

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of report (Date of earliest event reported): September 13, 2005

ENCORE CAPITAL GROUP, INC.

(Exact Name of Registrant as Specified in Charter)

Delaware
(State or Other Jurisdiction of
Incorporation)

000-26489
(Commission File
Number)

48-1090909
(IRS Employer
Identification No.)

8875 Aero Drive, Suite 200, San Diego, California
(Address of Principal Executive Offices)

92123
(Zip Code)

(877) 445-4581

(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01 Entry into a Material Definitive Agreement.

On September 13, 2005, Encore Capital Group, Inc. (the "Company") entered into a Purchase Agreement (the "Purchase Agreement") by and among J.P. Morgan Securities Inc. and Morgan Stanley & Co. Incorporated (the "Initial Purchasers") relating to its offering of \$90 million aggregate principal amount of 3.375% Convertible Senior Notes due September 19, 2010 (the "Notes"). The Notes were issued pursuant to an Indenture dated September 19, 2005 (the "Indenture") between the Company and JP Morgan Chase Bank, N.A., as Trustee (the "Trustee"). In accordance with the terms of the Purchase Agreement, the Initial Purchasers have a 30 day option to purchase up to an additional \$10,000,000 principal amount of Notes solely to cover overallocments. A copy of the Purchase Agreement is attached hereto as Exhibit 1.1 and is incorporated herein by reference.

On September 13, 2005, the Company entered into a Convertible Note Hedge Confirmation (the "Hedge Confirmations") and a Warrant Confirmation (the "Warrant Confirmations") with each of JPMorgan Chase Bank, National Association, an affiliate of J.P. Morgan Securities Inc., and Morgan Stanley International Limited, an affiliate of Morgan Stanley & Co. Incorporated (each such affiliate, the "Dealers"). The Hedge Confirmations and the Warrant Confirmations, if held together, will have the financial impact to the Company of increasing the effective conversion price of the Notes from \$22.34 per share of the Company's common stock to at least \$29.04 per share.

The Hedge Confirmations relate to 4,029,102 shares of our common stock, which is the product of the conversion rate under the Notes and the value of \$1,000 principal amount of Notes. Under the Hedge Confirmations, upon the conversion of Notes pursuant to their terms, the Dealers are required, subject to the conditions therein, to deliver to the Company the number of shares of the Company's common stock that the Company is obligated to deliver to the holders of the Notes with respect to the conversion, calculated exclusive of shares deliverable by the Company by reason of any additional (or "make whole") premium relating to the Notes or by reason of any election by the Company to unilaterally increase the conversion rate pursuant to the Indenture. The Hedge Confirmations expire at the close of trading on September 19, 2010, which is the maturity date of the Notes, although the Dealers will have ongoing obligations with respect to Notes properly converted on or prior to that date of which the Dealers have been timely notified.

See Item 3.02 of this Current Report on Form 8-K for a description of the Warrant Confirmations and the warrants issued pursuant thereto. Copies of the Hedge Confirmations and Warrant Confirmations will be filed at a later date and are incorporated herein by reference.

The Notes are convertible prior to maturity, subject to certain conditions, into shares of the Company's common stock at an initial conversion rate of 44.7678 shares per \$1,000 principal amount of notes (an initial conversion price of approximately \$22.34 per share). The initial conversion price represents a 25 percent premium to the \$17.87 per share closing price of the Company's common stock on the Nasdaq National Market on September 13, 2005. If the

Company obtains the required approval of its stockholders, the notes will be convertible into a combination of cash and common stock.

Holders may surrender their Notes for conversion at any time prior to the close of business on March 19, 2010 only if any of the following conditions is satisfied:

- during the five business-day period after any five consecutive trading-day period (the "Measurement Period") in which the trading price per note for each day of that Measurement Period was less than 103% of the product of the last reported sale price of the Company's common stock and the conversion rate on each such day; or
- the Company enters into specified corporate transactions.

Holders may surrender their Notes for conversion after March 19, 2010 and on or prior to the close of business on the business day immediately prior to the stated maturity date regardless if any of the foregoing conditions have been satisfied.

In general, following stockholder approval of the net share settlement of the Notes, each \$1,000 principal amount of Notes will be convertible into cash and shares of the Company's common stock, if any, based on the Daily Conversion Value (as defined below), calculated for each of the 20 trading days beginning on and including the second trading day following the conversion date, or in the event that the conversion date occurs on or after the twenty-third trading day immediately preceding the maturity date, the 20 trading days beginning on and including the trading day immediately following the maturity date (the "Observation Period").

The Daily Conversion Value for each trading day during the Observation Period for each \$1,000 aggregate principal amount of Notes is equal to one-twentieth of the product of the then applicable conversion rate multiplied by the volume weighted average price of the Company's common stock on that day.

For each \$1,000 aggregate principal amount of Notes surrendered for conversion prior to the twenty-third scheduled trading day prior to the maturity date, the Company will deliver to holders of the Notes, on the third business day following the end of the Observation Period, the aggregate of the following for each trading day during the related Observation Period:

- (1) if the Daily Conversion Value for such day exceeds \$50, (a) a cash payment of \$50 and (b) the remaining Daily Conversion Value, referred to as the daily net share settlement value, in shares of the Company's common stock; or
- (2) if the Daily Conversion Value for such day is less than or equal to \$50, a cash payment equal to the Daily Conversion Value.

The daily portion of the number of shares of common stock to be delivered will be determined by dividing the daily net share settlement value by the volume weighted average price of the Company's common stock for the relevant day.

For each \$1,000 aggregate principal amount of Notes surrendered for conversion on or after the twenty-third scheduled trading day prior to the maturity date and on or prior to the close of business on the business day immediately prior to maturity, (i) the holder will be deemed to have surrendered such Note as of the trading day immediately preceding the maturity date, (ii) the Observation Period for such Notes will commence on the trading day following the maturity date, (iii) in lieu of the payments and deliveries described above, the holder will receive (A) a cash payment of \$1,000 on the maturity date and (B) on the third trading day following the last day of the Observation Period, shares of our common stock equal to the greater of (i) 0 and (ii) the sum of the Daily Net Share Amounts for each of the 20 trading days during the related Observation Period.

The Daily Net Share Amount for each trading day during the Observation Period for each \$1,000 aggregate principal amount of Notes shall consist of a number of shares of common stock (which may be negative) equal to (A) the difference between the Daily Conversion Value (as defined below) on such day and \$50, divided by the volume weighted average price of the Company's common stock on that day.

No fractional shares will be issued upon conversion; in lieu thereof, the Company will deliver a number of shares of the Company's common stock equal to the aggregate of the fractional shares otherwise deliverable for each trading day during the Observation Period, rounded down to the nearest whole number, and pay cash equal to the remainder multiplied by the volume weighted average price of our common stock on the last trading day of the Observation Period.

The conversion price for each \$1,000 aggregate principal amount of Notes is initially \$22.34 per share of our common stock. The "conversion rate" of a Note is equal to \$1,000 divided by the then applicable conversion price at the time of determination (initially approximately 44.7678 shares of the Company's common stock). The conversion price is subject to adjustment as described in the Indenture. Accordingly, an adjustment to the conversion price will result in a corresponding adjustment to the conversion rate.

If the Notes are converted in connection with certain fundamental changes that occur prior to maturity of the Notes, the Company may also be obligated to pay an additional (or "make whole") premium with respect to the Notes so converted.

The Company may be required to repurchase the Notes at the option of the holder thereof in connection with certain fundamental changes (as defined in the Indenture) prior to maturity.

The foregoing summary is qualified in its entirety by reference to the Indenture and the Form of Notes, copies of which will be filed at a later date and are incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

Concurrent with the offering of the Notes, the Company purchased from each of the Dealers, a convertible note hedge at a combined cost of \$24.64 million pursuant to the Hedge

Confirmations. The Company also sold to the Dealers warrants to purchase an aggregate of 3,626,192 shares of our common stock and received net proceeds from the sale of \$10.53 million pursuant to the Warrant Confirmations. The Hedge Confirmations and the Warrant Confirmations will have the financial impact to the Company of increasing the effective conversion price of the Notes from \$22.34 per share of the Company's common stock to at least \$29.04 per share.

