

Edgar Filing: HEXCEL CORP /DE/ - Form SC 13D/A

HEXCEL CORP /DE/  
Form SC 13D/A  
December 20, 2002

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

SCHEDULE 13D

Under the Securities Exchange Act of 1934

(Amendment No. 1)\*

Hexcel Corporation

-----  
(Name of Issuer)

Common Stock (Par Value \$ 0.01 Per Share)

-----  
(Title of Class of Securities)

428290 10 0

-----  
(CUSIP Number)

Robert C. Schwenkel, Esq.  
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85 Broad Street  
New York, NY 10004  
(212) 902-1000

-----  
(Name, Address and Telephone Number of Persons Authorized to  
Receive Notices and Communications)

December 18, 2002

-----  
(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition which is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(e), 13d-1(f) or 13d-1(g), check the following box .

Note. Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Rule 13d-7 for other parties to whom copies are to be sent.

\* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

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1. NAME OF REPORTING PERSON  
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON  
  
THE GOLDMAN SACHS GROUP, INC.
2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) [ ]  
(b) [ ]
3. SEC USE ONLY
4. SOURCE OF FUNDS  
  
AF,00
5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS  
REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) [ ]
6. CITIZENSHIP OR PLACE OF ORGANIZATION  
  
DELAWARE
- NUMBER OF 7. SOLE VOTING POWER  
SHARES 32,002
- BENEFICIALLY 8. SHARED VOTING POWER  
OWNED BY EACH 14,525,000
- REPORTING 9. SOLE DISPOSITIVE POWER  
PERSON WITH 32,002
10. SHARED DISPOSITIVE POWER  
14,525,000
11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON  
14,557,002
12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) [ ]  
EXCLUDES CERTAIN SHARES
13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)  
37.9%
14. TYPE OF REPORTING PERSON  
HC-CO

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1. NAME OF REPORTING PERSON  
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON  
  
GOLDMAN, SACHS & CO.
2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) [ ]  
(b) [ ]
3. SEC USE ONLY
4. SOURCE OF FUNDS  
  
AF
5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS  
REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) [X]
6. CITIZENSHIP OR PLACE OF ORGANIZATION  
  
NEW YORK
- NUMBER OF 7. SOLE VOTING POWER  
SHARES 0
- BENEFICIALLY 8. SHARED VOTING POWER  
OWNED BY EACH 14,525,000
- REPORTING 9. SOLE DISPOSITIVE POWER  
PERSON WITH 0
10. SHARED DISPOSITIVE POWER  
14,525,000
11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON  
14,525,000
12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) [ ]  
EXCLUDES CERTAIN SHARES
13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)  
37.8%
14. TYPE OF REPORTING PERSON  
BD-PN-IA

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1. NAME OF REPORTING PERSON  
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON  
  
GS ADVISORS 2000, L.L.C.
2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) [ ]  
(b) [ ]
3. SEC USE ONLY
4. SOURCE OF FUNDS  
  
AF
5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS  
REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) [ ]
6. CITIZENSHIP OR PLACE OF ORGANIZATION  
  
DELAWARE
- |               |                              |
|---------------|------------------------------|
| NUMBER OF     | 7. SOLE VOTING POWER         |
| SHARES        | 0                            |
| BENEFICIALLY  | 8. SHARED VOTING POWER       |
| OWNED BY EACH | 11,278,155                   |
| REPORTING     | 9. SOLE DISPOSITIVE POWER    |
| PERSON WITH   | 0                            |
|               | 10. SHARED DISPOSITIVE POWER |
|               | 11,278,155                   |
11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON  
  
11,278,155
12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) [ ]  
EXCLUDES CERTAIN SHARES
13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)  
  
29.4%
14. TYPE OF REPORTING PERSON  
  
OO

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1. NAME OF REPORTING PERSON  
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

GOLDMAN, SACHS & CO. oHG

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) [ ]  
(b) [ ]

3. SEC USE ONLY

4. SOURCE OF FUNDS

AF

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS  
REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) [ ]

6. CITIZENSHIP OR PLACE OF ORGANIZATION

GERMANY

NUMBER OF 7. SOLE VOTING POWER

SHARES 0

BENEFICIALLY 8. SHARED VOTING POWER

OWNED BY EACH 345,764

REPORTING 9. SOLE DISPOSITIVE POWER

PERSON WITH 0

10. SHARED DISPOSITIVE POWER

345,764

11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

345,764

12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) [ ]  
EXCLUDES CERTAIN SHARES

13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

0.9%

14. TYPE OF REPORTING PERSON

PN

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1. NAME OF REPORTING PERSON  
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

GOLDMAN, SACHS MANAGEMENT GP GmbH

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) [ ]  
(b) [ ]

3. SEC USE ONLY

4. SOURCE OF FUNDS

AF

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS  
REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) [ ]

