, seven days a week, until 11:59 p.m. Eastern Time on June 7, 2017 (have your proxy card in hand when you visit the website);
- by toll-free telephone at 1-800-690-6903 (have your proxy card in hand when you call);
- by completing and mailing your proxy card (if you received printed proxy materials); or
- by written ballot at the Annual Meeting.

If you are a street name stockholder, you will receive voting instructions from your broker, bank or other nominee. You must follow the voting instructions provided by your broker, bank or other nominee in order to instruct your broker, bank or other nominee on how to vote your shares. Street name stockholders should generally be able to vote by returning an instruction card, or by telephone or on the Internet. However, the availability of telephone and Internet voting will depend on the voting process of your broker, bank or other nominee. If you are a street name stockholder, you may not vote your shares in person at the Annual Meeting unless you obtain a legal proxy from your broker, bank or other nominee.

Can I change my vote?

Yes. If you are a stockholder of record, you can change your vote or revoke your proxy any time before the Annual Meeting by:

- entering a new vote by Internet or by telephone;
- returning a later-dated proxy card;
- notifying the Secretary of Amphastar Pharmaceuticals, Inc., in writing, at Amphastar Pharmaceuticals, Inc., 11570 6th Street, Rancho Cucamonga, California 91730; or
- completing a written ballot at the Annual Meeting.

If you are a street name stockholder, your broker, bank or other nominee can provide you with instructions on how to change your vote.

What do I need to do to attend the Annual Meeting in person?

Seating will begin at 9:30 a.m. and the meeting will begin at 10:30 a.m. On the day of the meeting, each stockholder will be required to present valid picture identification such as a driver's license or passport. Street name stockholders will also be required to present proof of beneficial ownership as of April 17, 2017, the record date, such as your most recent account statement(s) reflecting your stock ownership as of March 31, 2017, along with a copy of the voting instruction card provided by your broker, bank, trustee or other nominee or similar evidence of ownership.

Use of cameras, recording devices, computers and other personal electronic devices will not be permitted at the Annual Meeting. Photography and video are prohibited at the Annual Meeting.

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Please allow ample time for check-in. For security reasons, stockholders should be prepared and may be required to pass through metal detectors prior to entering the Annual Meeting. Please note that large bags and packages will not be allowed at the Annual Meeting. Persons will be subject to search.

What is the effect of giving a proxy?

Proxies are solicited by and on behalf of our board of directors. Jack Yongfeng Zhang, Mary Ziping Luo, Jason B. Shandell and William J. Peters have been designated as proxies by our board of directors. When proxies are properly dated, executed and returned, the shares represented by such proxies will be voted at the Annual Meeting in accordance with the instructions of the stockholder. If no specific instructions are given, however, the shares will be voted in accordance with the recommendations of our board of directors as described above. If any matters not described in this proxy statement are properly presented at the Annual Meeting, the proxy holders will use their own judgment to determine how to vote the shares. If the Annual Meeting is adjourned, the proxy holders can vote the shares on the new Annual Meeting date as well, unless you have properly revoked your proxy instructions, as described above.

Why did I receive a Notice of Internet Availability of Proxy Materials instead of a full set of proxy materials?

In accordance with the rules of the Securities and Exchange Commission (the "SEC"), we have elected to furnish our proxy materials, including this proxy statement and our annual report, primarily via the Internet. The Notice containing instructions on how to access our proxy materials is first being mailed on or about April 28, 2017 to all stockholders entitled to vote at the Annual Meeting. Stockholders may request to receive all future proxy materials in printed form by mail or electronically by e-mail by following the instructions contained in the Notice. We encourage stockholders to take advantage of the availability of our proxy materials on the Internet to help reduce the environmental impact of our annual meetings of stockholders.

How are proxies solicited for the Annual Meeting?

Our board of directors is soliciting proxies for use at the Annual Meeting. All expenses associated with this solicitation will be borne by us. We will reimburse brokers or other nominees for reasonable expenses that they incur in sending our proxy materials to you if a broker or other nominee holds shares of our common stock on your behalf.

Is my vote confidential?