The warrants issued under the Warrant Confirmations have a strike price of \$29.0388 per share. The warrants expire on November 19, 2010. The warrants are exercisable at any time prior to the expiration date, subject to certain conditions. If the warrants are exercised, the Company will deliver to the Dealers net shares of our common stock in an amount based on the excess of the then current market price of our common stock over the strike price of the warrants.

We issued and sold the warrants to the Dealers in transactions exempt from the registration requirements of the Securities Act of 1933, as amended, because the offer and sale did not involve a public offering. There were no underwriting commissions or discounts in connection with the sale of the warrants.

Item 8.01 Other Events.

On September 12, 2005, the Company publicly announced a proposed convertible senior notes offering. On September 13, 2005, the Company publicly announced the pricing of the convertible senior notes offering.

The Company hereby incorporates by reference the press releases dated September 12, 2005 and September 13, 2005 attached hereto as Exhibits 99.1 and 99.2, respectively, and made a part of this Item 8.01.

Item 9.01 Financial Statements and Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
1.1	Purchase Agreement, dated as of September 13, 2005, by and among Encore Capital Group, Inc. and J.P. Morgan Securities Inc. and Morgan Stanley & Co. Incorporated.
99.1	Press Release dated September 12, 2005 — Encore Capital Group to Offer \$80 million of Convertible Senior Notes.
99.2	Press Release dated September 13, 2005 — Encore Capital Group Prices \$90 Million 3.375% Convertible Senior Note Offering.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

ENCORE CAPITAL GROUP, INC.

Date: September 19, 2005

By /s/ Paul Grinberg
Paul Grinberg
Executive Vice President,
Chief Financial Officer and Treasurer

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
1.1	Purchase Agreement, dated as of September 13, 2005, by and among Encore Capital Group, Inc. and J.P. Morgan Securities Inc. and Morgan Stanley & Co. Incorporated.
99.1	Press Release dated September 12, 2005 — Encore Capital Group to Offer \$80 million of Convertible Senior Notes.
99.2	Press Release dated September 13, 2005 — Encore Capital Group Prices \$90 Million 3.375% Convertible Senior Note Offering.

\$90,000,000

Encore Capital Group, Inc.

3.375% Convertible Senior Notes due September 19, 2010

Purchase Agreement

September 13, 2005

J.P. Morgan Securities Inc.
277 Park Avenue
9th Floor
New York, New York 10172

Morgan Stanley & Co. Incorporated
1585 Broadway
New York, NY 10036-8293

Ladies and Gentlemen:

Encore Capital Group, Inc., a Delaware corporation (the “**Company**”), proposes to issue and sell to the initial purchasers listed on Schedule I hereto (the “**Initial Purchasers**”), \$90,000,000 principal amount of its 3.375% Convertible Senior Notes due 2010 (the “**Firm Securities**”) to be issued pursuant to the provisions of an Indenture dated as of September 19, 2005 (the “**Indenture**”) between the Company and JPMorgan Chase Bank, as Trustee (the “**Trustee**”). The Company also proposes to issue and sell to the Initial Purchasers not more than an additional principal amount of its 3.375% Convertible Senior Notes due 2010 (the “**Additional Securities**”) if and to the extent that the Initial Purchasers shall have determined to exercise the right to purchase such 3.375% Convertible Senior Notes due 2010 granted to the Initial Purchasers in Section 1 hereof. The Firm Securities and the Additional Securities are hereinafter collectively referred to as the “**Securities**”. The Securities will be convertible into shares (the “**Underlying Securities**”) of common stock of the Company, par value \$.01 per share (the “**Common Stock**”).

The Securities and the Underlying Securities will be offered without being registered under the Securities Act of 1933, as amended (together with the rules and regulations promulgated thereunder, the “**Securities Act**”), only to “qualified

institutional buyers” (as defined in the Securities Act) in compliance with the exemptions therefrom.

Each Initial Purchaser and its direct and indirect transferees will be entitled to the benefits of a Registration Rights Agreement dated as of the Closing Date among the Company and the Initial Purchasers (the “**Registration Rights Agreement**”).

In connection with the sale of the Securities, the Company has prepared a preliminary offering memorandum (including the documents incorporated by reference therein, the “**Preliminary Memorandum**”) and will prepare a final offering memorandum (including the documents incorporated by reference therein, the “**Final Memorandum**” and, collectively the “**Offering Memorandum**”) for the information of the Initial Purchasers and for delivery to prospective purchasers of the Securities.

The Company hereby agrees with the Initial Purchasers as follows:

1. *Agreements to Sell and Purchase.* The Company agrees to issue and sell the Firm Securities to the several Initial Purchasers as hereinafter provided, and each Initial Purchaser, upon the basis of the representations and warranties herein contained, but subject to the conditions hereinafter stated, agrees to purchase, severally and not jointly, from the Company the Firm Securities at a purchase price of 97% of the principal amount thereof (the “**Purchase Price**”), in the respective principal amount of Securities set forth opposite such Initial Purchaser’s name in Schedule I hereto plus accrued interest, if any, from September 19, 2005 to the date of payment and delivery.

On the basis of the representations and warranties contained in this Agreement, and subject to its terms and conditions, the Company agrees to sell to the Initial Purchasers the Additional Securities, and the Initial Purchasers shall have the right to purchase in whole, or from time to time in part, up to \$10,000,000 principal amount of Additional Securities at the Purchase Price plus accrued interest, if any, from the Closing Date (as defined below) to the date of payment and delivery. If you, on behalf of the Initial Purchasers, exercise such option, you shall so notify the Company in writing not later than 30 days after the date of this Agreement, which notice shall specify the principal amount of Additional Securities to be purchased by the Initial Purchasers and the date on which such Additional Securities are to be purchased. Such date may be the same as the Closing Date but not earlier than the Closing Date nor later than seven business days after the date of such notice.

The Company acknowledges and agrees that the Initial Purchasers are acting solely in the capacity of an arm’s length contractual counterparty to the Company with respect to the offering of Securities and the Underlying Securities

contemplated hereby (including in connection with determining the terms of the offering) and not as a financial advisor or a fiduciary to, or an agent of, the Company or any other person. Additionally, no Initial Purchaser is advising the Company or any other person as to any legal, tax, investment, accounting or regulatory matters in any jurisdiction. The Company shall consult with its own advisors concerning such matters and shall be responsible for making their own independent investigation and appraisal of the transactions contemplated hereby, and the Initial Purchasers shall have no responsibility or liability to the Company with respect thereto. Any review by the Initial Purchasers of the Company, the transactions contemplated hereby or other matters relating to such transactions will be performed solely for the benefit of the Initial Purchasers and shall not be on behalf of the Company.

2. *Terms of the Offering.* The Company understands that the Initial Purchasers intend (i) to offer privately pursuant to Rule 144A under the Securities Act their respective portions of the Securities as soon after this Agreement has become effective as in the judgment of the Initial Purchasers is advisable and (ii) initially to offer the Securities upon the terms set forth in the Final Memorandum.

The Company confirms that it has authorized the Initial Purchasers, subject to the restrictions set forth below, to distribute copies of the Offering Memorandum in connection with the offering of the Securities. Each Initial Purchaser hereby severally makes to the Company the following representations and agreements:

- (i) it is a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act;
- (ii) offers and sales of the Securities will be made only by it or its affiliates thereof qualified to do so in the jurisdictions in which such offers or sales are made; and
- (iii) (A) it has not solicited offers for, or offered or sold, and will not solicit offers for, or offer to sell, the Securities by means of any form of general solicitation or general advertising (as those terms are used in Regulation D under the Securities Act (“**Regulation D**”)) or in any manner involving a public offering within the meaning of Section 4(2) of the Securities Act and (B) it has solicited and will solicit offers for the Securities only from, and has offered or sold and will offer, sell or deliver the Securities only to persons who it reasonably believes to be “qualified institutional buyers” within the meaning of Rule 144A under the Securities Act that in purchasing the Securities are deemed to have represented and agreed as provided in the Offering Memorandum.