6. CITIZENSHIP OR PLACE OF ORGANIZATION

GERMANY

- |               |                           |
|---------------|---------------------------|
| NUMBER OF     | 7. SOLE VOTING POWER      |
| SHARES        | 0                         |
| BENEFICIALLY  | 8. SHARED VOTING POWER    |
| OWNED BY EACH | 345,764                   |
| REPORTING     | 9. SOLE DISPOSITIVE POWER |
| PERSON WITH   | 0                         |

10. SHARED DISPOSITIVE POWER

345,764

11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

345,764

12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11)  
EXCLUDES CERTAIN SHARES [ ]

13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

0.9%

14. TYPE OF REPORTING PERSON

CO

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1. NAME OF REPORTING PERSON  
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON  
  
GS EMPLOYEE FUNDS 2000 GP, L.L.C.
2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) [ ]  
(b) [ ]
3. SEC USE ONLY
4. SOURCE OF FUNDS  
  
AF
5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) [ ]
6. CITIZENSHIP OR PLACE OF ORGANIZATION  
  
DELAWARE
- |               |                              |
|---------------|------------------------------|
| NUMBER OF     | 7. SOLE VOTING POWER         |
| SHARES        | 0                            |
| BENEFICIALLY  | 8. SHARED VOTING POWER       |
| OWNED BY EACH | 2,628,354                    |
| REPORTING     | 9. SOLE DISPOSITIVE POWER    |
| PERSON WITH   | 0                            |
|               | 10. SHARED DISPOSITIVE POWER |
|               | 2,628,354                    |
11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON  
  
2,628,354
12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES [ ]
13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)  
  
6.8%
14. TYPE OF REPORTING PERSON  
  
OO

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1. NAME OF REPORTING PERSON  
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON  
  
STONE STREET 2000, L.L.C.
2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) [ ]  
(b) [ ]
3. SEC USE ONLY
4. SOURCE OF FUNDS  
  
AF
5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) [ ]
6. CITIZENSHIP OR PLACE OF ORGANIZATION  
  
DELAWARE
- |               |                              |
|---------------|------------------------------|
| NUMBER OF     | 7. SOLE VOTING POWER         |
| SHARES        | 0                            |
| BENEFICIALLY  | 8. SHARED VOTING POWER       |
| OWNED BY EACH | 272,727                      |
| REPORTING     | 9. SOLE DISPOSITIVE POWER    |
| PERSON WITH   | 0                            |
|               | 10. SHARED DISPOSITIVE POWER |
|               | 272,727                      |
11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON  
  
272,727
12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES [ ]
13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)  
  
0.7%
14. TYPE OF REPORTING PERSON  
  
OO

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1. NAME OF REPORTING PERSON



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S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

GS CAPITAL PARTNERS 2000, L.P.

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) [ ]  
(b) [ ]

3. SEC USE ONLY

4. SOURCE OF FUNDS

WC

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) [ ]

6. CITIZENSHIP OR PLACE OF ORGANIZATION

DELAWARE

NUMBER OF 7. SOLE VOTING POWER

SHARES 0

BENEFICIALLY 8. SHARED VOTING POWER

OWNED BY EACH 8,272,312

REPORTING 9. SOLE DISPOSITIVE POWER

PERSON WITH 0

10. SHARED DISPOSITIVE POWER

8,272,312

11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

8,272,312

12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES [ ]

13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

21.5%

14. TYPE OF REPORTING PERSON

PN

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1. NAME OF REPORTING PERSON

S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

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GS CAPITAL PARTNERS 2000 OFFSHORE, L.P.

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) [ ]  
(b) [ ]

3. SEC USE ONLY

4. SOURCE OF FUNDS

WC

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS  
REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) [ ]

6. CITIZENSHIP OR PLACE OF ORGANIZATION

CAYMAN ISLANDS

NUMBER OF 7. SOLE VOTING POWER

SHARES 0

BENEFICIALLY 8. SHARED VOTING POWER

OWNED BY EACH 3,005,843

REPORTING 9. SOLE DISPOSITIVE POWER

PERSON WITH 0

10. SHARED DISPOSITIVE POWER

3,005,843

11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

3,005,843

12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) [ ]  
EXCLUDES CERTAIN SHARES

13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

7.8%

14. TYPE OF REPORTING PERSON

PN

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1. NAME OF REPORTING PERSON  
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

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GS CAPITAL PARTNERS 2000 GmbH & CO. BETEILIGUNGS KG

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) [ ]  
(b) [ ]

3. SEC USE ONLY

4. SOURCE OF FUNDS

WC

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) [ ]

6. CITIZENSHIP OR PLACE OF ORGANIZATION

GERMANY

- |               |                              |
|---------------|------------------------------|
| NUMBER OF     | 7. SOLE VOTING POWER         |
| SHARES        | 0                            |
| BENEFICIALLY  | 8. SHARED VOTING POWER       |
| OWNED BY EACH | 345,764                      |
| REPORTING     | 9. SOLE DISPOSITIVE POWER    |
| PERSON WITH   | 0                            |
|               | 10. SHARED DISPOSITIVE POWER |
|               | 345,764                      |

11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

345,764

12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES [ ]

13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

0.9%

14. TYPE OF REPORTING PERSON

PN

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1. NAME OF REPORTING PERSON  
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

GS CAPITAL PARTNERS 2000 EMPLOYEE FUND, L.P.