Proxy instructions, ballots and voting tabulations that identify individual stockholders are handled in a manner that protects your voting privacy. Your vote will not be disclosed either within Amphastar Pharmaceuticals, Inc. or to third parties, except as necessary to meet applicable legal requirements, to allow for the tabulation of votes and certification of the vote, or to facilitate a successful proxy solicitation.

How may my brokerage firm or other intermediary vote my shares if I fail to provide timely directions?

Brokerage firms and other intermediaries holding shares of our common stock in street name for customers are generally required to vote such shares in the manner directed by their customers. In the absence of timely directions, your broker will have discretion to vote your shares on our sole "routine" matter: the proposal to ratify the appointment of Ernst & Young LLP. Your broker will not have discretion to vote on the election of directors, which is a "non-routine" matter, absent direction from you.

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Where can I find the voting results of the Annual Meeting?

We will announce preliminary voting results at the Annual Meeting. We will also disclose voting results on a Current Report on Form 8-K that we will file with the SEC within four business days after the Annual Meeting. If final voting results are not available to us in time to file a Current Report on Form 8-K within four business days after the Annual Meeting, we will file a Current Report on Form 8-K to publish preliminary results and will provide the final results in an amendment to such Current Report on Form 8-K as soon as they become available.

I share an address with another stockholder, and we received only one paper copy of the proxy materials. How may I obtain an additional copy of the proxy materials?

We have adopted a procedure called “householding,” which the SEC has approved. Under this procedure, we deliver a single copy of the Notice and, if applicable, our proxy materials to multiple stockholders who share the same address unless we have received contrary instructions from one or more of the stockholders. This procedure reduces our printing costs, mailing costs, and fees. Stockholders who participate in householding will continue to be able to access and receive separate proxy cards. Upon written or oral request, we will deliver promptly a separate copy of the Notice and, if applicable, our proxy materials to any stockholder at a shared address to which we delivered a single copy of any of these materials. To receive a separate copy, or, if a stockholder is receiving multiple copies, to request that we only send a single copy of the Notice and, if applicable, our proxy materials, such stockholder may contact us at the following address:

Amphastar Pharmaceuticals, Inc.
Attention: Investor Relations
11570 6th Street
Rancho Cucamonga, California 91730

Stockholders who beneficially own shares of our common stock held in street name may contact their brokerage firm, bank, broker-dealer or other similar organization to request information about householding.

What is the deadline to propose actions for consideration at next year’s annual meeting of stockholders or to nominate individuals to serve as directors?

Stockholder Proposals

Stockholders may present proper proposals for inclusion in our proxy statement and for consideration at the next annual meeting of stockholders by submitting their proposals in writing to our Secretary in a timely manner. For a stockholder proposal to be considered for inclusion in our proxy statement for our 2018 annual meeting of stockholders, our Secretary must receive the written proposal at our principal executive offices not later than December 22, 2017. In addition, stockholder proposals must comply with the requirements of Rule 14a-8 regarding the inclusion of stockholder proposals in company-sponsored proxy materials. Stockholder proposals should be addressed to:

Amphastar Pharmaceuticals, Inc.
Attention: Secretary
11570 6th Street
Rancho Cucamonga, California 91730

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Our amended and restated bylaws also establish an advance notice procedure for stockholders who wish to present a proposal before an annual meeting of stockholders but do not intend for the proposal to be included in our proxy statement. Our amended and restated bylaws provide that the only business that may be conducted at an annual meeting is business that is (i) brought before the meeting by the corporation and specified in the notice of meeting given by or at the direction of our Board of Directors, (ii) brought before the meeting by or at the direction of our Board of Directors, or (iii) otherwise properly brought before the meeting by a stockholder who (A) was a stockholder of record both at the time of giving the notice and at the time of the meeting, (B) is entitled to vote at the meeting, and (C) has complied with all of the notice procedures set forth in our bylaws.

To be timely for our 2018 annual meeting of stockholders, our Secretary must receive the written notice at our principal executive offices:

- not earlier than February 8, 2018; and
- not later than the close of business on March 10, 2018.

