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

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**FORM 8-K**

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

**Date of Report (Date of earliest event reported): May 24, 2018**

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**Pandora Media, Inc.**  
(Exact Name of Registrant as Specified in Charter)

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**Delaware**  
(State or Other Jurisdiction  
of Incorporation)

**001-35198**  
(Commission  
File Number)

**94-3352630**  
(IRS Employer  
Identification No.)

**2101 Webster Street, Suite 1650**  
**Oakland, CA**  
(Address of Principal Executive Offices)

**94612**  
(Zip Code)

**Registrant's telephone number, including area code: 510-451-4100**

**Not Applicable**  
(Former Name or Former Address, if Changed Since Last Report)

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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))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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**Item 1.01. Entry Into a Material Definitive Agreement**

On May 24, 2018, Pandora Media, Inc. (the “Company”) entered into an underwriting agreement (the “Underwriting Agreement”) with Morgan Stanley & Co. LLC (the “Underwriter”), relating to the offer and short sale by the Underwriter of 6,373,275 shares (the “Shares”) of the Company’s common stock, par value \$0.0001 per share (the “Common Stock”) borrowed from third parties in connection with the exchange of approximately \$192.9 million aggregate principal amount of the Company’s outstanding 1.75% senior convertible notes due 2020 (the “2020 Notes”) for an equal principal amount of a new series of 1.75% senior convertible notes due 2023 (the “New Notes”) to facilitate the establishment of short positions by certain exchanging holders to facilitate hedging of their investments in the New Notes.

The Shares were sold pursuant to an automatic registration statement on Form S-3 (the “Registration Statement”) filed with the Securities and Exchange Commission (the “SEC”) on May 24, 2018, which became effective upon filing (File No. 333-225175), and a related prospectus supplement (the “Prospectus Supplement”) filed with the SEC. The closing of the offering took place on May 29, 2018.

The Underwriting Agreement is filed as Exhibit 1.1 to this Current Report on Form 8-K, and is incorporated by reference in the Registration Statement. The description of the Underwriting Agreement in this report is a summary and is qualified in its entirety by the terms of the Underwriting Agreement.

The Company is filing the opinion of its counsel, Sidley Austin LLP, as Exhibit 5.1 hereto, regarding the legality of the Shares covered by the Prospectus Supplement. Exhibit 5.1 is incorporated herein by reference and into the Registration Statement, and into the Prospectus Supplement.

**Item 8.01. Other Events.**

On May 24, 2018, the Company entered into separate privately negotiated exchange agreements with certain holders of its 2020 Notes to exchange in a private placement exempt from registration under Section 4(a)(2) of the Securities Act of 1933, as amended (the “Securities Act”), an aggregate of approximately \$192.9 million principal amount of 2020 Notes (the “Exchange”) for an equal principal amount of New Notes. The Company anticipates that settlement of the Exchange will occur on or about June 1, 2018.

The New Notes will be senior unsecured obligations and pay interest semiannually in arrears at a rate of 1.75% per annum on June 1 and December 1 of each year, beginning on December 1, 2018. Prior to the close of business on the business day immediately preceding July 1, 2023, the New Notes will be convertible at the option of the holder into cash, shares of the Company’s Common Stock or a combination thereof, at the Company’s election, only upon satisfaction of certain conditions and during certain periods, and thereafter at any time until the close of business on the second scheduled trading day immediately preceding the maturity date. The initial conversion rate for the New Notes has been set at 104.4768 shares of common stock per \$1,000 principal amount of New Notes, which is equivalent to an initial conversion price of approximately \$9.57 per share of common stock (subject to adjustment upon the occurrence of certain events). The New Notes will mature on December 1, 2023, unless earlier converted, repurchased or redeemed.

In connection with the exchange, certain of the investors participating in the Exchange entered into transactions in respect of shares of the Common Stock in order to hedge their market risk with respect to the New Notes that they are to acquire in the Exchange, as described in Item 1.01 herein.

Following the closings of the Exchange, \$152.1 million in principal amount of the 2020 Notes will remain outstanding, and \$192.9 million aggregate principal amount of New Notes will be outstanding.

The issuance of the New Notes will occur under an indenture to be dated on or about June 1, 2018, between the Company and Citibank, N.A., as trustee (the “Indenture”).

Press releases describing the above transactions are attached as Exhibits 99.1 and 99.2, respectively.

This Current Report on Form 8-K does not constitute an offer to sell or the solicitation of an offer to buy any securities, nor shall it constitute an offer to sell, solicitation or sale in any jurisdiction in which such offer,

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solicitation or sale would be unlawful. The New Notes and any shares of Common Stock issuable upon conversion of the New Notes have not been registered under the Securities Act or any state securities laws and, unless so registered, may not be offered or sold in the United States or to U.S. persons except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and applicable state laws.

**Item 9.01. Exhibits.**

<u>Exhibit No.</u>	<u>Description</u>
1.1	<a href="#"><u>Underwriting Agreement, dated as of May 24, 2018, by and between the Company and Morgan Stanley &amp; Co. LLC.</u></a>
5.1	<a href="#"><u>Opinion of Sidley Austin LLP regarding the legality of the shares.</u></a>
23.1	<a href="#"><u>Consent of Sidley Austin LLP (included in Exhibit 5.1).</u></a>
99.1	<a href="#"><u>Press Release, Pandora Announces Convertible Note Exchange Transactions, dated May 24, 2018.</u></a>
99.2	<a href="#"><u>Press Release, Pandora Prices Convertible Note Exchange Transactions, dated May 24, 2018.</u></a>

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**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 hereunto duly authorized.

**PANDORA MEDIA, Inc.**

By: /s/ Stephen Bené

Stephen Bené

General Counsel and Corporate Secretary

Date: May 29, 2018

6,373,275 Shares

PANDORA MEDIA, INC.

COMMON STOCK, PAR VALUE \$0.0001 PER SHARE

UNDERWRITING AGREEMENT

May 24, 2018

Morgan Stanley & Co. LLC

c/o Morgan Stanley & Co. LLC  
1585 Broadway  
New York, New York 10036

Ladies and Gentlemen:

Pandora Media, Inc., a Delaware corporation (the “**Company**”) is entering into this Agreement with Morgan Stanley & Co., as representative of the several underwriters named in Schedule I hereto (the “**Underwriters**”), with respect to the offer and short sale of 6,373,275 shares of common stock, par value \$0.0001 per share (the “**Shares**”) of the Company. The offer and short sale of Shares have been registered pursuant to the Registration Statement (as defined below), and are being offered and sold short pursuant to the Registration Statement and the Prospectus (as defined below). The outstanding shares of common stock, par value \$0.0001 per share of the Company are hereinafter referred to as the “**Common Stock**.” Any reference herein to the Underwriters shall be deemed to refer to a single Underwriter if only a single Underwriter is named in Schedule I hereto.