(iv) the transfer restriction and other provisions set forth in the Final Memorandum under the headings "Transfer Restrictions" and "Notice to Investors," including the legends required thereby, shall apply to the Securities except as otherwise agreed by the Company and the Initial Purchasers; and

(v) it understands that the Company and, for purposes of the opinion to be delivered to the Initial Purchasers pursuant to Section 6(e), (f) and (h) hereof, counsel to the Company and counsel to the Initial Purchaser will rely upon the accuracy and truth of the foregoing representations and hereby consents to such reliance.

With respect to offers and sales of the Securities inside the United States to "qualified institutional buyers" within the meaning of Rule 144A, as described in clause (iii)(B) above, each Initial Purchaser hereby represents and agrees with the Company that prior to or contemporaneously with the purchase of the Securities, the Initial Purchaser will take reasonable steps to inform, and cause each of its affiliates to take responsible steps to inform, U.S. persons acquiring Securities from such Initial Purchaser or affiliate, as the case may be, or other person acquiring Securities from such Initial Purchaser or affiliate in the United States, as the case may be, that the Securities (A) are being sold to them in reliance on Rule 144A under the Securities Act, (B) have not been and, except as described in the Offering Memorandum, will not be registered under the Securities Act, and (C) may not be offered, sold or otherwise transferred except as described in the Offering Memorandum. Each of the Initial Purchasers also agrees that it will not offer, sell or deliver any of the Securities in any jurisdiction outside the United States except under circumstances that will result in compliance with the applicable laws thereof.

3. *Payment for Securities.* Payment for the Firm Securities shall be made to the Company in Federal or other funds immediately available in New York City against delivery of such Firm Securities for the account of the several Initial Purchasers at 10:00 a.m., New York City time, on September 19, 2005, or at such other time on the same or such other date, not later than September 26, 2005, as shall be designated in writing by you. The time and date of such payment are hereinafter referred to as the "**Closing Date.**"

Payment for any Additional Securities shall be made to the Company in Federal or other funds immediately available in New York City against delivery of such Additional Securities for the account of the several Initial Purchasers at 10:00 a.m., New York City time, on the date specified in the notice described in Section 1 or at such other time on the same or on such other date, in any event not later than October 12, 2005, as shall be designated in writing by you. The time

and date of such payment are hereinafter referred to as the “**Option Closing Date.**”

Certificates for the Firm Securities and Additional Securities shall be in definitive form or global form, as specified by you, and registered in such names and in such denominations as you shall request in writing not later than one full business day prior to the Closing Date or the Option Closing Date, as the case may be. The certificates evidencing the Firm Securities and Additional Securities shall be delivered to you on the Closing Date or the Option Closing Date, as the case may be, for the account of the several Initial Purchasers, with any transfer taxes payable in connection with the transfer of the Securities to the Initial Purchasers duly paid, against payment of the Purchase Price therefor plus accrued interest, if any, to the date of payment and delivery.

4. *Representations and Warranties.* The Company represents and warrants to each Initial Purchaser that:

(a) the Preliminary Memorandum did not, as of its date, and does not, and the Final Memorandum in the form used by the Initial Purchasers to confirm sales of the Securities will not as of the Closing Date will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided, however*, that this representation and warranty shall not apply to any statements or omissions made in reliance upon and in conformity with information relating to any Initial Purchaser furnished to the Company in writing by such Initial Purchaser through you expressly for use therein;

(b) the documents incorporated by reference in the Offering Memorandum, when they were filed with the Securities and Exchange Commission (the “**Commission**”), or if amended, as so amended, conformed in all material respects to the requirements of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”) and none of such documents contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and any further documents so filed and incorporated by reference in the Final Memorandum, when such documents are filed with the Commission, will conform in all material respects to the requirements of the Exchange Act, and will not contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(c) the financial statements, and the related notes thereto, of the Company included or incorporated by reference in the Offering Memorandum present fairly, in all material respects, the consolidated financial position of the Company and its consolidated subsidiaries as of the dates indicated and the results of their operations and the changes in their consolidated cash flows for the periods specified; and said financial statements have been prepared in conformity with generally accepted accounting principles and practices applied on a consistent basis, except as described in the notes to such financial statements; and the supporting schedules incorporated by reference in the Offering Memorandum present fairly the information required to be stated therein; and the other financial and statistical information and any other financial data set forth in the Offering Memorandum present fairly, in all material respects, the information purported to be shown thereby at the respective dates or for the respective periods to which they apply and, to the extent that such information is set forth in or has been derived from the financial statements and accounting books and records of the Company, have been prepared on a basis consistent with such financial statements and the books and records of the Company;

(d) since the respective dates as of which information is given in the Offering Memorandum, there has not been any change in the capital stock or long-term debt of the Company or any of its subsidiaries which are “significant subsidiaries” within the meaning of Regulation S-X promulgated under the Securities Act (each, a “**Significant Subsidiary**” and collectively, the “**Significant Subsidiaries**”), or any issuance of any options, warrants, convertible securities or rights to purchase capital stock of the Company or any of the Significant Subsidiaries, or any material adverse change, or any development involving a prospective material adverse change, in or affecting the business, financial position, stockholders’ equity or results of operations of the Company and its subsidiaries, taken as a whole (a “**Material Adverse Effect**”), otherwise than as set forth, incorporated by reference or contemplated in the Offering Memorandum; the Company has not declared or paid any dividends or made any distribution of any kind with respect to its capital stock; and except as set forth, incorporated by reference or contemplated in the Offering Memorandum neither the Company nor any of its Significant Subsidiaries has entered into any transaction or agreement (whether or not in the ordinary course of business) material to the Company and its subsidiaries, taken as a whole;

(e) the Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of its jurisdiction of incorporation, with corporate power and authority to own its properties

and conduct its business as described in the Offering Memorandum, and has been duly qualified as a foreign corporation for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties, or conducts any business, so as to require such qualification, other than where the failure to be so qualified or in good standing would not have a Material Adverse Effect;

(f) each of the Company's Significant Subsidiaries has been duly incorporated and is validly existing as a corporation under the laws of its jurisdiction of incorporation, with corporate power and authority to own its properties and conduct its business as described in the Offering Memorandum, and has been duly qualified as a foreign corporation for the transaction of business and is in good standing under the laws of each jurisdiction in which it owns or leases properties or conducts any business, so as to require such qualification, other than where the failure to be so qualified or in good standing would not have a Material Adverse Effect; and all the outstanding shares of capital stock of each Significant Subsidiary of the Company have been duly authorized and validly issued, are fully-paid and non-assessable, and are owned by the Company, directly or indirectly, free and clear of all liens, encumbrances, security interests and claims, other than as set forth, incorporated by reference or contemplated in the Offering Memorandum;

(g) this Agreement has been duly authorized, executed and delivered by the Company;

(h) the Company had, at the date indicated in the Offering Memorandum, a duly authorized, issued and outstanding capitalization of the Company is as set forth in the Offering Memorandum under the caption "Capitalization" and such authorized capital stock of the Company conforms as to legal matters in all material respects to the description thereof contained in the Final Memorandum; there are no outstanding options to purchase, or any rights or warrants to subscribe for, or any securities or obligations convertible into, or any contracts or commitments to issue or sell, any shares of Common Stock, any shares of capital stock of any subsidiary, or any such warrants, convertible securities or obligations, except as set forth in the Offering Memorandum and except for options granted under, or contracts or commitments pursuant to, the Company's previous or currently existing stock option and other similar officer, director or employee benefit plans; except for this Agreement and the Registration Rights Agreement or stock purchase plans, any registration rights agreement listed as an exhibit to the Company's Annual Report on Form 10-K for fiscal year December 31, 2004 and registration rights granted in the asset purchase agreement between a subsidiary of the

Company and Ascension Capital Group, Ltd., there are no contracts, commitments, agreements, arrangements, understandings or undertakings of any kind to which the Company is a party, or by which it is bound, granting to any person the right to require either the Company to file a registration statement under the Securities Act with respect to any securities of the Company or requiring the Company to include such securities with the Securities registered pursuant to any registration statement;

(i) the shares of Common Stock outstanding on the date hereof have been duly authorized and are validly issued, fully paid and non-assessable;

(j) the Securities have been duly authorized by the Company, and when duly executed, authenticated, issued and delivered as provided in the Indenture (assuming due authentication of the Securities by the Trustee) and paid for as provided herein will constitute valid and binding obligations of the Company, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity); and the Securities will conform to the descriptions thereof in the Offering Memorandum;

(k) the Indenture has been duly authorized by the Company, and when executed and delivered by the Company (assuming the authorization, execution and delivery by the Trustee) will be a valid and binding instrument of the Company; enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity); and the Indenture will conform to the description thereof in the Offering Memorandum;

(l) upon issuance and delivery of the Securities in accordance with the Agreement and the Indenture, the Securities will be convertible at the option of the holder thereof into shares of the Underlying Securities in accordance the terms of the Securities; the Underlying Securities reserved

for issuance upon conversion of the Securities have been duly authorized and reserved and, when issued upon conversion of the Securities in accordance with the terms of the Securities, will be validly issued, fully paid and non-assessable, and the issuance of the Underlying Securities will not be subject to any preemptive or similar rights.