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2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) [ ]  
(b) [ ]

3. SEC USE ONLY

4. SOURCE OF FUNDS

WC

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS  
REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) [ ]

6. CITIZENSHIP OR PLACE OF ORGANIZATION

DELAWARE

NUMBER OF	7. SOLE VOTING POWER
SHARES	0
BENEFICIALLY	8. SHARED VOTING POWER
OWNED BY EACH	2,628,354
REPORTING	9. SOLE DISPOSITIVE POWER
PERSON WITH	0

10. SHARED DISPOSITIVE POWER

2,628,354

11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

2,628,354

12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) [ ]  
EXCLUDES CERTAIN SHARES

13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

6.8%

14. TYPE OF REPORTING PERSON

PN

SCHEDULE 13D

CUSIP No. 428290 10 0

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1. NAME OF REPORTING PERSON  
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

STONE STREET FUND 2000, L.P.

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2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) [ ]  
(b) [ ]

3. SEC USE ONLY

4. SOURCE OF FUNDS

WC

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS  
REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) [ ]

6. CITIZENSHIP OR PLACE OF ORGANIZATION

DELAWARE

NUMBER OF 7. SOLE VOTING POWER  
SHARES 0

BENEFICIALLY 8. SHARED VOTING POWER  
OWNED BY EACH 272,727

REPORTING 9. SOLE DISPOSITIVE POWER  
PERSON WITH 0

10. SHARED DISPOSITIVE POWER  
272,727

11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON  
272,727

12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) [ ]  
EXCLUDES CERTAIN SHARES

13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)  
0.7%

14. TYPE OF REPORTING PERSON  
PN

SCHEDULE 13D

CUSIP No. 428290 10 0

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1. NAME OF REPORTING PERSON  
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

LXH HOLDINGS CORP.

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) [ ]

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(b) [ ]

3. SEC USE ONLY

4. SOURCE OF FUNDS

AF

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) [ ]

6. CITIZENSHIP OR PLACE OF ORGANIZATION

DELAWARE

NUMBER OF SHARES 7. SOLE VOTING POWER 0

BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH 8. SHARED VOTING POWER 221,325.7

9. SOLE DISPOSITIVE POWER 0

10. SHARED DISPOSITIVE POWER 221,325.7

11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON 221,325.7

12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES [ ]

13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11) 0.6%

14. TYPE OF REPORTING PERSON CO

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1. NAME OF REPORTING PERSON S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON LXH HOLDINGS, L.P.

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) [ ] (b) [ ]

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3. SEC USE ONLY

4. SOURCE OF FUNDS

AF

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) [ ]

6. CITIZENSHIP OR PLACE OF ORGANIZATION

DELAWARE

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH

7. SOLE VOTING POWER

0

8. SHARED VOTING POWER

257,299.2

9. SOLE DISPOSITIVE POWER

0

10. SHARED DISPOSITIVE POWER

257,299.2

11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

257,299.2

12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES [ ]

13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

0.7%

14. TYPE OF REPORTING PERSON

PN

SCHEDULE 13D

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1. NAME OF REPORTING PERSON  
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

LXH, L.L.C.

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) [ ]  
(b) [ ]

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3. SEC USE ONLY

4. SOURCE OF FUNDS

AF, WC

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) [ ]

6. CITIZENSHIP OR PLACE OF ORGANIZATION

DELAWARE

NUMBER OF 7. SOLE VOTING POWER

SHARES 0

BENEFICIALLY 8. SHARED VOTING POWER

OWNED BY EACH 8,272,312

REPORTING 9. SOLE DISPOSITIVE POWER

PERSON WITH 0

10. SHARED DISPOSITIVE POWER

8,272,312

11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

8,272,312

12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES [ ]

13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

21.5%

14. TYPE OF REPORTING PERSON

OO

SCHEDULE 13D

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1. NAME OF REPORTING PERSON  
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

LXH II, L.L.C.