The Shares are being offered and sold short in connection with the Company’s concurrent private exchange (the “**Exchange**”) of its existing 1.75% Convertible Senior Notes due 2020 (the “**Old Notes**”) for newly-issued 1.75% Convertible Senior Notes due 2023 (the “**New Notes**”). The Exchange is being offered only to existing holders of the Old Notes, each of which is an institutional “accredited investor” within the meaning of Rule 501 of Regulation D under the Securities Act of 1933, as amended (the “**Securities Act**”) that is also a qualified institutional buyer (“**QIB**”) within the meaning of Rule 144A under the Securities Act pursuant to an exemption from registration under Section 4(a)(2) of the Securities Act. The Underwriters are offering and selling short the Shares (i) as underwriter and principal on behalf of certain Investors and/or (ii) on behalf of themselves and/or their respective affiliates, as the case may be. Any Shares sold short by any Underwriter as principal on behalf of any Investors in the offering will be shares of Common Stock borrowed by such Underwriter or from third parties by such Investors, who are expected to use the resulting short position to hedge their investments in the New Notes. With respect to any Shares sold short by the Underwriters, on behalf of themselves and/or their respective affiliates, in the offering, which will be borrowed by such Underwriters and/or their respective affiliates from third parties, we expect that such Underwriters and/or their respective affiliates will concurrently enter into privately negotiated transactions relating to the Common Stock in an equal notional amount, including derivative transactions, with certain Investors in the New Notes to allow such Investors to establish short positions relating to the Common Stock to hedge their investments in the New Notes.

The Company has filed with the Securities and Exchange Commission (the “**Commission**”) a registration statement, including a prospectus, (file number 333 – 225175) on Form S-3, relating to certain of the Company’s securities (the “**Shelf Securities**”), including the Shares, to be issued from time to time by the Company or sold from time to time by certain selling security holders. The registration statement as amended to the date of this Agreement, including the information (if any) deemed to be part of the registration statement at the time of effectiveness pursuant to Rule 430A or Rule 430 B under the Securities Act, is hereinafter referred to as the “**Registration Statement**”, and the related prospectus covering the Shelf Securities dated May 24, 2018 in the form first used to confirm sales of the Shares (or in the form first made available to the Underwriters by the Company to meet requests of purchasers pursuant to Rule 173 under the Securities Act) is hereinafter referred to as the “**Basic Prospectus**.” The Basic Prospectus, as supplemented by the prospectus supplement specifically relating to the Shares in the form first used to confirm sales of the Shares (or in the form first made available to the Underwriters by the Company to meet requests of purchasers pursuant to Rule 173 under the Securities Act) is hereinafter referred to as the “**Prospectus**,” and the term “**preliminary prospectus**” means any preliminary form of the Prospectus. For purposes of this Agreement, “**free writing prospectus**” has the meaning set forth in Rule 405 under the Securities Act, and “**Time of Sale Prospectus**” means the documents and pricing information set forth in Schedule II hereto. As used herein, the terms “Registration Statement,” “Basic Prospectus,” “preliminary prospectus,” “Time of Sale Prospectus” and “Prospectus” shall include the documents, if any, incorporated by reference therein as of the date hereof. The terms “**supplement**,” “**amendment**,” and “**amend**” as used herein with respect to the Registration Statement, the Basic Prospectus, the Time of Sale Prospectus, any preliminary prospectus or the Prospectus shall include all documents subsequently filed by the Company with the Commission pursuant to the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), that are deemed to be incorporated by reference therein.

1. *Representations and Warranties of the Company.* The Company represents and warrants to and agrees with each of the Underwriters that:

(a) The Registration Statement has become effective; no stop order suspending the effectiveness of the Registration Statement is in effect, and no proceedings for such purpose are pending before or, to the Company’s knowledge, threatened by the Commission. The Company is a well-known seasoned issuer (as defined in Rule 405 under the Securities Act) eligible to use the Registration Statement as an automatic shelf registration statement and the Company has not received notice that the Commission objects to the use of the Registration Statement as an automatic shelf registration statement.

(b) (i) Each document, if any, filed or to be filed pursuant to the Exchange Act and incorporated by reference in the Time of Sale Prospectus or the Prospectus complied or will comply when so filed in all material respects with the Exchange Act and the applicable rules and regulations of the Commission thereunder, (ii) each part of the Registration Statement, when such part became effective, did not contain, and each such part, as amended or supplemented, if applicable, will not contain, as of the date of

such amendment or supplement, any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (iii) the Registration Statement as of the date hereof does not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (iv) the Registration Statement and the Prospectus comply and, as amended or supplemented, if applicable, will comply in all material respects with the Securities Act and the applicable rules and regulations of the Commission thereunder, (v) the Time of Sale Prospectus does not, and at the time of each sale of the Shares in connection with the offering when the Prospectus is not yet available to prospective purchasers and at May 29, 2018 (as such date may be postponed by agreement between the Underwriters and the Company, the “**Closing Date**”), the Time of Sale Prospectus, as then amended or supplemented by the Company, if applicable, will not, contain any 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, and (vi) the Prospectus does not contain and, as amended or supplemented, if applicable, will not contain any 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, except that the representations and warranties set forth in this paragraph do not apply to statements or omissions in the Registration Statement, the Time of Sale Prospectus or the Prospectus based upon information relating to any Underwriter furnished to the Company in writing by such Underwriter through you expressly for use therein as identified in the letter being delivered by you to the Company on the date hereof (the “**Underwriter Information**”).

(c) The Company is not an “ineligible issuer” in connection with the offering pursuant to Rules 164, 405 and 433 under the Securities Act. Any free writing prospectus that the Company is required to file pursuant to Rule 433(d) under the Securities Act has been, or will be, filed with the Commission in accordance with the requirements of the Securities Act and the applicable rules and regulations of the Commission thereunder. Each free writing prospectus that the Company has filed, or is required to file, pursuant to Rule 433(d) under the Securities Act or that was prepared by or on behalf of or used or referred to by the Company complies or will comply in all material respects with the requirements of the Securities Act and the applicable rules and regulations of the Commission thereunder. Except for the free writing prospectuses, if any, identified in Schedule II hereto forming part of the Time of Sale Prospectus, the Company has not prepared, used or referred to, and will not, without your prior consent, prepare, use or refer to, any free writing prospectus (including, for the avoidance of doubt, any “road show” (as defined below)).

(d) The Company has been duly incorporated, is validly existing as a corporation in good standing under the laws of the state of Delaware, has the corporate power and authority to own its property and to conduct its business as described in the Time of Sale Prospectus and the Prospectus and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that

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the failure to be so qualified or be in good standing would not have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(e) Each subsidiary of the Company has been duly incorporated, is validly existing in good standing under the laws of the jurisdiction of its formation, has the corporate power and authority to own its property and to conduct its business as described in the Time of Sale Prospectus and the Prospectus and is duly qualified to transact business and is in good standing in each jurisdiction, to the extent the concept of “good standing” is applicable under the laws of such jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not have a material adverse effect on the Company and its subsidiaries, taken as a whole; all of the issued shares of capital stock of each subsidiary of the Company have been duly and validly authorized and issued, are fully paid and non-assessable, and are owned directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or claims.

(f) The authorized capital stock of the Company conforms as to legal matters to the description thereof contained in each of the Time of Sale Prospectus and the Prospectus.

(g) The outstanding shares of Common Stock (including the Shares) have been duly authorized and are validly issued, fully paid and non-assessable.

(h) This Agreement has been duly authorized, executed and delivered by the Company.