In the event that we hold our 2018 annual meeting of stockholders more than 30 days before or more than 30 days after the one-year anniversary of the Annual Meeting, then notice of a stockholder proposal that is not intended to be included in our proxy statement must be received no earlier than the close of business on the 120th day before such annual meeting and no later than the close of business on the later of the following two dates:

- the 90th day prior to such annual meeting; or
- the 10th day following the day on which public disclosure of the date of such annual meeting was made.

If a stockholder who has notified us of his, her or its intention to present a proposal at an annual meeting does not appear to present his, her or its proposal at such annual meeting, we are not required to present the proposal for a vote at such annual meeting.

Nomination of Director Candidates

You may propose director candidates for consideration by our nomination committee. Any such recommendations should include the nominee's name and qualifications for membership on our board of directors and should be directed to our Secretary at the address set forth above. For additional information regarding stockholder recommendations for director candidates, see "Board of Directors and Corporate Governance—Stockholder Recommendations for Nominations to the Board of Directors."

In addition, our amended and restated bylaws permit stockholders to nominate directors for election at an annual meeting of stockholders. To nominate a director, the stockholder must provide the information required by our amended and restated bylaws. In addition, the stockholder must give timely notice to our Secretary in accordance with our amended and restated bylaws, which, in general, require that the notice be received by our Secretary within the time period described above under "Stockholder Proposals" for stockholder proposals that are not intended to be included in a proxy statement.

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Availability of Bylaws

A copy of our amended and restated bylaws may be obtained by accessing our filings on the SEC's website at <http://www.sec.gov>. You may also contact our Secretary at our principal executive offices for a copy of the relevant bylaw provisions regarding the requirements for making stockholder proposals and nominating director candidates.

11.

Aggregate Amount Beneficially Owned by Each Reporting Person
207,423 Shares (See Item 5)

12.

Check if the Aggregate Amount in Row (11) Excludes Certain Shares

13.

Percent of Class Represented by Amount in Row (11)
0.1% (1)

14.

Type of Reporting Person
PN

(1) Based on 421,108,282 Shares outstanding on November 30, 2012.

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- | | |
|-----|--|
| 1. | Names of Reporting Persons
CD&R Parallel Fund Associates VII, Ltd. |
| 2. | Check the Appropriate Box if a Member of a Group (See Instructions)
(a) <input type="radio"/>
(b) <input checked="" type="radio"/> |
| 3. | SEC Use Only |
| 4. | Source of Funds
OO |
| 5. | Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e) <input type="radio"/> |
| 6. | Citizenship or Place of Organization
Cayman Islands |
| 7. | Sole Voting Power
0 Shares |
| 8. | Shared Voting Power
207,423 Shares (See Item 5) |
| 9. | Sole Dispositive Power
0 Shares |
| 10. | Shared Dispositive Power
207,423 Shares (See Item 5) |
| 11. | Aggregate Amount Beneficially Owned by Each Reporting Person
207,423 Shares (See Item 5) |
| 12. | Check if the Aggregate Amount in Row (11) Excludes Certain Shares <input checked="" type="checkbox"/> |
| 13. | Percent of Class Represented by Amount in Row (11)
0.1% (1) |
| 14. | Type of Reporting Person
CO |

Number of
Shares
Beneficially
Owned by
Each
Reporting
Person With

(1) Based on 421,108,282 Shares outstanding on November 30, 2012.

Explanatory Note

This Amendment No. 2 to Schedule 13D (this Amendment No. 2) amends and supplements the Schedule 13D originally filed with the United States Securities and Exchange Commission (the SEC) on June 8, 2009, as previously amended by Amendment No. 1 thereto filed with the SEC on March 31, 2011 (as so amended, the Statement) as follows:

Item 4. Purpose of Transaction

Item 4 of the Statement is amended by inserting the following information:

On December 14, 2012, Clayton Dubilier & Rice Fund VII, L.P. sold 13,909,141 Shares, CDR CCMG Co-Investor L.P. sold 5,078,482 Shares and CD&R Parallel Fund VII, L.P. sold 94,411 Shares, in each case to J.P. Morgan Securities LLC (J.P. Morgan) at a price of \$15.77 per Share, in a registered offering (the Secondary Offering) pursuant to an Underwriting Agreement, dated as of December 10, 2012 (the Underwriting Agreement), by and among the CD&R Hertz Funds (as defined in the Statement), the Carlyle Hertz Funds (as defined in the Statement), the Merrill Lynch Hertz Funds (as defined in the Statement), CMC-Hertz Partners, L.P. and J.P. Morgan.