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) [ ]  
(b) [ ]

3. SEC USE ONLY



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4. SOURCE OF FUNDS

AF, WC

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS  
REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) [ ]

6. CITIZENSHIP OR PLACE OF ORGANIZATION

DELAWARE

NUMBER OF	7. SOLE VOTING POWER
SHARES	0
BENEFICIALLY	8. SHARED VOTING POWER
OWNED BY EACH	6,252,688
REPORTING	9. SOLE DISPOSITIVE POWER
PERSON WITH	0
	10. SHARED DISPOSITIVE POWER
	6,252,688

11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

6,252,688

12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11)  
EXCLUDES CERTAIN SHARES [ ]

13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

16.3%

14. TYPE OF REPORTING PERSON

OO

This Amendment No. 1, filed by The Goldman Sachs Group, Inc. ("GS Group"), Goldman, Sachs & Co. ("Goldman Sachs"), GS Advisors 2000, L.L.C. ("GS Advisors"), Goldman, Sachs & Co. oHG ("GS oHG"), Goldman, Sachs Management GP GmbH ("GS GmbH"), GS Employee Funds 2000 GP, L.L.C. ("GS Employee 2000"), Stone Street 2000, L.L.C. ("Stone 2000"), GS Capital Partners 2000, L.P. ("GS Capital"), GS Capital Partners 2000 Offshore, L.P. ("GS Offshore"), GS Capital Partners 2000 GmbH & Co. Beteiligungs KG ("GS Germany"), GS Capital Partners 2000 Employee Fund, L.P. ("GS Employee"), Stone Street Fund 2000, L.P. ("Stone Street" and, together with GS Capital, GS Offshore, GS Germany and GS Employee, the "Limited Partnerships"), LXH Holdings Corp. ("LXH Corp."), LXH Holdings, L.P. ("LXH L.P."), LXH, L.L.C. ("LXH"), and LXH II, L.L.C. ("LXH II" and, together with LXH, the "Original Purchasers") (GS Group, Goldman Sachs, GS Advisors, GS oHG, GS GmbH, GS

## Edgar Filing: HEXCEL CORP /DE/ - Form SC 13D/A

Employee 2000, Stone 2000, the Limited Partnerships, LXH Corp., LXH L.P., and the Original Purchasers, collectively, the "Filing Persons"), amends and supplements the Schedule 13D filed by the Filing Persons with the Securities and Exchange Commission (the "SEC") on December 28, 2000 (the "Schedule 13D"), relating to the common stock, par value \$0.01 per share (the "Common Stock"), of Hexcel Corporation, a Delaware corporation (the "Company"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Schedule 13D.(1)

### ITEM 2. IDENTITY AND BACKGROUND.

-----

The seventh and eighth sentences of the second paragraph of Item 2 are hereby amended and restated as follows:

GS oHG, a German partnership, is the sole stockholder of GS GmbH. GS GmbH, a German corporation, is the sole managing partner of GS Germany.

The eleventh sentence of the second paragraph of Item 2 is hereby amended to reflect that GS Germany is a German limited partnership, not a German civil law partnership.

The third sentence of the third paragraph of Item 2 is hereby amended and restated as follows:

The name, business address, present principal occupation or employment and citizenship of each member of the Principal Investment Area Investment Committee of Goldman Sachs, which is responsible for making all investment and management decisions for GS Advisors, GS Capital, GS Offshore, GS Germany, GS Employee and Stone Street on behalf of Goldman Sachs, are set forth in Schedule II-A-ii hereto and are incorporated herein by reference.

### ITEM 3. SOURCE AND AMOUNT OF FUNDS OR OTHER CONSIDERATION.

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Item 3 is hereby amended to add the following at the end thereof:

As more fully described in Item 4 below, on December 18, 2002 (the "Signing Date"), the Limited Partnerships and the Company entered into a stock purchase agreement (the "December Stock Purchase Agreement"), pursuant to which, upon the terms and subject to the conditions contained therein, the Limited Partnerships agreed to purchase an aggregate of 47,125 shares (the "Series A Shares") of the Company's Series A Convertible Preferred Stock, without par value (the "Series A Preferred Stock"), and 47,125 shares (the "Series B Shares" and, together with the Series A Shares, the "Shares") of the Company's Series B Convertible Preferred Stock, without par value (the "Series B Preferred Stock" and together with the Series A Preferred Stock, the "Preferred Stock"), for an aggregate purchase price of \$47,125,000. As of December 18, 2002, the Shares initially would be convertible into 18,781,162 shares of Common Stock, based on the initial conversion price of the Series A Preferred Stock and the Series B Preferred Stock of \$3.00. The transactions contemplated by the December Stock Purchase Agreement are expected to close prior to May 30, 2003. The Limited Partnerships will obtain the funds required to purchase the Shares from capital contributions made by the partners of each of the Limited Partnerships.

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1 Neither the present filing nor anything contained herein will be construed as an admission that any Filing Person constitutes a "person" for any purpose other than for compliance with Section 13(d) of the Securities Exchange Act of 1934.

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### ITEM 4. PURPOSE OF TRANSACTION.

Item 4 is hereby amended by adding the following immediately before the section entitled "Other Plans and Proposals" contained in the Schedule 13D:

#### General

The purpose of the contemplated acquisition of the Shares by the Limited Partnerships is to maintain a significant equity interest in the Company. The acquisition of the Shares by the Limited Partnerships upon the consummation of the transactions contemplated by the December Stock Purchase Agreement will maintain the percentage of the voting power of the Company's outstanding voting stock beneficially owned by the Limited Partnerships at approximately the same level beneficially owned by the Limited Partnerships on the date hereof.