(i) The execution and delivery by the Company of, and the performance by the Company of its obligations under this Agreement will not contravene any provision of (i) applicable law; (ii) the certificate of incorporation or by-laws of the Company or any agreement or other instrument binding upon the Company or any of its subsidiaries that is material to the Company and its subsidiaries, taken as a whole; or (iii) any judgment, order or decree of any governmental body, agency or court having jurisdiction over the Company or any of its subsidiaries, except that in the case of clauses (i) and (iii) as would not have a material adverse effect on the Company or on the power and ability of the Company to perform its obligations under this Agreement, and no consent, approval, authorization or order of, or qualification with, any governmental body or agency is required for the performance by the Company of its obligations under this Agreement, except such as may be required by the securities or Blue Sky laws of the various states in connection with transactions contemplated therein.

(j) There has not occurred any material adverse change, or any development involving a prospective material adverse change, in the condition, financial or otherwise, or in the earnings, business or operations of the Company and its subsidiaries, taken as a whole, from that set forth in the Time of Sale Prospectus and the Prospectus.

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(k) There are no legal or governmental proceedings pending or, to the knowledge of the Company, threatened to which the Company or any of its subsidiaries is a party or to which any of the properties of the Company or any of its subsidiaries is subject (i) other than proceedings accurately described in all material respects in the Time of Sale Prospectus and the Prospectus and proceedings that would not have a material adverse effect on the Company and its subsidiaries, taken as a whole, or on the power or ability of the Company to perform its obligations under this Agreement or to consummate the transactions contemplated by the Time of Sale Prospectus and the Prospectus or (ii) that are required to be described in the Registration Statement or the Prospectus and are not so described in all material respects; and there are no transactions or relationships involving the Company, or statutes, regulations, or contracts or other documents to which the Company is subject or by which the Company is bound that are required to be described in the Registration Statement or the Prospectus or to be filed as exhibits to the Registration Statement that are not described in all material respects or filed as required.

(l) Each preliminary prospectus filed as part of the Registration Statement as originally filed or as part of any amendment thereto, or filed pursuant to Rule 424 under the Securities Act, complied when so filed in all material respects with the Securities Act and the applicable rules and regulations of the Commission thereunder.

(m) The Company and its subsidiaries are (i) in compliance with any and all applicable foreign, federal, state and local laws and regulations relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants (“**Environmental Laws**”), (ii) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (iii) are in compliance with all terms and conditions of any such permit, license or approval, except where such noncompliance with Environmental Laws, failure to receive required permits, licenses or other approvals or failure to comply with the terms and conditions of such permits, licenses or approvals would not, singly or in the aggregate, be reasonably likely to have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(n) There are no costs or liabilities associated with Environmental Laws (including, without limitation, any capital or operating expenditures required for clean-up, closure of properties or compliance with Environmental Laws or any permit, license or approval, any related constraints on operating activities and any potential liabilities to third parties) which would, singly or in the aggregate, be reasonably likely to have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(o) The Company is not, and, after giving effect to the offer and sale of the Shares will not be, required to register as an “investment company” as such term is defined in the Investment Company Act of 1940, as amended.

(p) There are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to file

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a registration statement under the Securities Act with respect to any securities of the Company or to require the Company to include such securities with the Shares registered pursuant to the Registration Statement other than such contracts, agreements or understandings where any such rights have been validly waived.

(q) (i) None of the Company or its subsidiaries or affiliates, or any director, officer, or employee thereof, or, to the Company's knowledge, any affiliate or agent or representative of the Company or of any of its subsidiaries or affiliates, has taken or will take any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment, giving or receipt of money, property, gifts or anything else of value, directly or indirectly, to any government official (including any officer or employee of a government or government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office) ("**Government Official**") in order to influence official action, or to any person in violation of any applicable anti-corruption laws; and (ii) the Company and its subsidiaries and affiliates have conducted their businesses in material compliance with applicable anti-corruption laws and have instituted and maintained and will continue to maintain policies and procedures reasonably designed to promote and achieve compliance with such laws and with the representations and warranties contained herein.

(r) The operations of the Company and its subsidiaries are and have been conducted at all times in material compliance with all applicable financial recordkeeping and reporting requirements, including those of the Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), and the applicable anti-money laundering statutes of jurisdictions where the Company and its subsidiaries conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "**Anti-Money Laundering Laws**"), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(s) (i) None of the Company, any of its subsidiaries, or any director, officer, or employee thereof, or, to the Company's knowledge, any agent, affiliate or representative of the Company or any of its subsidiaries, is an individual or entity ("**Person**") that is, or is owned or controlled by one or more Persons that are:

(A) the subject of any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control ("**OFAC**"), the United Nations Security Council ("**UNSC**"), the European Union ("**EU**"), Her Majesty's Treasury ("**HMT**"), or other relevant sanctions authority (collectively, "**Sanctions**"), or

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(B) located, organized or resident in a country or territory that is the subject of Sanctions (including, without limitation, Crimea, Cuba, Iran, North Korea and Syria).

(ii) For the past 5 years, the Company and its subsidiaries have not knowingly engaged in, are not now knowingly engaged in, and will not knowingly engage in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions.

(t) Subsequent to the respective dates as of which information is given in the Time of Sale Prospectus and the Prospectus, (i) the Company and its subsidiaries have not incurred any material liability or obligation, direct or contingent, nor entered into any material transaction; (ii) the Company has not purchased any of its outstanding capital stock, nor declared, paid or otherwise made any dividend or distribution of any kind on its capital stock other than ordinary and customary dividends; and (iii) there has not been any material change in the capital stock, short-term debt or long-term debt of the Company and its subsidiaries, except in each case as described in each of the Time of Sale Prospectus and the Prospectus, respectively.

(u) The Company and its subsidiaries do not own any real property. The Company and its subsidiaries have 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 in the Time of Sale Prospectus and the Prospectus or such as do not materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company and its subsidiaries; and any buildings held under lease by the Company and its 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 subsidiaries, in each case except as described in the Time of Sale Prospectus and the Prospectus.

(v) Except as disclosed in the Time of Sale Prospectus and the Prospectus, the Company owns or possesses, or can acquire on reasonable terms, all material Intellectual Property (as defined below) as currently employed by them in connection with the business now operated by them, as described in the Time of Sale Prospectus and the Prospectus. Except as disclosed in the Time of Sale Prospectus and the Prospectus: (i) the Intellectual Property owned by the Company has not been adjudged invalid or unenforceable, in whole or in part, (ii) there is no pending or, to the knowledge of the Company, threatened action, suit, proceeding or claim by others challenging the ownership, validity, enforceability or scope of any such Intellectual Property, excluding office actions before the U.S. Patent and Trademark Office and foreign patent and trademark offices arising in the ordinary course of prosecuting any pending applications included within such Intellectual Property (provided, however, that the term "office actions" does not include reexaminations or any interference or opposition proceedings) and (iii) to the Company's knowledge, none of the Intellectual Property used by the Company has been obtained or is being used by the Company in violation of any

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contractual obligation binding on the Company or any of its current or former employees or independent contractors. Except as disclosed in the Time of Sale Prospectus and the Prospectus, (i) there is no pending or, to the knowledge of the Company, threatened action, suit, proceeding or claim by others that the Company infringes, misappropriates or otherwise violates any Intellectual Property, (ii) the Company has not received any notice of infringement of or conflict with any Intellectual Property and (iii) to the knowledge of the Company, there is no infringement, misappropriation, or other violation of the Intellectual Property owned by the Company, in each case, except as would not be reasonably expected to have a material adverse effect on the Company. The term "Intellectual Property" as used herein means foreign and domestic patents and all patent rights associated therewith, and patent applications, inventions, registered and unregistered trademarks and service marks and all rights associated therewith, applications to register trademarks or service marks, trade names, trade dress, copyrights, applications to register copyrights, databases and rights associated with databases, moral rights, mask works, applications to register mask works, know-how, trade secrets and all trade secret rights associated therewith, domain names, domain name applications, proprietary processes, and other forms of intellectual property and proprietary rights therein. There are no material outstanding options, licenses or agreements of any kind relating to the Intellectual Property of the Company that are required to be described in the Time of Sale Prospectus and the Prospectus and are not described in all material respects in the Time of Sale Prospectus and the Prospectus.