Under the Underwriting Agreement, the Issuer, the CD&R Hertz Funds, the Carlyle Hertz Funds, the Merrill Lynch Hertz Funds and CMC-Hertz Partners, L.P. have agreed with J.P. Morgan, subject to certain exceptions, not to dispose of or hedge any Shares or securities convertible into or exchangeable for Shares during the period from December 10, 2012 continuing through and including the date 45 days after December 10, 2012, except with the prior written consent of J.P. Morgan (such period, the restricted period). The restricted period will be automatically extended if: (1) during the last 17 days of the restricted period the Issuer issues an earnings release or announces material news or a material event; or (2) prior to the expiration of the restricted period, the Issuer announces that it will release earnings results during the 15-day period following the last day of the restricted period, in which case the restrictions described above will continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the announcement of the material news or material event.

The foregoing description of the Underwriting Agreement does not purport to be complete and is qualified in its entirety by reference to the Underwriting Agreement, which is filed as Exhibit 7 hereto and is incorporated herein by reference.

Except as described in this Item 4 and Item 6 of this Statement which are incorporated herein by reference, the Reporting Persons have no present plans or proposals that relate to or would result in any of the actions required to be reported herein.

Item 5. Interest in Securities of the Issuer

Item 5 of the Statement is amended and restated in its entirety by inserting the following information:

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(a)-(b)

As of the date hereof (and after giving effect to sale of the Shares in the Secondary Offering), each of the Reporting Persons beneficially owns the number and percentage of Shares then issued and outstanding listed opposite its name:

Reporting Person(1)	Amount Beneficially Owned	Percent of Class(2)
Clayton Dubilier & Rice Fund VII, L.P.	30,558,712(3)	7.3%
CD&R Associates VII, Ltd.	0(4)	0%
CD&R Associates VII, L.P.	0(4)(5)	0%
CD&R Investment Associates VII, Ltd.	0(4)(6)	0%
CDR CCMG Co-Investor L.P.	11,157,546	2.7%
CDR CCMG Co-Investor GP Limited	0(7)	0%
CD&R Parallel Fund VII, L.P.	207,423	0.1%
CD&R Parallel Fund Associates VII, Ltd.	0(6)(8)	0%

(1) As noted in Item 2. Identity and Background, of the Statement, which is incorporated herein by reference, the Carlyle Hertz Funds, the Merrill Lynch Hertz Funds and CMC-Hertz Partners, L.P. are not included as Reporting Persons in this Schedule 13D, and the CD&R Hertz Funds expressly disclaim beneficial ownership of all Shares held by such funds. As such, this table excludes: (i) 16,870,592 Shares held by ML Global Private Equity Fund, L.P.; (ii) 2,027,171 Shares held by Merrill Lynch Ventures L.P. 2001; (iii) 1,623,358 Shares held by ML Hertz Co-Investor, L.P.; (iv) 31,971,660 Shares held by Carlyle Partners IV, L.P.; (v) 1,291,229 Shares held by CP IV Coinvestment, L.P.; (vi) 3,901,343 Shares held by CEP II U.S. Investments, L.P.; (vii) 152,997 Shares held by CEP II Participations S.à r.l. SICAR; and (viii) 10,135,851 Shares held by CMC-Hertz Partners, L.P., in each case after giving effect to the sale of Shares in the Secondary Offering. This table also excludes the 25,532 Shares held by Merrill Lynch, Pierce, Fenner & Smith Incorporated, which is associated with the Merrill Lynch Hertz Funds and 86,065 Shares and 46,700 currently exercisable options to purchase Shares issued to certain entities associated with MLGPE, as assignee of compensation payable to the Merrill Sponsor Nominees under Hertz Holdings Director Compensation Policy, which shares may be deemed to be beneficially owned by ML Global Private Equity Fund, L.P.