#### December Stock Purchase Agreement

Pursuant to the December Stock Purchase Agreement, the Limited Partnerships have agreed to purchase an aggregate of 47,125 shares of Series A Preferred Stock and 47,125 shares of Series B Preferred Stock from the Company for an aggregate purchase price of \$47,125,000 in cash. Subject to the satisfaction or waiver of the closing conditions set forth in the December Stock Purchase Agreement, the closing of the December Stock Purchase Agreement (the "Closing") will occur on such date and time (the "Shares Closing Date") as agreed upon by the Company and the Limited Partnerships, but in no event later than two business days following the date of the Stockholder Approval (as defined below). The December Stock Purchase Agreement contains customary representations and warranties by the parties for transactions of the type contemplated thereby.

#### Conditions to Obligations of the Limited Partnerships and the Company

The respective obligations of the Limited Partnerships and the Company to consummate the Closing are subject to the satisfaction or waiver at or prior to the Closing of the following conditions: (i) the expiration of the applicable waiting period (and any extension thereof) under the Hart-Scott Rodino Antitrust Improvements Act of 1976, as amended; (ii) the absence of any laws, statutes, ordinances, rules, regulations, orders, injunctions, judgments, decrees or bodies of law, being in effect which prohibit the consummation of the transactions contemplated by the December Stock Purchase Agreement; (iii) the approval by holders of the requisite number of shares of Common Stock outstanding on the record date for a special meeting of stockholders called by the Company (the "Special Meeting") in accordance with the requirements of the DGCL and the rules of the New York Stock Exchange (the "NYSE") and Pacific Exchange, Inc. (the "PCX"), as applicable, of (x) the issuance of the Shares and the shares of Common Stock issuable upon conversion of the Shares, (y) the issuance and sale by the Company of 77,875 shares of Series A Preferred Stock and 77,875 shares of Series B Preferred Stock to other purchasers of such stock pursuant to separate agreements between such other purchasers and the Company (such other purchasers, the "Other Purchasers") and (z) the Company Charter Amendment (as defined in the December Stock Purchase Agreement) (the "Stockholder Approval"); (iv) the consummation by the Company of the Senior Debt Refinancing (as defined in the December Stock Purchase Agreement); (v) the making of any material foreign governmental and

regulatory filings, the giving of all material notices and the obtainment of any material approvals, in each case, by the Company and/or the Limited Partnerships that the Company and the Limited Partnerships reasonably agree are required in connection with the consummation of the transactions contemplated by the December Stock Purchase Agreement, the amendment and restatement of the Governance Agreement (the "Amended and Restated Governance Agreement"), and the amendment and restatement of the Registration Rights Agreement (the "Amended and Restated Registration Rights Agreement" and, together with the Amended and Restated Governance Agreement, the "Related Agreements"); (vi) the approval for listing on the NYSE and the PCX, subject to official notice of issuance, of the shares of Common Stock issuable upon conversion of the Shares; and (vii) the receipt by the Company of not less than \$77,875,000 in aggregate gross proceeds from simultaneous issuances of its Series A Preferred Stock and Series B Preferred Stock to parties other than the Limited Partnerships on the terms previously provided to the Limited Partnerships.

Conditions to Obligations of the Limited Partnerships

The obligations of the Limited Partnerships to consummate the Closing are subject to the satisfaction or waiver at or prior to the Closing of the following conditions: (i) all of the representations and warranties of the Company set forth in the December Stock Purchase Agreement must be true and correct, in each case as of the Signing Date and as of the Shares Closing Date, as if made at and as of such time, except (w) to the extent expressly made as of an earlier date, in which case as of such date, (x) in the case certain representations and warranties, where failure to be true and correct would not have a material adverse effect on the financial condition, results of operations or business of the Company and its Subsidiaries (as defined in the December Stock Purchase Agreement), taken as a whole, other than (I) as a result of changes in general economic or industry conditions or changes in applicable laws, rules or regulations, (II) as disclosed in a schedule to the December Stock Purchase Agreement, or (III) as a result of changes arising out of the announcement of the transactions contemplated by the December Stock Purchase Agreement (a "Material Adverse Effect"), (y) in the case of certain representations and warranties which must be true and correct in all material respects and (z) for changes specifically permitted by the December Stock Purchase Agreement; (ii) the Company must have performed, satisfied and complied with, in all material respects, all covenants and agreements set forth in the December Stock Purchase Agreement required to be performed at or prior to the Closing; (iii) the delivery by the Company to the Limited Partnerships of a certificate signed by its chief executive officer, dated the Shares Closing Date, to the effect that the conditions set forth in clauses (i) and (ii) of this paragraph have been satisfied; (iv) the execution and delivery by the Company of the Related Agreements, the stockholders agreement, dated as of the Shares Closing Date, among the Company and the Other Purchasers (the "Other Stockholders Agreement"), and the registration rights agreement, dated as of the Shares Closing Date, among the Company and the Other Purchasers of Series A Preferred Stock and Series B Preferred Stock, and certain other deliveries pursuant to the December Stock Purchase Agreement; (v) the filing by the Company of the Certificate of Designations of the Series A Preferred Stock (the "Series A Preferred Stock Certificate of Designations") and the Certificate of Designations of the Series B Preferred Stock (the "Series B Preferred Stock Certificate of Designations") with the Secretary of State of the State of Delaware; (vi) the resignation from the Board, effective as of the Closing, of one director of the Company; (vii) since June 30, 2002, there not having occurred any change, event or development or series of changes, events or developments which, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect; (viii) the receipt by the Limited Partnerships of an opinion of counsel to the