(w) No material labor dispute with the employees of the Company or any of its subsidiaries exists, except as described in the Time of Sale Prospectus and the Prospectus, or, to the knowledge of the Company, is imminent; and the Company is not aware of any existing, threatened or imminent labor disturbance by the employees of any of its principal suppliers, manufacturers or contractors that would reasonably be likely to have a material adverse effect on the Company, and its subsidiaries, taken as a whole.

(x) The Company and each of its subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are, in the Company's reasonable judgment, prudent and customary in the businesses in which they are engaged; neither the Company nor any of its subsidiaries have been refused any insurance coverage sought or applied for; and the Company has no reason to believe that it or its subsidiaries will not be able to renew their existing insurance coverage as and when such coverage expires or obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not be reasonably likely to have a material adverse effect on the Company and its subsidiaries, taken as a whole, except as described in the Time of Sale Prospectus and the Prospectus.

(y) The Company and its subsidiaries possess all certificates, authorizations and permits issued by the appropriate federal, state or foreign governmental or regulatory authorities necessary to conduct their respective businesses, except where the failure to obtain such certificates, authorizations or permits would not, individually

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or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole, and neither the Company nor any of its subsidiaries have received notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have a material adverse effect on the Company and its subsidiaries, taken as a whole, except as described in the Time of Sale Prospectus and the Prospectus.

(z) The Company and each of its subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management's general or specific authorization; (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences; and (v) the interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement is accurate. Except as described in the Time of Sale Prospectus or Prospectus, since the end of the Company's most recent audited fiscal year, there has been (i) no material weakness in the Company's internal control over financial reporting (whether or not remediated) and (ii) no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

(aa) The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement fairly presents the information called for in all material respects and has been prepared in accordance with the Commission's rules and guidelines applicable thereto.

(bb) Except as described in the Time of Sale Prospectus and the Prospectus, the Company has not sold, issued or distributed any shares of Common Stock during the six-month period preceding the date hereof, including any sales pursuant to Rule 144A under, or Regulation D or S of, the Securities Act, other than shares issued pursuant to employee benefit plans, qualified stock option plans or other employee compensation plans or pursuant to outstanding options, rights or warrants.

(cc) Ernst & Young LLP, which has expressed its opinion with respect to the financial statements of the Company filed with the Commission and incorporated by reference in each of the Registration Statement, the Time of Sale Prospectus and the Prospectus, is an independent registered public accounting firm as required by the Securities Act.

(dd) The Company and each of its subsidiaries have filed all tax returns that are required to have been filed by them through the date hereof or have timely requested extensions thereof, pursuant to applicable federal, state, local, foreign or other law, except insofar as the failure to file such returns would not result in a material adverse

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effect on the Company. The Company and each of its subsidiaries have paid all taxes due and payable, except for such taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided and except where the failure to pay such taxes would not result in a material adverse effect on the Company. The charges, accruals and reserves in respect of any income and other tax liability in the financial statements of the Company included in each of the Time of Sale Prospectus and the Prospectus are adequate, in accordance with generally accepted accounting principles to meet any assessments for any taxes of the Company accruing through the end of the last period specified in such financial statements, except to the extent of any inadequacy that would not result in a material adverse effect on the Company.

(ee) The Company and its subsidiaries have established and maintain disclosure controls and procedures (as defined in Rule 13a-15 under the Exchange Act). Such disclosure controls and procedures are designed to ensure that material information relating to the Company, including its consolidated subsidiaries, is made known to the Company's principal executive officer and its principal financial officer by others at the Company, particularly during the periods in which the periodic reports required under the Exchange Act are being prepared. Such disclosure controls and procedures are effective and timely in alerting the Company's principal executive officer and principal financial officer to material information required to be included in the Company's periodic reports required under the Exchange Act. The Company and its subsidiaries have carried out evaluations of the effectiveness of their disclosure controls and procedures as required by Rule 13a-15 of the Exchange Act.

(ff) There is and has been no material failure on the part of the Company or, to the knowledge of the Company, any of the Company's directors or officers, in their capacities as such, to comply with any applicable provision of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith, including Section 402 related to loans and Sections 302 and 906 related to certifications.

(gg) There are no transactions between the Company and any holder of 5% or more of the Common Stock, any director, any director nominee or any executive officer, or members of such individuals' immediate families, or any enterprise in which a substantial interest in the voting power is owned, directly or indirectly, by any of such individuals that are required to be disclosed in the Time of Sale Prospectus and the Prospectus other than those described in the Time of Sale Prospectus and the Prospectus.

(hh) The financial statements of the Company incorporated by reference in each of the Time of Sale Prospectus and the Prospectus present fairly the financial position of the Company as of the dates indicated and the results of its operations and cash flows for the periods specified. Such financial statements have been prepared in conformity with generally accepted accounting principles as applied in the United States applied on a consistent basis throughout the periods involved.

(ii) The statistical, industry-related and market-related data incorporated by reference in the Time of Sale Prospectus and the Prospectus are based on or derived from sources which the Company reasonably and in good faith believes are reliable and accurate, and such data is consistent with the sources from which they are derived.

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(jj) The Company will not take any action prohibited by Regulation M under the Exchange Act ("**Regulation M**") in connection with the offer and sale of the Shares.

2. *Terms of Public Offering; Fee* The Company is advised by you that the Underwriters propose to make a public offering of their respective portions of the Shares as soon after this Agreement has become effective. For each Share sold, the Company will pay the relevant Underwriter a fee equal to 2.5% of the price at which such Share is sold by such Underwriter (the "**Fee**"). The Fee is payable in cash to the account designated by Morgan Stanley & Co. LLC on behalf of the Underwriters. The Company shall pay the Fee to the relevant Underwriter promptly, but in no event later than the third business day following such sale.

3. *Conditions to the Underwriters' Obligations.* The several obligations of the Underwriters are subject to the following further conditions:

(a) Subsequent to the execution and delivery of this Agreement and prior to the Closing Date:

(i) there shall not have occurred any downgrading, nor shall any notice have been given of any intended or potential downgrading or of any review for a possible change that does not indicate the direction of the possible change, in the rating accorded any of the securities of the Company or any of its subsidiaries by any "nationally recognized statistical rating organization," as such term is defined in Section 3(a)(62) of the Exchange Act; and

(ii) there shall not have occurred any change, or any development involving a prospective change, in the condition, financial or otherwise, or in the earnings, business or operations of the Company and its subsidiaries, taken as a whole, from that set forth in the Time of Sale Prospectus that, in your judgment, is material and adverse and that makes it, in your judgment, impracticable to market the Shares on the terms and in the manner contemplated in the Time of Sale Prospectus.