(2) Based on 421,108,282 Shares outstanding on November 30, 2012.

(3) Excludes 11,157,546 Shares held by CDR CCMG Co-Investor L.P., of which CDR CCMG Co-Investor GP Limited, a wholly owned subsidiary of Clayton Dubilier & Rice Fund VII, L.P., is the general partner. Clayton Dubilier & Rice Fund VII, L.P. expressly disclaims beneficial ownership of the Shares held by CDR CCMG Co-Investor L.P.

(4) Clayton Dubilier & Rice Fund VII, L.P. is a partnership of which CD&R Associates VII, Ltd. is the general partner, which is a wholly-owned subsidiary of CD&R Associates VII, L.P., of which CD&R Investment Associates VII, Ltd. is the general partner. Each of CD&R Associates VII, Ltd., CD&R Associates VII, L.P. and CD&R Investment Associates VII, Ltd. expressly disclaims beneficial ownership of the Shares held by Clayton, Dubilier & Rice Fund VII, L.P., as well as of the Shares held by each of CD&R Parallel Fund VII, L.P. and CDR CCMG Co-Investor L.P.

(5) CMC-Hertz Partners, L.P. is affiliated with ML Global Private Equity Fund, L.P., Carlyle-Hertz GP, L.P. and CD&R Associates VII, L.P. The general partner of CMC-Hertz Partners, L.P. is CMC-Hertz General Partner, L.L.C., whose members are Carlyle-Hertz GP, L.P., ML Global Private Equity Fund, L.P. and CD&R Associates VII, L.P. Investment decisions on behalf of CMC-Hertz General Partner, L.L.C. are made by majority vote of its Executive Committee, which comprises one representative of each of the members; however, until December 21, 2013, ML Global Private Equity Fund, L.P. has the contractual right (subject to various restrictions) to make decisions regarding disposition or voting of the Shares beneficially owned by CMC-Hertz Partners, L.P. Each of CD&R Associates VII, L.P. and its general partner, CD&R Investment Associates VII, Ltd., expressly disclaims beneficial ownership of such Shares.

(6) CD&R Investment Associates VII, Ltd. and CD&R Parallel Fund Associates VII, Ltd. are each managed by a two person board of directors, and all board action relating to the voting or disposition of these Shares requires approval of a majority of the board. Donald J. Gogel and Kevin J. Conway, as the directors of CD&R Investment Associates VII, Ltd. and CD&R Parallel Fund Associates VII, Ltd., may be deemed to share beneficial ownership of the Shares shown as beneficially owned by the funds associated with Clayton, Dubilier & Rice, LLC. Such persons disclaim such beneficial ownership. Investment and voting decisions with respect to shares held by each of Clayton, Dubilier & Rice Fund VII, L.P., CD&R Parallel Fund VII, L.P. and CDR CCMG Co-Investor L.P. are made by an investment committee of limited partners of CD&R Associates VII, L.P., currently consisting of more than ten individuals (the Investment Committee). All members of the Investment Committee disclaim beneficial ownership of the shares shown as beneficially owned by the funds associated with Clayton, Dubilier & Rice LLC.

(7) CDR CCMG Co-Investor GP Limited, which is a wholly owned subsidiary of Clayton, Dubilier & Rice Fund VII, L.P., is the general partner of CDR CCMG Co-Investor L.P. CDR CCMG Co-Investor GP Limited expressly disclaims beneficial ownership of the Shares held by each of CDR CCMG Co-Investor L.P. and Clayton, Dubilier & Rice Fund VII, L.P. Investment and voting decisions with respect to shares held by each

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of Clayton, Dubilier & Rice Fund VII, L.P., CD&R Parallel Fund VII, L.P. and CDR CCMG Co-Investor L.P. are made by an investment committee of limited partners of CD&R Associates VII, L.P., currently consisting of more than ten individuals (the Investment Committee). All members of the Investment Committee disclaim beneficial ownership of the shares shown as beneficially owned by the funds associated with Clayton, Dubilier & Rice LLC.