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Company; (ix) the receipt by the Limited Partnerships of certain other deliveries including, without limitation, a certificate of the Company's Chief Executive Officer and Chief Financial Officer certifying that the transactions contemplated by December Stock Purchase Agreement do not violate the terms of the Senior Debt Refinancing, and as to such officers' good faith belief based on projections prepared by the Company believed to be reasonable in good faith, that the Company will be able to satisfy the financial covenants contained in the Senior Debt Refinancing documents, or a similar certification reasonably acceptable to the Limited Partnerships; and (x) the Company must not have amended, modified, waived, terminated or otherwise altered in any material respect the provisions, terms or conditions of any other agreements between the Company and any other Person (as defined in the December Stock Purchase Agreement) with respect to an investment in shares of Series A Preferred Stock and Series B Preferred Stock and the rights and obligations incident thereto without the consent of the Limited Partnerships.

### Conditions to Obligations of the Company

The obligations of the Company to consummate the Closing are subject to the satisfaction or waiver at or prior to the Closing of the following conditions: (i) all of the representations and warranties of the Limited Partnerships set forth in the December Stock Purchase Agreement (other than those set forth in Sections 4.1, 4.2 and 4.8 of the December Stock Purchase Agreement) must be true and correct in all material respects, in each case as of the Signing Date and as of the Shares Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date); (ii) the representations and warranties of the Limited Partnerships set forth in Sections 4.1, 4.2 and 4.8 of the December Stock Purchase Agreement must be true and correct in all respects, in each case as of the Signing Date and as of the Shares Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date); (iii) the Limited Partnerships must have performed, satisfied and complied with, in all material respects, all covenants and agreements set forth in the December Stock Purchase Agreement required to be performed by any of them under the December Stock Purchase Agreement at or prior to Closing; (iv) each of the Limited Partnerships must have delivered to the Company a certificate signed by an authorized signatory thereof, dated the Shares Closing Date, to the effect that the conditions set forth in clauses (i), (ii) and (iii) of this paragraph have been satisfied; (v) the execution and delivery by the Limited Partnerships of the Related Agreements and certain other deliveries pursuant to the December Stock Purchase Agreement; and (vi) the receipt by the Company of an opinion of counsel to the Limited Partnerships.

### Covenants

#### Payment of Fees and Expenses

On the Shares Closing Date, the Company will make a closing payment to the Limited Partnerships in an aggregate amount equal \$907,705 in cash for all of the Limited Partnerships, against receipt from the Limited Partnerships of the aggregate purchase price for the Shares. The Company has agreed to reimburse the Limited Partnerships, up to a maximum of \$500,000, for all of the reasonable, documented, out-of-pocket legal, travel and accounting expenses incurred by the Limited Partnerships in connection with the transactions contemplated by the December Stock Purchase Agreement.

#### Proxy Statement; Stockholder Approval

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Pursuant to the December Stock Purchase Agreement, the Company will hold the Special Meeting to obtain the Stockholder Approval and, in connection therewith, the Company will prepare a form of proxy statement (the "Proxy Statement") to be mailed to the stockholders of the Company in connection with the Special Meeting as soon as practicable after the Signing Date and will use its reasonable efforts to, among other things, (i) respond as promptly as practicable to any comments made by the SEC with respect to the Proxy Statement and (ii) cause the definitive Proxy Statement to be mailed to its stockholders at the earliest practicable date following the clearance of the Proxy Statement by the SEC.