(b) The Underwriters shall have received on the Closing Date a certificate, dated the Closing Date and signed by an executive officer of the Company to the effect set forth in Section 3(a)(i) above and to the effect that the representations and warranties of the Company contained in this Agreement are true and correct as of the Closing Date and that the Company has complied with all of the agreements and satisfied all of the conditions on its part to be performed or satisfied hereunder on or before the Closing Date.

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The officer signing and delivering such certificate may rely upon the best of his or her knowledge as to proceedings threatened.

(c) The Underwriters shall have received on the Closing Date an opinion and negative assurance letter of Sidley Austin, LLP (“**Sidley**”), outside counsel for the Company dated the Closing Date and in form and substance satisfactory to the Underwriters.

(d) The Underwriters shall have received on the Closing Date an opinion and negative assurance letter of Davis Polk & Wardwell LLP, counsel for the Underwriters, dated the Closing Date, in form and substance satisfactory to the Underwriters.

The opinion and negative assurance letter of Sidley described in Section 3(c) above shall be rendered to the Underwriters at the request of the Company, as the case may be, and shall so state therein. With respect to Sections 3(c) and (d) above, Sidley and Davis Polk & Wardwell LLP may state that their opinions and beliefs are based upon their participation in the preparation of the Registration Statement, the Time of Sale Prospectus, the Prospectus and any amendments or supplements thereto and review and discussion of the contents thereof, but are without independent check or verification, except as specified.

(e) The Underwriters shall have received, on each of the date hereof and the Closing Date, a letter dated the date hereof or the Closing Date, as the case may be, in form and substance satisfactory to the Underwriters, from Ernst & Young LLP, independent registered public accounting firm, containing statements and information of the type ordinarily included in accountants’ “comfort letters” to Underwriters with respect to the financial statements and certain financial information contained in the Registration Statement, the Time of Sale Prospectus and the Prospectus; *provided* that the letter delivered on the Closing Date shall use a “cut-off date” not earlier than the date hereof.

(f) A certificate of the Secretary of the Company in form and substance reasonably acceptable to the Underwriters and certificates of public officials for purposes of supporting the opinions described in Sections 3(c) and 3(d) hereof.

(g) The Underwriters shall have received all the Shares to be sold hereunder prior to the Closing Date.

4. *Covenants of the Company.* The Company covenants with each Underwriter as follows:

(a) To furnish to you, at your request and without charge, a signed copy of the Registration Statement (including exhibits thereto and documents incorporated by reference therein) and to deliver to each of the Underwriters during the period mentioned in Section 4(e) or 4(f) below, as many copies of the Time of Sale Prospectus, the Prospectus, any documents incorporated therein by reference and any supplements and amendments thereto or to the Registration Statement as you may reasonably request.

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(b) Before amending or supplementing the Registration Statement, the Time of Sale Prospectus or the Prospectus, to furnish to you a copy of each such proposed amendment or supplement and not to file any such proposed amendment or supplement to which you reasonably object.

(c) To furnish to you a copy of each proposed free writing prospectus to be prepared by or on behalf of, used by, or referred to by the Company and not to use or refer to any proposed free writing prospectus to which you reasonably object.

(d) Not to take any action that would result in an Underwriter or the Company being required to file with the Commission pursuant to Rule 433(d) under the Securities Act a free writing prospectus prepared by or on behalf of the Underwriter that the Underwriter otherwise would not have been required to file thereunder.

(e) If the Time of Sale Prospectus is being used to solicit offers to buy the Shares at a time when the Prospectus is not yet available to prospective purchasers and any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Time of Sale Prospectus in order to make the statements therein, in the light of the circumstances, not misleading, or if any event shall occur or condition exist as a result of which the Time of Sale Prospectus conflicts with the information contained in the Registration Statement then on file, or if, in the opinion of counsel for the Underwriters, it is necessary to amend or supplement the Time of Sale Prospectus to comply with applicable law, forthwith to prepare, file with the Commission and furnish, at its own expense, to the Underwriters and to any dealer upon request, either amendments or supplements to the Time of Sale Prospectus so that the statements in the Time of Sale Prospectus as so amended or supplemented will not, in the light of the circumstances when the Time of Sale Prospectus is delivered to a prospective purchaser, be misleading or so that the Time of Sale Prospectus, as amended or supplemented, will no longer conflict with the Registration Statement, or so that the Time of Sale Prospectus, as amended or supplemented, will comply with applicable law.

(f) If, during such period after the first date of the public offering of the Shares as in the opinion of counsel for the Underwriters the Prospectus (or in lieu thereof the notice referred to in Rule 173(a) of the Securities Act) is required by law to be delivered in connection with sales by an Underwriter or dealer, any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Prospectus in order to make the statements therein, in the light of the circumstances when the Prospectus (or in lieu thereof the notice referred to in Rule 173(a) of the Securities Act) is delivered to a purchaser, not misleading, or if, in the opinion of counsel for the Underwriters, it is necessary to amend or supplement the Prospectus to comply with applicable law, forthwith to prepare, file with the Commission and furnish, at its own expense, to the Underwriters and to any other dealers upon request, either amendments or supplements to the Prospectus so that the statements in the Prospectus

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as so amended or supplemented will not, in the light of the circumstances when the Prospectus (or in lieu thereof the notice referred to in Rule 173(a) of the Securities Act) is delivered to a purchaser, be misleading or so that the Prospectus, as amended or supplemented, will comply with applicable law.

(g) To endeavor to qualify the Shares for offer and sale under the securities or Blue Sky laws of such jurisdictions as you shall reasonably request; *provided* that in no event shall the Company be obligated to qualify to do business in any jurisdiction where it is not now so qualified or to take any action that would subject it to service of process in suits, other than those arising out of the offering or sale of the Shares, or taxation in any jurisdiction where it is not now so subject.

(h) To make generally available to the Company's security holders and to you as soon as practicable an earning statement covering a period of at least twelve months beginning with the first fiscal quarter of the Company occurring after the date of this Agreement which shall satisfy the provisions of Section 11(a) of the Securities Act and the rules and regulations of the Commission thereunder.

(i) Whether or not the transactions contemplated in this Agreement are consummated or this Agreement is terminated, to pay or cause to be paid all expenses incident to the performance of its obligations under this Agreement, including: (i) the fees, disbursements and expenses of the Company's counsel and the Company's accountants in connection with the registration of the Shares under the Securities Act and all other fees or expenses in connection with the preparation and filing of the Registration Statement, any preliminary prospectus, the Time of Sale Prospectus, the Prospectus, any free writing prospectus prepared by or on behalf of, used by, or referred to by the Company and amendments and supplements to any of the foregoing, including the filing fees payable to the Commission relating to the Shares (within the time required by Rule 456(b)(1), if applicable), all printing costs associated therewith, and the mailing and delivering of copies thereof to the Underwriters and dealers, in the quantities hereinabove specified, (ii) all expenses in connection with the qualification of the Shares for offer and sale under state securities laws as provided in Section 4(g) hereof, including filing fees and the reasonable fees and disbursements of counsel for the Underwriters in connection with such qualification, (iii) the costs and charges of any transfer agent, registrar or depository, (iv) the document production charges and expenses associated with printing this Agreement, and (v) all other costs and expenses incident to the performance of the obligations of the Company hereunder for which provision is not otherwise made in this Section.

(j) If requested by the Underwriters, to prepare a final term sheet relating to the offering of the Shares, containing only information that describes the final terms of the offering in a form consented to by the Underwriters, and to file such final term sheet within the period required by Rule 433(d)(5)(ii) under the Securities Act following the date the final terms have been established for the offering of the Shares.