(m) the Registration Rights Agreement has been duly authorized by the Company and when executed and delivered by the Company (assuming the due authorization, execution and delivery thereof by the Initial Purchasers) shall constitute the legal, valid and binding obligation of the Company, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity) and except that rights to indemnification and contribution thereunder may be limited by federal or state securities laws or public policy relating thereto; and the Registration Rights Agreement conforms to the description thereof in the Offering Memorandum;

(n) neither the Company nor any of its Significant Subsidiaries is, or with the giving of notice or lapse of time or both would be, in violation of or in default under, its Certificate of Incorporation, Bylaws or other organizational documents or under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its Significant Subsidiaries is a party or by which it or any of them or any of their respective properties is bound, except where such violations or defaults individually or in the aggregate would not reasonably be expected to result in a material adverse effect to the Company and its Significant Subsidiaries, taken as a whole, or to the holders of the Securities. The performance by the Company of all its obligations under the Securities, the Indenture, the Registration Rights Agreement and this Agreement, and the consummation of the transactions herein and therein contemplated (including the issuance and sale of the Securities and the issuance of the Underlying Securities upon conversion of the Securities), will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its Significant Subsidiaries under, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its Significant Subsidiaries is a party or by which the Company or any of its Significant

Subsidiaries is bound or to which any of the property or assets of the Company or any of its Significant Subsidiaries is subject (except for such breach, default, lien, charge or encumbrance that individually or in the aggregate would not reasonably be expected to result in a Material Adverse Effect), nor will any such action result in any violation of the provisions of the Certificate of Incorporation or the Bylaws of the Company or any applicable law or statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company, its Significant Subsidiaries or any of their respective properties (except for such violations that individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect); and no consent, approval, authorization, order, license, registration or qualification of or with any such court or governmental agency or body is required for the issue and sale of the Securities or the consummation by the Company of the transactions contemplated by this Agreement, the Registration Rights Agreement or the Indenture, except such consents, approvals, authorizations, orders, licenses, registrations or qualifications (i) as may be required under state securities or Blue Sky Laws in connection with the purchase and distribution of the Securities by the Initial Purchasers or (ii) as may be required under the Securities Act with respect to the registration of the Securities and the Underlying Securities pursuant to the terms of the Registration Rights Agreement or (iii) that individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect;

(o) other than as set forth, incorporated by reference or contemplated in the Offering Memorandum, there are no legal or governmental investigations, actions, suits or proceedings pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its subsidiaries or any of their respective properties or to which the Company or any of its subsidiaries is or may be a party or to which any property of the Company or any of its subsidiaries is or may be the subject which, if determined adversely to the Company or any of its subsidiaries, would individually or in the aggregate, if determined adversely, result in a Material Adverse Effect;

(p) neither the Company, nor any affiliate (as defined in Rule 501(b) of Regulation D) of the Company has directly, or through any agent, sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of, any security (as defined in the Securities Act) which is or will be integrated with the sale of the Securities in a manner that would require the registration under the Securities Act of the offering contemplated by the Offering Memorandum;

(q) none of the Company, any affiliate of the Company or any person acting on its or their behalf has offered or sold the Securities by means of any general solicitation or general advertising within the meaning of Rule 502(c) under the Securities Act;

(r) the Securities satisfy the requirements set forth in Rule 144A(d)(3) under the Securities Act;

(s) assuming the accuracy of the representations of the Initial Purchasers contained in Section 2 hereof and their compliance with the agreements set forth therein, it is not necessary in connection with the offer, sale and delivery of the Securities in the manner contemplated by this Agreement and the Offering Memorandum to register the Securities under the Securities Act or to qualify the Indenture under the Trust Indenture Act of 1939, as amended;

(t) the Company is not and, after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in the Offering Memorandum, will not be required to register as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended;

(u) BDO Seidman, LLP, who have certified the consolidated financial statements of the Company as of December 31, 2004 are independent public or certified public accountants within the meaning of Regulation S-X under the Securities Act;

(v) the Company and its Significant Subsidiaries have filed all federal, state, local and foreign tax returns which have been required to be filed and have paid all taxes shown thereon and all assessments received by them or any of them to the extent that such taxes have become due and are not being contested in good faith, except where the failure to do so would not have a Material Adverse Effect; and, except as disclosed, incorporated by reference or contemplated in the Offering Memorandum there is no tax deficiency which has been or might reasonably be expected to be asserted or threatened against the Company or any subsidiary except where such assertion would not have a Material Adverse Effect;

(w) no labor disputes exist with employees of the Company or of its Significant Subsidiaries which would reasonably be expected to result in a Material Adverse Effect; and

(x) each of the Company and its subsidiaries is in compliance with any and all applicable foreign, federal, state and local laws and

regulations relating to the protection of human health or the environment or imposing liability or standards of conduct concerning any Hazardous Material (collectively, “**Environmental Laws**”), except where such non-compliance with Environmental Laws could not, singly or in the aggregate, reasonably be expected to have a Material Adverse Effect. The term “**Hazardous Material**” means (i) any “**hazardous substance**” as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, (ii) any “**hazardous waste**” as defined by the Resource Conservation and Recovery Act, as amended, (iii) any petroleum or petroleum product, (iv) any polychlorinated biphenyl, and (v) any pollutant or contaminant or hazardous, dangerous, or toxic chemical, material, waste or substance regulated under or within the meaning of any other Environmental Law;

(y) each of the Company and its Significant Subsidiaries owns or possesses the right to use the patents, patent licenses, trademarks, service marks, trade names, copyrights and know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures) (collectively, the “**Intellectual Property**”) reasonably necessary to carry on the business conducted by each as conducted on the date hereof, except to the extent that the failure to own or possess the right to use such Intellectual Property would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and, except as set forth or incorporated by reference in the Offering Memorandum, neither the Company nor any Significant Subsidiary has received any notice of infringement of or conflict with asserted rights of others with respect to any Intellectual Property, except for notices the content of which if accurate would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(z) the Company and each of its Significant Subsidiaries have all licenses, franchises, permits, authorizations, approvals and orders of and from all governmental and regulatory officials and bodies that are necessary to own or lease and operate their properties and conduct their businesses as described in the Offering Memorandum and that are material in relation to the business of the Company and its Significant Subsidiaries, taken as a whole;

(aa) the Company and its subsidiaries have good and marketable title in fee simple to all real property and good and marketable title to all personal property owned by them which is material to the business of the Company and its subsidiaries, in each case free and clear of all liens, encumbrances and defects except such as are described, incorporated by reference or contemplated in the Offering Memorandum or such as do not

interfere with the use made and proposed to be made of such property by the Company and its Significant Subsidiaries and would not reasonably be expected to have a material adverse effect on the Company and its Significant Subsidiaries, taken as a whole; and any real property and buildings held under lease by the Company and its Significant Subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company and its Significant Subsidiaries, in each case except as described in the Offering Memorandum;