In addition, pursuant to the December Stock Purchase Agreement, the Limited Partnerships agreed to vote or cause the Original Purchasers to vote, at the Special Meeting, all of the shares of Common Stock beneficially owned by the Original Purchasers in accordance with the recommendations of the Board that the stockholders of the Company vote to adopt and approve (i) the issuance of the Shares and the shares of Common Stock issuable upon conversion of the Shares, (ii) the Company Charter Amendment, and (iii) the adoption of the Hexcel Corporation 2003 Incentive Stock Plan and amendments to certain of the Company's existing equity incentive plans. The voting obligation described above is subject to the satisfaction of the following conditions as of the date of any such stockholder meeting: (a) the Board shall not have withdrawn or modified in an adverse manner its recommendation of the transactions contemplated by the December Stock Purchase Agreement; (b) the Company shall not be in material breach of its obligations under the December Stock Purchase Agreement; (c) there shall not have occurred a Material Adverse Effect since June 30, 2002; (d) the Company shall have received an executed commitment letter or entered into definitive agreements with respect to the Senior Debt Refinancing and the commitment letter or definitive agreements shall not have been withdrawn, waived, modified, terminated or otherwise altered in a manner adverse to the Company at any time prior to the Special Meeting and any adjournments thereof; and (e) the fairness opinion of Houlihan Lokey Howard & Zukin Financial Advisors, Inc., financial advisor to the Board ("Houlihan") shall not have been withdrawn or materially adversely modified by Houlihan.

In addition, pursuant to the December Stock Purchase Agreement, except as otherwise contemplated by the Pledge Agreements, the Limited Partnerships will cause the Original Investors to not transfer, pledge, hypothecate, sell or otherwise dispose of, or encumber, grant any proxy or power of attorney over, any of the shares of Common Stock held by them, or deposit any of their shares of Common Stock into a voting trust or enter into a voting agreement, understanding or arrangement with respect to any of such shares of Common Stock at any time prior to the Special Meeting and any adjournments thereof.

### No Solicitation

Pursuant to the December Stock Purchase Agreement, except to satisfy the condition discussed in clause (vii) under the caption "Conditions to Obligations of the Limited Partnerships and the Company" above or except as consented to by the Limited Partnerships, the Company and its Subsidiaries agreed not to, and the Company agreed to use its reasonable best efforts to cause its officers, directors, employees, financial advisors, consultants, attorneys, accountants and other agents not to, directly or indirectly, solicit, initiate, encourage or facilitate or take any action to solicit, initiate, encourage or facilitate the submission or making of any offer or proposal for, or any indication of interest in, any (i) direct or indirect acquisition or purchase of a business or assets that constitute 20% or more of the net revenues, net income or the assets of the Company and its Subsidiaries, taken as a whole,

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(ii) direct or indirect acquisition or purchase of 20% or more of any class of equity securities of the Company, (iii) tender offer or exchange offer that if consummated would result in any Person beneficially owning 20% or more of any class of equity securities of the Company, or (iv) merger, consolidation, business combination, recapitalization, liquidation, dissolution or similar transaction involving the Company, other than the transactions contemplated by the December Stock Purchase Agreement and the Other December Stock Purchase Agreement (any such offer, proposal or indication of interest, an "Alternate Proposal") or any inquiry with respect thereto or engage in discussions or negotiations with any Person with respect thereto, or, in connection with any Alternate Proposal or potential Alternate Proposal, disclose any nonpublic information relating to it or its Subsidiaries or afford access to the properties, books or records of it or its Subsidiaries to any Person that has made, or to such party's knowledge, is considering making, any Alternate Proposal; provided, however, that in the event that the Company receives an Alternate Proposal that could reasonably be expected to result in a bona fide Alternate Proposal, which does not contain any due diligence condition, on terms that the Board of the Company determines in its good faith judgment (after consultation with a financial advisor of nationally recognized reputation and outside counsel) to be more favorable from a financial standpoint to the Company's stockholders than the transactions contemplated by the December Stock Purchase Agreement, taking into account any changes to the transactions contemplated by the December Stock Purchase Agreement that have been proposed by the Limited Partnerships in response to such proposal that was not solicited by it after the Signing Date and which did not otherwise result from a breach by the Company of this covenant (such Alternate Proposal, a "Superior Proposal"), then (a) the Company or its representatives may make such inquiries or conduct such discussions with respect to such Alternate Proposal as the Board, after consultation with outside counsel, may deem necessary to inform itself for the purpose of exercising its fiduciary duties and (b) if the Board by a majority vote determines in good faith (after receiving the advice of a financial adviser of nationally recognized reputation) that such Alternate Proposal is reasonably likely to result in a Superior Proposal, the Company and its representatives may conduct such additional discussions or provide such information as the Board may determine, but only if, (I) prior to such additional discussions or such provision of information, the Board by a majority vote determines in good faith, after consultation with outside counsel, that the failure to take such action would reasonably be expected to constitute a breach by it of its fiduciary duties to its stockholders under applicable law and (II) prior to providing any such information, the Company receives from such Person an executed agreement protecting the confidentiality of the information to be provided.