5. *Covenants of the Underwriters.* Each Underwriter severally covenants with the Company not to take any action that would result in the

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Company being required to file with the Commission under Rule 433(d) a free writing prospectus prepared by or on behalf of such Underwriter that otherwise would not be required to be filed by the Company thereunder, but for the action of the Underwriter.

6. *Indemnity and Contribution.* (a) The Company agrees to indemnify and hold harmless each Underwriter, its directors, officers, employees and agents, each person, if any, who controls any Underwriter within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, and each affiliate of any Underwriter within the meaning of Rule 405 under the Securities Act from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) caused by any untrue statement or alleged untrue statement of a material fact contained in (i) the Registration Statement or any amendment thereof, 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 such untrue statement or omission or alleged untrue statement or omission based upon the Underwriter Information and (ii) any preliminary prospectus, the Time of Sale Prospectus or any amendment or supplement thereto, any issuer free writing prospectus as defined in Rule 433(h) under the Securities Act, any Company information that the Company has filed, or is required to file, pursuant to Rule 433(d) under the Securities Act, any road show as defined in Rule 433(h) under the Securities Act (a "road show"), or the Prospectus or any amendment or supplement 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, in the light of the circumstances under which they were made, not misleading, except insofar as such losses, claims, damages or liabilities are caused by any such untrue statement or omission or alleged untrue statement or omission based upon the Underwriter Information.

(b) Each Underwriter agrees, severally and not jointly, to indemnify and hold harmless the Company, the directors of the Company, the officers of the Company who sign the Registration Statement and each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act to the same extent as the foregoing indemnity from the Company to such Underwriter, but only with reference to the Underwriter Information.

(c) In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to Section 6(a) or 6(b) such person (the "**indemnified party**") shall promptly notify the person against whom such indemnity may be sought (the "**indemnifying party**") in writing and the indemnifying party, upon request of the indemnified party, shall retain counsel chosen by the indemnifying party reasonably satisfactory to the indemnified party to represent the indemnified party and any others the indemnifying party may designate in such proceeding and shall pay the reasonable fees and

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disbursements of such counsel related to such proceeding. In any such proceeding, any indemnified party 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 party unless (i) the indemnifying party and the indemnified party shall have mutually agreed in writing to the retention of such counsel or (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party 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 party shall not, in respect of the legal expenses of any indemnified party in connection with any proceeding or related proceedings 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 such indemnified parties and that all such fees and expenses shall be reimbursed as they are incurred. Such firm shall be designated in writing by Morgan Stanley & Co. LLC, in the case of parties indemnified pursuant to Section 6(a), and by the Company, in the case of parties indemnified pursuant to Section 6(b). The indemnifying party 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 party agrees to indemnify the indemnified party from and against any loss or liability by reason of such settlement or judgment. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding.

(d) To the extent the indemnification provided for in Section 6(a) or 6(b) is unavailable to an indemnified party or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then each indemnifying party under such paragraph, in lieu of indemnifying such indemnified party thereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities in such proportion as is appropriate to reflect not only the relative benefits referred to in clause **Error! Reference source not found.** above but also the relative fault of the indemnifying party or parties on the one hand and of the indemnified party or parties on the other hand 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 fault of the indemnifying party or parties on the one hand and the indemnified party or parties on the other hand 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 Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Underwriters' respective obligations to contribute pursuant to this Section 6 are several in proportion to the respective number of Shares they have offered and sold hereunder and not joint.

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(e) The Company, and the Underwriters agree that it would not be just or equitable if contribution pursuant to this Section 6 were determined *by pro rata* allocation (even if the Underwriters 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 Section 6(d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages and liabilities referred to in Section 6(d) shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 6, no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Shares underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages that such Underwriter 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 remedies provided for in this Section 6 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.

(f) The indemnity and contribution provisions contained in this Section 6 and the representations, warranties and other statements of the Company contained 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 Underwriter, any person controlling any Underwriter or any affiliate of any Underwriter, or by or on behalf of the Company, its officers or directors or any person controlling the Company and (iii) delivery of any of the Shares to purchasers by the Underwriters.

7. *Termination.* The Underwriters may terminate this Agreement by notice given by you to the Company, if after the execution and delivery of this Agreement and prior to the Closing Date (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 or The Nasdaq Global Market, (ii) trading of any securities of the Company shall have been suspended on any exchange or in any over-the-counter market, (iii) a material disruption in securities settlement, payment or clearance services in the United States shall have occurred, (iv) any moratorium on commercial banking activities shall have been declared by Federal or New York State authorities or (v) there shall have occurred any outbreak or escalation of hostilities, or any change in financial markets or any calamity or crisis that, in your judgment, is material and adverse and which, singly or together with any other event specified in this clause (v), makes it, in your judgment, impracticable or inadvisable to proceed with the offer, sale or delivery of the Shares on the terms and in the manner contemplated in the Time of Sale Prospectus or the Prospectus.

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8. *Effectiveness.* This Agreement shall become effective upon the execution and delivery hereof by the parties hereto.

If this Agreement shall be terminated by the Underwriters, or any of them, 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, the Company will reimburse the Underwriters or such Underwriters as have so terminated this Agreement with respect to themselves, severally, for all documented out-of-pocket expenses (including the fees and disbursements of their counsel) reasonably incurred by such Underwriters in connection with this Agreement or the offering contemplated hereunder.

9. *Entire Agreement.* (a) This Agreement, together with any contemporaneous written agreements and any prior written agreements (to the extent not superseded by this Agreement) that relate to the offering of the Shares, represents the entire agreement between the Company and the Underwriters with respect to the preparation of any preliminary prospectus, the Time of Sale Prospectus, the Prospectus and the conduct of the offering.

(b) The Company acknowledges that in connection with the offering of the Shares: (i) the Underwriters have acted at arm's length, are not agents of, and owe no fiduciary duties to, the Company or any other person, (ii) the Underwriters owe the Company only those duties and obligations set forth in this Agreement and prior written agreements (to the extent not superseded by this Agreement), if any, and (iii) the Underwriters may have interests that differ from those of the Company. The Company waives to the full extent permitted by applicable law any claims it may have against the Underwriters arising from an alleged breach of fiduciary duty in connection with the offering of the Shares.

10. *Counterparts.* This Agreement may be signed in two or more counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

11. *Applicable Law.* This Agreement, and any claim, controversy or dispute arising under or related to this Agreement, shall be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to its conflicts of laws principles.

12. *Submission to Jurisdiction.* The Company irrevocably submits to the non-exclusive jurisdiction of any New York State or United States Federal court sitting in The City of New York over any suit, action or proceeding arising out of or relating to this Agreement, the Prospectus, the Registration Statement or the offering of the Shares (each, a "**Related Proceeding**"). The Company irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any Related Proceeding brought in such a court and any claim that any such Related Proceeding brought in such a court has been brought in an inconvenient forum. To the extent that the

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Company has or hereafter may acquire any immunity (on the grounds of sovereignty or otherwise) from the jurisdiction of any court or from any legal process with respect to itself or its property, the Company irrevocably waives, to the fullest extent permitted by law, such immunity in respect of any such suit, action or proceeding.

13. *Headings.* The headings of the sections of this Agreement have been inserted for convenience of reference only and shall not be deemed a part of this Agreement.