(bb) the Company is in compliance with all presently applicable provisions of the Employee Retirement Income Security Act of 1974, as amended, including the regulations and published interpretations thereunder (“**ERISA**”), except where the failure to be in such compliance would not, individually or in the aggregate, have a Material Adverse Effect; no “reportable event” (as defined in ERISA) has occurred with respect to any “pension plan” (as defined in ERISA) for which the Company would have any liability, except where such liability would not, individually or in the aggregate, have a Material Adverse Effect; except for matters that would not, individually or in the aggregate, have a Material Adverse Effect, the Company has not incurred and does not expect to incur liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any “pension plan” or (ii) Section 412 or 4971 of the Internal Revenue Code of 1986, as amended, including the regulations and published interpretations thereunder (“**Code**”); and each “pension plan” for which the Company and each of its subsidiaries would have any liability that is intended to be qualified under Section 401(a) of the Code is so qualified in all material respects and nothing has occurred, whether by action or by failure to act, which would reasonably be expected cause the loss of such qualification; and no “prohibited transaction” (as defined in Section 406 of ERISA or Section 4975 of Code or “accumulated funding deficiency” (as defined in section 302 of ERISA) has occurred;

(cc) (i) the Company and each of its Significant Subsidiaries (i) maintains a system of internal accounting controls sufficient to provide reasonable assurances that (A) transactions are executed in accordance with management’s general or specific authorization; (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets; (C) access to assets is permitted only in accordance with management’s general or specific authorization; and (D) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any

differences, and (ii) the Company maintains a system of “disclosure controls and procedures” (as such term is defined in Rule 13a-14(c) under the Exchange Act);

(dd) the Company is in substantial compliance with the applicable provisions of the Sarbanes-Oxley Act of 2002 that are effective.

5. *Covenants of the Company.* The Company covenants and agrees with each of the several Initial Purchasers as follows:

(a) the Company will deliver to the Initial Purchasers as many copies of the Preliminary Memorandum and the Final Memorandum (including all amendments and supplements thereto) as the Initial Purchasers may reasonably request for internal use and for distribution to prospective purchasers;

(b) before distributing any amendment or supplement to the Offering Memorandum, the Company will furnish to the Initial Purchasers a copy of the proposed amendment or supplement for review and not to distribute any such proposed amendment or supplement to which the Initial Purchasers reasonably object;

(c) if, at any time prior to the completion of the initial placement of the Securities by the Initial Purchasers, any event shall occur as a result of which it is necessary in the opinion of the Initial Purchasers to amend or supplement the Offering Memorandum in order that the Final Memorandum will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances when the Final Memorandum is delivered to a purchaser, not misleading, or if it is necessary to amend or supplement the Offering Memorandum to comply with law, the Company will forthwith prepare and furnish, at the expense of the Company, to the Initial Purchasers and to the dealers (whose names and addresses the Initial Purchasers will furnish to the Company) to which Securities may have been sold by the Initial Purchasers on behalf of the Initial Purchasers and to any other dealers upon request, such amendments or supplements to the Final Memorandum as may be necessary to correct such untrue statement or omission or so that the statements in the Final Memorandum as so amended or supplemented will comply with applicable law;

(d) the Company will cooperate with the Initial Purchasers and their counsel in endeavoring to qualify the Securities for offer and sale under the securities or Blue Sky laws of such jurisdictions as the Initial Purchasers shall reasonably request and to continue such qualification in

effect so long as reasonably required for distribution of the Securities and to pay all fees and expenses (excluding fees and disbursements of counsel to the Initial Purchasers) reasonably incurred in connection with such qualification and in connection with the determination of the eligibility of the Securities for investment under the laws of such jurisdictions as the Initial Purchasers may designate; *provided* that the Company shall not be required to file a general consent to service of process in any jurisdiction or to qualify as a foreign corporation in any jurisdiction in which it is not so qualified;

(e) without the prior written consent of J.P. Morgan Securities Inc. and Morgan Stanley & Co. Incorporated, the Company will not, during the period ending 90 days after the date of the Final Memorandum, (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock, (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, (iii) file with the Commission a registration statement under the Securities Act relating to any additional shares of its Common Stock or securities convertible into, or exchangeable for, any shares of its Common Stock, or publicly disclose the intention to effect any transaction described in clause (i), (ii) or (iii), whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise; *provided* that the foregoing shall not apply to (A) the sale of the Securities under this Agreement or the issuance of the Underlying Securities, (B) the grant by the Company of employee or director stock options in the ordinary course of business or the filing of any registration statement in respect thereof, the issuance by the Company of any shares of Common Stock upon the exercise of an option or warrant or the conversion of a security outstanding on the date hereof, (C) the filing of any registration statement in respect of the Securities and the Underlying Securities; *provided, further*, that the Company will notify J.P. Morgan Securities Inc. and Morgan Stanley & Co. Incorporated upon any issuance pursuant to clause (C) above, or (D) the purchase of convertible note hedge and sale of warrant transactions (as described in the Offering Memorandum) into which the Company is entering with JPMorgan Chase Bank, National Association, and Morgan Stanley International Limited, affiliates of the Initial Purchasers;

(f) the Company will use the net proceeds received by the Company from the sale of the Securities pursuant to this Agreement in the

manner specified in the Offering Memorandum under the caption "Use of Proceeds";

(g) the Company will use its reasonable best efforts to have the Underlying Securities listed on the NASDAQ;

(h) during the period from the Closing Date until two years after the Closing Date, or the Option Closing Date, if applicable, without the prior written consent of the Initial Purchasers, the Company will not, and will not permit any of its "affiliates" (as defined in Rule 144 under the Securities Act) to, resell any of the Securities which constitute "restricted securities" under Rule 144 that have been reacquired by any of them;

(i) whether or not the transactions contemplated in this Agreement are consummated or this Agreement is terminated, the Company will pay or cause to be paid all costs and expenses incident to the performance of its obligations hereunder, including without limiting the generality of the foregoing, all fees, costs and expenses (i) incident to the preparation, issuance, execution, authentication and delivery of the Securities, including any expenses of the Trustee, (ii) incident to the preparation, printing and distribution of the Preliminary Memorandum and the Final Memorandum (including in each case all exhibits, amendments and supplements thereto), (iii) incurred in connection with the registration or qualification and determination of eligibility for investment of the Securities under the laws of such jurisdictions as the Initial Purchasers may designate, (iv) in connection with the admission for trading of the Securities on any securities exchange or inter-dealer quotation system (as well as in connection with the admission of the Securities for trading in the Private Offerings, Resales and Trading through Automatic Linkages ("**PORTAL**") system of the National Association of Securities Dealers, Inc. or any appropriate market system), (v) related to any filing with the National Association of Securities Dealers, Inc., (vi) in connection with the printing (including word processing and duplication costs) and delivery of this Agreement, the Indenture, the Blue Sky Memoranda and any Legal Investment Survey and the furnishing to Initial Purchasers and dealers of copies of the Preliminary Memorandum and the Final Memorandum, including mailing and shipping, as herein provided, (vii) payable to rating agencies in connection with the rating of the Securities, (viii) in connection with the listing of the Underlying Securities on the NASDAQ, and (ix) any expenses incurred by the Company in connection with a "road show" presentation to potential investors (it being understood that, except as expressly set forth in this Section 5(i) and elsewhere in this Agreement (including, but not limited to, Sections 7 and 10 hereof), the Company shall have no obligation to pay any costs and expenses of the Initial

Purchasers, including any fees or disbursements of counsel for the Initial Purchasers);

(j) while the Securities remain outstanding and are “restricted securities” within the meaning of Rule 144(a)(3) under the Securities Act, the Company will, during any period in which it is not subject to Section 13 or 15(d) under the Exchange Act, make available to the purchasers and any holder of Securities in connection with any sale thereof and any prospective purchaser of Securities and securities analysts, in each case upon request, the information specified in, and meeting the requirements of, Rule 144A(d)(4) under the Securities Act (or any successor thereto);

(k) the Company will not take any action prohibited by Regulation M under the Exchange Act, in connection with the distribution of the Securities contemplated hereby;

(l) none of the Company, any of its affiliates (as defined in Rule 501(b) under the Securities Act) or any person acting on behalf of the Company or such affiliate will solicit any offer to buy or offer or sell the Securities by means of any form of general solicitation or general advertising within the meaning of Regulation D, including: (i) any advertisement, article, notice or other communication published in any newspaper, magazine or similar medium or broadcast over television or radio; and (ii) any seminar or meeting whose attendees have been invited by any general solicitation or general advertising;