(8) CD&R Parallel Fund Associates VII, Ltd. is the general partner of CD&R Parallel Fund VII, LP. CD&R Parallel Fund Associates VII, Ltd. expressly disclaims beneficial ownership of the Shares held by each of CD&R Parallel Fund VII, L.P., Clayton, Dubilier & Rice Fund VII, L.P. and CDR CCMG Co-Investor L.P. Investment and voting decisions with respect to shares held by each of Clayton, Dubilier & Rice Fund VII, L.P., CD&R Parallel Fund VII, L.P. and CDR CCMG Co-Investor L.P. are made by an investment committee of limited partners of CD&R Associates VII, L.P., currently consisting of more than ten individuals (the Investment Committee). All members of the Investment Committee disclaim beneficial ownership of the shares shown as beneficially owned by the funds associated with Clayton, Dubilier & Rice LLC.

(b)

In addition to the description set forth above in this Item 5, see the cover pages of this Amendment No. 2 to Schedule 13D for indications of the respective voting powers and disposition powers of the Reporting Persons.

(c)

The information set forth in Item 4 above is hereby incorporated by reference in response to Item 5(c).

Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer

Item 6 of the Statement is amended and restated in its entirety by inserting the following information:

The information set forth in Item 4 above is hereby incorporated by reference in response to Item 6.

Item 7. Material to Be Filed as Exhibits

EXHIBIT INDEX

Exhibit Number	Description
1.1	Joint Filing Agreement, dated December 18, 2012, by and among the Reporting Persons.
7	Underwriting Agreement, dated as of December 10, 2012, by and among Clayton, Dubilier & Rice Fund VII, L.P., CDR CCMG Co-Investor L.P., CD&R Parallel Fund VII, L.P., Carlyle Partners IV, L.P., CEP II U.S. Investments, L.P., CP IV Coinvestment, L.P., CEP II Participations S.à r.l. SICAR, ML Global Private Equity Fund, L.P., Merrill Lynch Ventures L.P. 2001, ML Hertz Co-Investor, L.P., CMC-Hertz Partners, L.P. and J.P. Morgan Securities LLC.

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this Statement is true, complete and correct.

CLAYTON, DUBILIER & RICE FUND VII, L.P.

By: CD&R Associates VII, Ltd.,
its general partner

By: /s/ Theresa A. Gore
Name: Theresa A. Gore
Title: Vice President, Treasurer and Assistant Secretary

CD&R ASSOCIATES VII, LTD.

By: /s/ Theresa A. Gore
Name: Theresa A. Gore
Title: Vice President, Treasurer and Assistant Secretary

CD&R ASSOCIATES VII, L.P.

By: CD&R Investment Associates VII, Ltd.,
its general partner

By: /s/ Theresa A. Gore
Name: Theresa A. Gore
Title: Vice President, Treasurer and Assistant Secretary

CD&R INVESTMENT ASSOCIATES VII, LTD.

By: /s/ Theresa A. Gore
Name: Theresa A. Gore
Title: Vice President, Treasurer and Assistant Secretary

CDR CCMG CO-INVESTOR L.P.

By: CDR CCMG Co-Investor GP Limited,
its general partner

By: /s/ Theresa A. Gore
Name: Theresa A. Gore

CDR CCMG CO-INVESTOR GP LIMITED

By: /s/ Theresa A. Gore
Name: Theresa A. Gore
Title: Director

CD&R PARALLEL FUND VII, L.P.

By: CD&R Parallel Fund Associates VII, Ltd.,
its general partner

By: /s/ Theresa A. Gore
Name: Theresa A. Gore
Title: Vice President, Treasurer and Assistant
Secretary

CD&R PARALLEL FUND ASSOCIATES VII, LTD.

By: /s/ Theresa A. Gore
Name: Theresa A. Gore
Title: Vice President, Treasurer and Assistant
Secretary

Dated: December 18, 2012