14. *Notices.* All communications hereunder shall be in writing and effective only upon receipt and if to the Underwriters shall be delivered, mailed or sent to Morgan Stanley & Co. LLC, Attention: Equity Syndicate Desk, with a copy to the Legal Department, 1585 Broadway, New York, New York 10036; and if to the Company, shall be delivered, mailed or sent to 2101 Webster Street, Suite 1650, Oakland, CA 94612, Attention: General Counsel with a copy to Sidley Austin LLP, 1001 Page Mill Road, Building 1, Palo Alto, CA 94304, Attention: Martin Wellington.

[Signature page follows.]

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Very truly yours,

**PANDORA MEDIA, INC.**

By: /s/ Jeremy Liegl

Name: Jeremy Liegl

Title: Assistant Secretary

[Signature Page to Underwriting Agreement]

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Accepted as of the date hereof

By: MORGAN STANLEY & CO. LLC

By: /s/ Rohan Mehra

Name: Rohan Mehra

Title: Vice President

[Signature Page to the Underwriting Agreement]

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**SCHEDULE I**

<b>Underwriter</b>	<b>Number of Shares to Be Offered</b>
Morgan Stanley & Co. LLC	<u>6,373,725</u>
Total:	<u><u>6,373,725</u></u>

**Time of Sale Prospectus**

1. Prospectus dated May 24, 2018 relating to the Shelf Securities
2. Preliminary Prospectus dated May 24, 2018 relating to the Shares
3. Orally communicated pricing information:  
The public offering price is, as to each investor, the price paid by such investor

**SIDLEY**SIDLEY AUSTIN LLP  
1001 PAGE MILL ROAD  
BUILDING 1  
PALO ALTO, CA 94304  
+1 650 565 7000  
+1 650 565 7100 FAX

AMERICA x ASIA PACIFIC x EUROPE

May 29, 2018

Pandora Media, Inc.  
2101 Webster Street, Suite 1650  
Oakland, CA 94612

Re: Registration Statement on Form S-3

Ladies and Gentlemen:

We refer to the Registration Statement on Form S-3, File No. 333-225175 (the "Registration Statement"), filed by Pandora Media, Inc., a Delaware corporation (the "Company"), with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "Securities Act"), which Registration Statement became effective upon filing pursuant to Rule 462(e) under the Securities Act. Pursuant to the Registration Statement and the Underwriting Agreement dated May 24, 2018 (the "Underwriting Agreement") between the Company and Morgan Stanley & Co. LLC, as underwriter (the "Underwriter"), the Underwriter borrowed and sold 6,373,275 issued and outstanding shares of the Company's common stock (the "Shares"), par value \$0.0001 per share, at the request of the Company in order to facilitate hedging transactions by holders of certain convertible debt securities of the Company who had exchanged such convertible debt securities of the Company for convertible debt securities of the Company of a different series.

This opinion letter is being delivered in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act.

We have examined the Registration Statement, the Underwriting Agreement, the Company's certificate of incorporation and the resolutions adopted by the board of directors of the Company (the "Board") and the audit committee thereof, having been delegated authority by the Board, relating to the Registration Statement. We have also examined originals, or copies of originals certified to our satisfaction, of such agreements, documents, certificates and statements of the Company and other corporate documents and instruments, and have examined such questions of law, as we have considered relevant and necessary as a basis for this opinion letter. We have assumed the authenticity of all documents submitted to us as originals, the genuineness of all signatures, the legal capacity of all persons and the conformity with the original documents of any copies thereof submitted to us for examination. As to facts relevant to the opinions expressed herein, we have relied without independent investigation or verification upon, and assumed the accuracy and completeness of, certificates, letters and oral and written statements and representations of public officials and officers and other representatives of the Company.

Based on and subject to the foregoing and the other limitations, qualifications and assumptions set forth herein, we are of the opinion that the Shares have been duly authorized by the Company and are validly issued, fully paid and non-assessable.

This opinion letter is limited to the General Corporation Law of the State of Delaware. We express no opinion as to the laws, rules or regulations of any other jurisdiction, including, without limitation, the federal laws of the United States of America or any state securities or blue sky laws.

We hereby consent to the filing of this opinion letter as an Exhibit to the Registration Statement and to all references to our Firm included in or made a part of the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act.

Very truly yours

/s/ Sidley Austin LLP



### **Pandora Announces Convertible Note Exchange Transactions**

- **Transaction extends maturity of \$192.9 million aggregate principal amount of senior convertible notes from 2020 to 2023**
  - **Approximately 6,373,275 borrowed shares of Pandora common stock to be sold short in registered offering to facilitate hedging transactions related to the exchange.**

**OAKLAND, Calif.** – May 24, 2018 - Pandora (NYSE: P) today announced that it has agreed with certain holders of its existing 1.75% senior convertible notes due 2020 (the “2020 Notes”) to exchange an aggregate of \$192.9 million principal amount of 2020 Notes for a new series of 1.75% senior convertible notes due 2023 (the “New Notes”), as described more fully below (the “Exchange”). The Exchange is being undertaken to extend the maturity of a portion of the 2020 Notes. After completion of the Exchange, \$152.1 million aggregate principal amount of 2020 Notes will remain outstanding, and \$192.9 million aggregate principal amount of New Notes will be outstanding.

#### *Convertible Note Exchange*

Pandora has entered into privately negotiated agreements with a limited number of holders of 2020 Notes to exchange an aggregate of approximately \$192.9 million principal amount of 2020 Notes for an equal principal amount of New Notes. The Exchange is expected to close on or about June 1, 2018, subject to customary closing conditions.

The New Notes will be senior unsecured obligations and pay interest semiannually in arrears at a rate of 1.75% per annum on June 1 and December 1 of each year, beginning on December 1, 2018. Prior to the close of business on the business day immediately preceding July 1, 2023, the New Notes will be convertible at the option of the holder into cash, shares of the company’s common stock or a combination thereof, at the company’s election, only upon satisfaction of certain conditions and during certain periods and thereafter at any time until the close of business on the second scheduled trading day immediately preceding the maturity date. The initial conversion rate per \$1,000 principal amount of the New Notes will be established based on a 35% premium to the price at which shares of the company’s common stock are sold to the underwriter in the underwritten offering of borrowed shares by or on behalf of certain of the exchanging noteholders, described below. The New Notes will mature on December 1, 2023, unless earlier converted, repurchased or redeemed.

This press release shall not constitute an offer to sell or a solicitation of an offer to buy the New Notes, the company’s common stock or any other securities, and shall not constitute an offer, solicitation or sale in any state or jurisdiction in which such an offer, solicitation or sale would be unlawful. The offer and sale of the New Notes and any shares of the company’s common stock issuable upon conversion have not been registered under the Securities Act or any state securities laws. The New Notes may not be offered or sold in the United States except pursuant to an exemption from the registration requirements of the Securities Act and any applicable state securities laws.