(m) none of the Company, any of its affiliates (as defined in Rule 501(b) under the Securities Act) or any person acting on behalf of the Company or such affiliate will sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in the Securities Act) which will be integrated with the sale of the Securities or the Underlying Securities in a manner which would require the registration under the Securities Act of the Securities and the Company will take all action that is appropriate or necessary to assure that its offerings of other securities will not be integrated for purposes of the Securities Act with the offering contemplated hereby;

(n) prior to any registration of the Securities pursuant to the Registration Rights Agreement, or at such earlier time as may be so required, to qualify the Indenture under the Trust Indenture Act of 1939, as amended (the “TIA”), and to enter into any necessary supplemental indentures in connection therewith;

(o) the Company will use its reasonable best efforts to cause the Securities to be eligible for trading on PORTAL;

(p) the Company will reserve and keep available at all times, free of pre-emptive rights, shares of Common Stock for the purpose of enabling the Company to satisfy all obligations to issue the Underlying Securities upon conversion of the Securities; and

(q) the Company will use its reasonable best efforts to cause all shares of the Underlying Securities to be listed on NASDAQ in accordance with its rules and regulations.

6. *Conditions to the Initial Purchasers' Obligations.* The several obligations of the Initial Purchasers hereunder to purchase the Firm Securities on the Closing Date are subject to the performance by the Company of its obligations hereunder and to the following additional conditions:

(a) the representations and warranties of the Company contained herein are true and correct on and as of the Closing Date as if made on and as of the Closing Date and the Company shall have complied with all agreements and all conditions on its part to be performed or satisfied hereunder at or prior to the Closing Date;

(b) subsequent to the execution and delivery of this Agreement and prior to the Closing Date, there shall not have occurred any downgrading, nor shall any notice have been given of (i) any intended or potential downgrading or (ii) any review or possible change that does not indicate an improvement in the rating accorded any securities of or guaranteed by the Company by any "nationally recognized statistical rating organization", as such term is defined for purposes of Rule 436(g)(2) under the Securities Act;

(c) since the respective dates as of which information is given in the Final Memorandum (excluding any amendment or supplement thereto after the date hereof) there shall not have been any (i) change in the capital stock or long-term debt of the Company or any of the Subsidiaries or any material adverse change, or any development involving a prospective material adverse change, in or affecting the business, its financial condition, management or results of operations of the Company and its subsidiaries, taken as a whole, otherwise than as set forth in the Final Memorandum; or (ii) any suspension or material limitation of trading in the capital stock of the Company on the NASDAQ, the effect of which in the judgment of the Initial Purchasers makes it impracticable or inadvisable to proceed with the offering or the delivery of the Securities on

the Closing Date on the terms and in the manner contemplated in the Final Memorandum;

(d) the Initial Purchasers shall have received on and as of the Closing Date a certificate of an executive officer of the Company, with specific knowledge about the Company's financial matters, satisfactory to the Initial Purchasers to the effect set forth in Sections 6(a) and 6(b) and to the further effect that there has not occurred any material adverse change, or any development involving a prospective material adverse change, in or affecting the business, financial position, stockholders' equity or results of operations of the Company and its subsidiaries, taken as a whole from that set forth in the Final Memorandum;

(e) Snell & Wilmer L.L.P., outside counsel for the Company, shall have furnished to the Initial Purchasers their written opinion, dated the Closing Date, in the form of Exhibit A hereto;

(f) Corporate Counsel of the Company, shall have furnished to the Initial Purchasers his written opinion, dated the Closing Date, in the form of Exhibit B hereto;

(g) on the date of the issuance of the Final Memorandum and also on the Closing Date, BDO Seidman, LLP shall have furnished to the Initial Purchasers letters, dated the respective dates of delivery thereof, in form and substance satisfactory to you, containing statements and information of the type customarily included in accountants "comfort letters" to underwriters with respect to the financial statements and certain financial information contained in the Offering Memorandum;

(h) the Initial Purchasers shall have received on and as of the Closing Date an opinion of Davis Polk & Wardwell, counsel to the Initial Purchasers, in form and substance satisfactory to you;

(i) the "lock-up" agreements, each substantially in the form of Exhibit C hereto, between you and the shareholders, officers and directors of the Company identified on Exhibit C-1 relating to sales and certain other dispositions of shares of Common Stock or certain other securities, delivered to you on or before the date hereof, shall be in full force and effect on the Closing Date;

(j) an application for the listing of the Underlying Securities shall have been submitted to the NASDAQ;

(k) the Securities shall have been approved for trading on PORTAL, subject only to notice of issuance at or prior to the time of purchase; and

(l) on or prior to the Closing Date the Company shall have furnished to the Initial Purchasers such further certificates and documents as the Initial Purchasers or their counsel shall reasonably request.

The obligations of the Initial Purchaser to purchase Additional Securities hereunder are subject to the delivery to you on the Option Closing Date of such documents as you may reasonably request including with respect to the good standing of the Company, the due authorization, execution, authentication and issuance of the Additional Securities and other matters related to the execution, authentication and issuance of the Additional Securities.

7. Indemnity and Contribution. The Company agrees to indemnify and hold harmless each Initial Purchaser and each person, if any, who controls any Initial Purchaser within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any and all losses, claims, damages and liabilities (including without limitation the legal fees and other expenses incurred in connection with any suit, action or proceeding or any claim asserted) caused by any untrue statement or alleged untrue statement of a material fact contained in the Preliminary Memorandum (and any amendment or supplement thereto) or the Final Memorandum (and any amendment or supplement thereto if the Company shall have furnished any amendments or supplements thereto), or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such losses, claims, damages or liabilities are caused by any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with information relating to any Initial Purchaser furnished to the Company in writing by such Initial Purchaser through you expressly for use therein; *provided* that the foregoing indemnity with respect to any Preliminary Offering Memorandum shall not inure to the benefit of any Initial Purchaser (or to the benefit of any person controlling such Initial Purchaser) from whom the person asserting any such losses, claims, damages or liabilities purchased Securities if such untrue statement or omission or alleged untrue statement or omission made in such Preliminary Memorandum is eliminated or remedied in the Final Memorandum (as amended or supplemented if the Company shall have furnished any amendments or supplements thereto) and, if required by law in jurisdictions outside the United States, a copy of the Final Memorandum (as so amended or supplemented) shall not have been furnished to such person at or prior to the written confirmation of the sale of such Securities to such person.

Each Initial Purchaser agrees, severally and not jointly, to indemnify and hold harmless the Company, its directors, its officers and each person who controls the Company within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act, to the same extent as the foregoing indemnity from the Company to each Initial Purchaser, but only with reference to information relating to such Initial Purchaser furnished to the Company in writing by such Initial Purchaser expressly for use in the Offering Memorandum or any amendment or supplement thereto.

If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against any person in respect of which indemnity may be sought pursuant to either of the two preceding paragraphs, such person (the “**Indemnified Person**”) shall promptly notify the person against whom such indemnity may be sought (the “**Indemnifying Person**”) in writing, and the Indemnifying Person, upon request of the Indemnified Person, shall retain counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person and any others the Indemnifying Person may designate in such proceeding and shall pay the fees and expenses of such counsel related to such proceeding. In any such proceeding, any Indemnified Person shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless (i) the Indemnifying Person and the Indemnified Person shall have mutually agreed to the contrary, (ii) the Indemnifying Person has failed within a reasonable time to retain counsel reasonably satisfactory to the Indemnified Person or (iii) the named parties in any such proceeding (including any impleaded parties) include both the Indemnifying Person and the Indemnified Person and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood that the Indemnifying Person shall not, in connection with any proceeding or related proceeding in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all Indemnified Persons, and that all such fees and expenses shall be reimbursed as they are incurred. Any such separate firm for the Initial Purchasers and such control persons of the Initial Purchasers shall be designated in writing by the Initial Purchasers and any such separate firm for the Company, its directors, its officers and such control persons of the Company shall be designated in writing by the Company. The Indemnifying Person shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the Indemnifying Person agrees to indemnify any Indemnified Person from and against any loss or liability by reason of such settlement or judgment. No Indemnifying Person shall, without the prior written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Person is or could have been a party and indemnity could have been sought hereunder by such

Indemnified Person, unless such settlement includes an unconditional release of such Indemnified Person from all liability on claims that are the subject matter of such proceeding on terms reasonably satisfactory to such Indemnified Person.

If the indemnification provided for in the first and second paragraphs of this Section 7 is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then each Indemnifying Person under such paragraph, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Initial Purchasers on the other hand from the offering of the Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and the Initial Purchasers on the other in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Initial Purchasers on the other shall be deemed to be in the same respective proportions as the net proceeds from the offering of such Securities (before deducting expenses) received by the Company and the total discounts and commissions received by the Initial Purchasers bear to the aggregate offering price of the Securities. The relative fault of the Company on the one hand and the Initial Purchasers on the other shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or by the Initial Purchasers and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company and the Initial Purchasers agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by *pro rata* allocation (even if the Initial Purchasers were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in the immediately preceding paragraph. The amount paid or payable by an Indemnified Person as a result of the losses, claims, damages and liabilities referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses incurred by such Indemnified Person in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 7, in no event shall an Initial Purchaser be required to contribute any amount in excess of the amount by which the total price at which the Securities purchased by it were offered exceeds the amount of any damages that such Initial

Purchaser has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Initial Purchasers' obligations to contribute pursuant to this Section 7 are several in proportion to the respective principal amount of the Securities set forth opposite their names in Schedule I hereto, and not joint.

The remedies provided for in this Section 7 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any indemnified party at law or in equity.

The indemnity and contribution agreements contained in this Section 7 and the representations and warranties of the Company set forth in this Agreement shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of any Initial Purchaser or any person controlling any Initial Purchaser or by or on behalf of the Company, its officers or directors or any other person controlling the Company and (iii) acceptance of and payment for any of the Securities.

8. *Termination.* Notwithstanding anything herein contained, this Agreement may be terminated in the absolute discretion of the Initial Purchasers, by notice given to the Company, if after the execution and delivery of this Agreement and prior to the closing of the Offering (i) trading generally shall have been suspended or materially limited on or by, as the case may be, any of the New York Stock Exchange, the American Stock Exchange, the National Association of Securities Dealers, Inc., the Chicago Board Options Exchange, the Chicago Mercantile Exchange or the Chicago Board of Trade, (ii) trading of any securities of or guaranteed by the Company shall have been suspended on any exchange or in any over-the-counter market, (iii) a general moratorium on commercial banking activities in New York shall have been declared by either Federal or New York State authorities, or (iv) there shall have occurred any outbreak or escalation of hostilities or any change in financial markets or any calamity or crisis that, in the judgment of the Initial Purchasers, is material and adverse and which, in the judgment of the Initial Purchasers, makes it impracticable to offer, sell or deliver the Securities on the terms and in the manner contemplated in the Final Memorandum or to enforce contracts for the sale of the Securities.

9. *Effectiveness; Defaulting Initial Purchasers.* This Agreement shall become effective upon the execution and delivery hereof by the parties hereto.

If, on the Closing Date any one or more of the Initial Purchasers shall fail or refuse to purchase Securities which it or they have agreed to purchase hereunder on such date, and the aggregate principal amount of Securities which

such defaulting Initial Purchaser or Initial Purchasers agreed but failed or refused to purchase is not more than one-tenth of the aggregate principal amount of the Securities to be purchased on such date, the other Initial Purchasers shall be obligated severally in the proportions that the principal amount of Securities set forth opposite their respective names in Schedule I (in the column titled "Total") bears to the aggregate principal amount of Securities set forth opposite the names of all such non-defaulting Initial Purchasers (in the column titled "Total"), or in such other proportions as the Initial Purchasers may specify, to purchase the Securities which such defaulting Initial Purchaser or Initial Purchasers agreed but failed or refused to purchase on such date; *provided* that in no event shall the principal amount of Securities that any Initial Purchaser has agreed to purchase pursuant to Section 1 be increased pursuant to this Section 9 by an amount in excess of one-tenth of such principal amount of Securities without the written consent of such Initial Purchaser. If, on the Closing Date any Initial Purchaser or Initial Purchasers shall fail or refuse to purchase Securities which it or they have agreed to purchase hereunder on such date, and the aggregate principal amount of Securities with respect to which such default occurs is more than one-tenth of the aggregate principal amount of Securities to be purchased on such date, and arrangements satisfactory to the Initial Purchasers and the Company for the purchase of such Securities are not made within 36 hours after such default, this Agreement shall terminate without liability on the part of any non-defaulting Initial Purchaser or the Company. In any such case either the Initial Purchasers or the Company shall have the right to postpone the Closing Date, but in no event for longer than seven days, in order that the required changes, if any, in the Final Memorandum or in any other documents or arrangements may be effected. Any action taken under this paragraph shall not relieve any defaulting Initial Purchaser from liability in respect of any default of such Initial Purchaser under this Agreement.

10. *Reimbursement.* If this Agreement shall be terminated by the Initial Purchasers pursuant to Section 8 hereof, the Initial Purchasers will be responsible for their out-of-pocket fees and expenses. However, if this Agreement shall be terminated by the Initial Purchasers because of any failure or refusal on the part of the Company to comply with the terms or to fulfill any of the conditions of this Agreement, or if for any reason the Company shall be unable to perform its obligations under this Agreement or any condition of the Initial Purchasers' obligations cannot be fulfilled, the Company agrees to reimburse the Initial Purchasers as have so terminated this Agreement with respect to themselves, severally, for all out-of-pocket expenses (including the reasonable fees and expenses of their counsel) incurred by such Initial Purchasers in connection with this Agreement or the offering contemplated hereunder.

11. *Parties.* This Agreement shall inure to the benefit of and be binding upon the Company, the Initial Purchasers, any controlling persons referred to

herein and their respective successors and assigns. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any other person, firm or corporation any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained. No purchaser of Securities from any Initial Purchaser shall be deemed to be a successor by reason merely of such purchase.

12. *Notices.* All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted by any standard form of telecommunication. Notices to the Initial Purchasers shall be given to the Initial Purchasers c/o J.P. Morgan Securities Inc., 277 Park Avenue, 9th Floor, New York, New York 10172 (telefax: (212) 622-8358); Attention: Syndicate Desk and (ii) Morgan Stanley & Co. Incorporated, 1585 Broadway, New York, New York 10017 (telefax: (212-761-0538), Attention: Equity Capital Markets. Notices to the Company shall be given to it at 8875 Aero Drive, Suite 200, San Diego, CA 92123; Attention: General Counsel.

13. ***Governing Law.* THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.**

14. *Counterparts.* This Agreement may be signed in counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

If the foregoing is in accordance with your understanding, please sign and return six counterparts hereof.

Very truly yours,

ENCORE CAPITAL GROUP, INC.

By: /s/ Carl C. Gregory, III

Name: Carl C. Gregory, III

Title: Vice Chairman and CEO

The foregoing Purchase Agreement
is hereby confirmed and accepted
as of the date first above written.

J.P. MORGAN SECURITIES INC.

By: /s/ Gautam Sareen

Name: Gautam Sareen

Title: Vice President

MORGAN STANLEY & CO. INCORPORATED

By: /s/ Bryan Andrzejewski

Name: Bryan Andrzejewski

Title: Executive Director

Initial Purchaser

**Principal Amount
of Securities**

J.P. Morgan Securities Inc.	\$ 45,000,000
Morgan Stanley & Co. Incorporated	\$ 45,000,000
	\$ 90,000,000



FOR IMMEDIATE RELEASE

Encore Capital Group to Offer \$80 Million of Convertible Senior Notes

San Diego, CA, September 12, 2005 – Encore Capital Group, Inc. (Nasdaq: ECPG), a leading consumer accounts receivable management firm, today announced that, subject to market conditions and other factors, it plans to offer \$80 million of convertible senior notes due 2010 in a private offering pursuant to Rule 144A under the Securities Act of 1933. The Company also expects to grant the initial purchasers a 30-day option to purchase up to an additional \$20 million principal amount of notes solely to cover over allotments. It is anticipated that the pricing of the offering will occur after the close of the market on September 13, 2005.