#### *Registered Block Trade*

In connection with the Exchange, Pandora announced an underwritten offering (the “Offering”) of approximately 6,373,275 borrowed shares of its common stock, with Morgan Stanley & Co. LLC acting as sole bookrunner. The

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shares of common stock to be sold in the Offering are being borrowed from third parties and sold by Morgan Stanley & Co. LLC (i) as underwriter and principal on behalf of certain holders participating in the Exchange and/or (ii) on behalf of itself and/or its affiliates, in each case, to facilitate the establishment of short positions by such exchanging holders relating to Pandora's common stock to hedge their investments in the New Notes. With respect to any shares of Pandora's common stock sold short by Morgan Stanley & Co. LLC, on behalf of itself and/or its affiliates, in the Offering, Pandora expects Morgan Stanley & Co. LLC and/or its affiliates will concurrently enter into privately negotiated transactions relating to Pandora's common stock in an equal notional amount (including derivative transactions) with certain exchanging holders to facilitate hedging of the New Notes by such holders. Pandora will not receive any proceeds from the Offering, and as the Offering is based on borrowed shares, the Offering will not increase the amount of outstanding shares of its common stock.

The Offering will be made only by means of an effective shelf registration statement that has previously been filed with the Securities and Exchange Commission (the "SEC"). Any offer, or solicitation to buy, if at all, will be made solely by means of a prospectus and related prospectus supplement filed with the SEC. You may obtain these documents without charge from the SEC at [www.sec.gov](http://www.sec.gov). Alternatively, you may request copies of these materials from Morgan Stanley & Co. LLC, c/o Prospectus Department, 180 Varick Street, 2nd Floor, New York, New York 10014 or by email at [prospectus@morganstanley.com](mailto:prospectus@morganstanley.com).

This announcement is neither an offer to sell nor a solicitation of an offer to buy any of these securities and shall not constitute an offer, solicitation, or sale in any jurisdiction in which such offer, solicitation, or sale is unlawful.

#### **"SAFE HARBOR" STATEMENT.**

This press release contains forward-looking statements within the meaning established by the Private Securities Litigation Reform Act of 1995, including, but not limited to, statements regarding the completion of Pandora's convertible note exchange and its underwritten offering of borrowed shares of its common stock. There are no assurances that these proposed transactions will be completed, and they may not be completed due to certain factors, including, but not limited to general economic and market conditions.

#### **ABOUT PANDORA**

Pandora is one of the world's most powerful music discovery platforms, offering a personalized experience for each of its listeners wherever and whenever they want to listen to music—whether through earbuds, car speakers or home audio/video equipment. Pandora is available as an ad-supported service, a radio subscription service called Pandora Plus and an on-demand subscription service called Pandora Premium. When a listener enters a single song, artist, comedian or genre to start a station, the Pandora service instantly generates a station that plays music or comedy it thinks that listener will enjoy. Powered by its proprietary personalization technologies, including the Music Genome Project and its playlist generating algorithms, its service then further tailors the listener experience based on listener reactions to the recordings it picks. In addition to incorporating its music selection technology, Pandora Premium gives listeners the ability to search and play any track or album as well as offering unique playlist features tailored to each listener's distinct preferences. Founded by musicians, Pandora also empowers artists with valuable data and tools to help grow their careers and connect with their fans.

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### Pandora Prices Convertible Note Exchange Transactions

- Transaction extends maturity of \$192.9 million aggregate principal amount of senior convertible notes from 2020 to 2023.
- Initial conversion rate of new issued notes set at 104.4768 shares of common stock per \$1,000 note; equivalent to approximately \$9.57 per share of common stock.
  - 6,373,275 borrowed shares of Pandora common stock sold short in registered offering to facilitate hedging transactions related to the exchange.

**OAKLAND, Calif.** – May 24, 2018 - Pandora (NYSE: P) today announced that in accordance with its previously announced agreements with certain holders of its existing 1.75% senior convertible notes due 2020 (the “2020 Notes”) to exchange an aggregate of approximately \$192.9 million principal amount of 2020 Notes for a new series of 1.75% senior convertible notes due 2023 (the “New Notes”), as described more fully below (the “Exchange”), the conversion rate for the New Notes has been set at 104.4768 shares of common stock per \$1,000 note, which is equivalent to an initial conversion price of approximately \$9.57 per share of common stock (subject to adjustment upon the occurrence of certain events). The Exchange is being undertaken to extend the maturity of a portion of the 2020 Notes. After completion of the Exchange, \$152.1 million aggregate principal amount of 2020 Notes will remain outstanding, and \$192.9 million aggregate principal amount of New Notes will be outstanding.

#### *Convertible Note Exchange*

Pandora has entered into privately negotiated agreements with a limited number of holders of 2020 Notes to exchange an aggregate of approximately \$192.9 million principal amount of 2020 Notes for an equal principal amount of New Notes. The Exchange is expected to close on or about June 1, 2018, subject to customary closing conditions.

The New Notes will be senior unsecured obligations and pay interest semiannually in arrears at a rate of 1.75% per annum on June 1 and December 1 of each year, beginning on December 1, 2018. Prior to the close of business on the business day immediately preceding July 1, 2023, the New Notes will be convertible at the option of the holder into cash, shares of the company’s common stock or a combination thereof, at the company’s election, only upon satisfaction of certain conditions and during certain periods and thereafter at any time until the close of business on the second scheduled trading day immediately preceding the maturity date. The New Notes will mature on December 1, 2023, unless earlier converted, repurchased or redeemed.

This press release shall not constitute an offer to sell or a solicitation of an offer to buy the New Notes, the company’s common stock or any other securities, and shall not constitute an offer, solicitation or sale in any state or jurisdiction in which such an offer, solicitation or sale would be unlawful. The offer and sale of the New Notes and any shares of the company’s common stock issuable upon conversion have not been registered under the Securities Act or any state securities laws. The New Notes may not be offered or sold in the United States except pursuant to an exemption from the registration requirements of the Securities Act and any applicable state securities laws.

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*Registered Block Trade*

In connection with the Exchange, Pandora announced that the underwritten offering (the “Offering”) of 6,373,275 borrowed shares of its common stock, with Morgan Stanley & Co. LLC acting as sole bookrunner, was completed at a price per share of \$7.09. The shares of common stock sold in the Offering were borrowed from third parties and sold by Morgan Stanley & Co. LLC (i) as underwriter and principal on behalf of certain holders participating in the Exchange and/or (ii) on behalf of itself and/or its affiliates, in each case, to facilitate the establishment of short positions by such exchanging holders relating to Pandora’s common stock to hedge their investments in the New Notes. With respect to any shares of Pandora’s common stock sold short by Morgan Stanley & Co. LLC, on behalf of itself and/or its affiliates, in the Offering, Pandora has been advised that Morgan Stanley & Co. LLC and/or its affiliates are concurrently entering into privately negotiated transactions relating to Pandora’s common stock in an equal notional amount (including derivative transactions) with certain exchanging holders to facilitate hedging of the New Notes by such holders. Pandora will not receive any proceeds from the Offering, and as the Offering is based on borrowed shares, the Offering will not increase the amount of outstanding shares of its common stock.

The Offering is being made only by means of an effective shelf registration statement that has previously been filed with the Securities and Exchange Commission (the “SEC”). You may obtain a copy of the final prospectus and prospectus supplement in connection with the offering without charge from the SEC at [www.sec.gov](http://www.sec.gov). Alternatively, you may request copies of these materials from Morgan Stanley & Co. LLC, c/o Prospectus Department, 180 Varick Street, 2nd Floor, New York, New York 10014 or by email at [prospectus@morganstanley.com](mailto:prospectus@morganstanley.com).

This announcement is neither an offer to sell nor a solicitation of an offer to buy any of these securities and shall not constitute an offer, solicitation, or sale in any jurisdiction in which such offer, solicitation, or sale is unlawful.

**“SAFE HARBOR” STATEMENT.**

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