The notes will pay interest semiannually through maturity and will be convertible upon the occurrence of specified events into shares of the Company's common stock or, if the Company obtains the required approval of its stockholders, a combination of cash and common stock, at a conversion rate to be determined. The notes will not be redeemable by the Company prior to maturity. The Company's Board has authorized that a stockholder meeting be held to seek this approval as soon as practicable following the closing of the convertible note issuance.

In connection with the offering, the Company expects to enter into convertible note hedge and warrant option transactions in respect of Encore Capital Group common stock with the initial purchasers of the notes. These transactions will reduce the potential dilution upon future conversion of the notes by providing Encore Capital Group with the option, subject to certain exceptions, to acquire shares from the initial purchasers for delivery upon settlement of conversions of the notes, which offsets the delivery of newly issued shares. The Company believes that entering into the convertible note hedge and warrant transactions with the initial purchasers will have the economic effect to the Company of raising the conversion premium on the notes to approximately 60% above our closing share price at the time of pricing of the notes.

The parties to such transactions have advised Encore Capital Group that they expect to enter into various over-the-counter derivative transactions and may purchase shares of Encore Capital Group common stock simultaneously or shortly after the pricing of the notes. In addition, the initial purchasers may unwind certain over-the-counter derivative transactions and may continue to purchase and may sell shares of Encore Capital Group common stock in secondary market transactions following the pricing of the notes (including during the cash settlement averaging period relating to the notes).

The company intends to use the net proceeds from the offering (i) to repay a portion of the amount outstanding under our \$200 million revolving credit facility and (ii) to pay the net cost of the convertible note hedge and warrant transaction.

The convertible senior notes and the underlying shares of common stock have not been registered under the Securities Act of 1933, as amended, or any state securities laws, and may not be offered or sold in the United States or to U.S. persons absent registration or an applicable exemption from the registration requirements.

This press release shall not constitute an offer to sell or a solicitation of an offer to buy any securities, nor shall there be any sale of securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or jurisdiction.

Forward Looking Statements

The statements in this press release that are not historical facts, including, most importantly, those statements preceded by, or that include, the words “may,” “believe,” “projects,” “expects,” “anticipates” or the negation thereof, or similar expressions, constitute “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995 (the “Reform Act”). These statements may include, but are not limited to, the issuance of convertible senior notes, as well as assumptions relating to the offering. For all “forward-looking statements,” the Company claims the protection of the safe harbor for forward-looking statements contained in the Reform Act. Such forward-looking statements involve risks, uncertainties and other factors which may cause actual results, performance or achievements of the Company and our subsidiaries to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements.

CONTACT:

Encore Capital Group, Inc. (Shareholders/Analysts)

Carl C. Gregory, III 858-309-6961

Carl.gregory@encorecapitalgroup.com

Or

J. Brandon Black, 858-309-6963

Brandon.black@encorecapitalgroup.com

Financial Relations Board (Press)

Tony Rossi, 310-854-8317 (Investor Relations)

trossi@financialrelationsboard.com

###



For Immediate Release

Encore Capital Group Prices \$90 Million 3.375% Convertible Senior Note Offering

San Diego, CA, September 13, 2005 – Encore Capital Group, Inc. (Nasdaq: ECPG), a leading consumer accounts receivable management firm, today announced that it has priced a private offering of \$90 million aggregate principal amount of 3.375% convertible senior notes due 2010. The base offering was increased from \$80 million to \$90 million. The offering is being made pursuant to Rule 144A under the Securities Act of 1933. The Company has also granted the initial purchasers an option to purchase up to an additional \$10 million aggregate principal amount of notes solely to cover over-allotments. The sale of the convertible notes is expected to close on September 19, 2005, subject to customary closing conditions.

The convertible notes will pay interest semiannually in arrears through maturity at an annual rate of 3.375%. The notes will not be redeemable by the Company prior to maturity. The notes will be convertible beginning on March 19, 2010 or earlier upon the occurrence of certain events into shares of the Company's common stock at an initial conversion rate of 44.7678 shares per \$1,000 principal amount of notes (an initial conversion price of approximately \$22.34 per share). The initial conversion price represents a 25 percent premium to the \$17.87 per share closing price of the Company's common stock on the Nasdaq National Market on September 13, 2005. If the Company obtains the required approval of its stockholders, the notes will be convertible into a combination of cash and common stock. In general, following stockholder approval, the holder of each note will receive, upon conversion, cash equal to the lesser of the principal amount of the note or the conversion value of the note and common stock of Encore Capital Group for any conversion value in excess of such principal amount. The Company's Board has authorized that a stockholder meeting be held to seek this approval as soon as practicable following the closing of the convertible note issuance.

Holders of the notes will have the right to require the Company to repurchase some or all of their notes upon the occurrence of a fundamental change at a price equal to 100% of the principal amount of the notes plus accrued interest. The notes will mature on September 19, 2010.

In connection with the offering, the Company has entered into convertible note hedge and warrant option transactions in respect of Encore Capital Group common stock with affiliates of the initial purchasers of the notes. These transactions will reduce the potential dilution upon future conversion of the notes by providing Encore Capital Group with the option, subject to certain exceptions, to acquire shares from the initial purchasers for delivery upon settlement of conversions of the notes, which offsets the delivery of newly issued shares. This has the economic effect to the Company of increasing the conversion price of the notes to approximately \$29.04 per share, representing a 62.5 percent conversion premium to the per share closing price on September 13, 2005. If the initial purchasers exercise their over-allotment option, the Company may enter into additional convertible note hedge and warrant option transactions.

The parties to such transactions have advised Encore Capital Group that they have entered into various over-the-counter derivative transactions simultaneously with the pricing of the notes. In addition, the initial purchasers may unwind certain over-the-counter derivative transactions and may continue to purchase and may sell shares of Encore Capital Group common stock or enter into other derivatives in secondary market transactions following the pricing of the notes (including during the cash settlement averaging period relating to the notes, if any). If the Company enters into additional convertible note hedge and warrant option transactions upon an exercise of the initial purchasers' over-allotment option, the parties to such transactions expect to purchase shares of Encore Capital Group common stock or derivatives linked to common stock simultaneously with and following such transactions.

The Company intends to use the net proceeds from the offering (i) to repay \$73.0 million of the amount outstanding under its \$200 million revolving credit facility and (ii) to pay the approximately \$14.1 million net cost of the convertible note hedge and warrant transaction. The Company will continue to have access to all undrawn amounts in the revolving credit facility for portfolio purchases, selective acquisitions and other general corporate purposes, subject to the underlying covenants and restrictions.

The convertible senior notes and the underlying shares of common stock have not been registered under the Securities Act of 1933, as amended, or any state securities laws, and may not be offered or sold in the United States or to U.S. persons absent registration or an applicable exemption from the registration requirements.

This press release shall not constitute an offer to sell or a solicitation of an offer to buy any securities, nor shall there be any sale of securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or jurisdiction.

Forward Looking Statements

The statements in this press release that are not historical facts, including, most importantly, those statements preceded by, or that include, the words "may," "believe," "projects," "expects," "anticipates" or the negation thereof, or similar expressions, constitute "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995 (the "Reform Act"). These statements may include, but are not limited to, the issuance of the convertible senior notes, as well as assumptions relating to the offering. For all "forward-looking statements," the Company claims the protection of the safe harbor for forward-looking statements contained in the Reform Act. Such forward-looking statements involve risks, uncertainties and other factors which may cause actual results, performance or achievements of the Company and our subsidiaries to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements.

CONTACT:

Encore Capital Group, Inc. (Shareholders/Analysts)

Carl C. Gregory, III 858-309-6961

Carl.gregory@encorecapitalgroup.com

or

J. Brandon Black, 858-309-6963

Brandon.black@encorecapitalgroup.com

Financial Relations Board (Press)

Tony Rossi, 310-854-8317 (Investor Relations)

trossi@financialrelationsboard.com

###