Pursuant to the December Stock Purchase Agreement, the Company agreed that the Board may not withdraw its recommendation of the transactions contemplated by the December Stock Purchase Agreement or approve or recommend, or cause the Company to enter into any agreement with respect to, any Alternate Proposal; provided, that, notwithstanding the foregoing, if the Board by a majority vote determines in good faith, after consultation with outside counsel, that such withdrawal of recommendation or approval or recommendation of a Superior Proposal or entering into an agreement with respect to a Superior Proposal may reasonably be expected to be required to satisfy its fiduciary duties, the Board may withdraw its recommendation of the transactions contemplated by the December Stock Purchase Agreement or approve or recommend a Superior Proposal, or cause the Company to enter into an agreement with respect to a Superior Proposal, but in each case only (i) after providing written notice to the Limited Partnerships advising the Limited Partnerships that the Board has received a Superior Proposal, specifying the material terms and conditions of such Superior Proposal and identifying the person(s) making such Superior

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Proposal (the "Notice of Superior Proposal") and (ii) if, within five business days of the Limited Partnerships' receipt of the Notice of Superior Proposal, the Limited Partnerships do not make an offer which the Board by a majority vote determines in good faith (based on the advice of a financial advisor of nationally recognized reputation) to be as favorable to the Company's stockholders as such Superior Proposal; provided, however, that the Board will not be entitled to withdraw its recommendation of the transactions contemplated by the December Stock Purchase Agreement or cause the Company to enter into any agreement with respect to a Superior Proposal unless the December Stock Purchase Agreement has been or concurrently is terminated by its terms.

### Debt Refinancing

Pursuant to the December Stock Purchase Agreement, the Company agreed to use its reasonable best efforts to consummate the Senior Debt Refinancing prior to the Shares Closing Date.

### Termination

The December Stock Purchase Agreement may be terminated at any time prior to the Shares Closing Date:

(i) by the mutual written consent of each of the Limited Partnerships and the Company;

(ii) by the Limited Partnerships or the Company: (a) if the Closing has not occurred on or before May 30, 2003 (the "Expiration Date") and the December Stock Purchase Agreement has not previously been terminated; provided, that the right to terminate the December Stock Purchase Agreement pursuant to this provision is not available to any party whose failure to fulfill any obligation under the December Stock Purchase Agreement was the cause of, or resulted in, the failure of the Closing to occur on or before such date; (b) if any Governmental Entity (as defined in the December Stock Purchase Agreement) has issued an order, judgment, decree or ruling or taken any other action, in each case permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by the December Stock Purchase Agreement and such order, judgment, decree, ruling or other action has become final and non-appealable; provided, that the right to terminate the December Stock Purchase Agreement pursuant to this provision is not available to any party whose failure to fulfill any obligation under the December Stock Purchase Agreement was the cause of, or resulted in, the issuance of such order, judgment, decree or ruling; or (c) if, at the Special Meeting, the Stockholder Approval is not obtained; provided, that the right to terminate the December Stock Purchase Agreement pursuant to this provision is not be available to any party whose failure to fulfill any obligation under the December Stock Purchase Agreement was the cause of, or resulted in, the failure to obtain the Stockholder Approval;

(iii) by the Company: (a) if the Company receives a Superior Proposal and the Board has complied with the covenants contained in the "No Solicitation" provision the December Stock Purchase Agreement; or (b) if (1) the representations and warranties of any of the Limited Partnerships set forth in the December Stock Purchase Agreement (other than those set forth in Sections 4.1, 4.2 and 4.8 of the December Stock Purchase Agreement) are not true and correct in all material respects on and as of the Signing Date and on and as of the Shares Closing Date as if made on such date (except to the extent expressly made as of an earlier date, in which case as of such earlier date), (2) the representations and warranties of any of the Limited



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Partnerships set forth in Sections 4.1, 4.2 and 4.8 of the December Stock Purchase Agreement are not true and correct in all material respects on and as of the Signing Date and on and as of the Shares Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date) or (3) any of the Limited Partnerships has breached or failed in any material respect to perform or comply with any material obligation, agreement or covenant required by the December Stock Purchase Agreement to be performed or complied with by it, which inaccuracy or breach is incapable of being cured prior to the Expiration Date; and

(iv) by the Limited Partnerships: (a) if the Board or any committee thereof has withdrawn or modified, in a manner adverse to the Limited Partnerships, its approval or recommendation of any of the transactions contemplated by the December Stock Purchase Agreement; (b) if (1) certain representations and warranties of the Company set forth in the December Stock Purchase Agreement are not true and correct on and as of the Signing Date and on and as of the date of such determination as if made on such date (except to the extent expressly made as of an earlier date, in which case as of such earlier date), except where failure to be true and correct would not have a Material Adverse Effect, (2) certain representations and warranties of the Company set forth in the December Stock Purchase Agreement are not true and correct in all material respects on and as of the Signing Date and on and as of the Shares Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date) or (3) the Company has breached or failed in any material respect to perform or comply with any material obligation, agreement or covenant required by the December Stock Purchase Agreement to be performed or complied with by it, which inaccuracy or breach cannot be cured or has not been cured prior to the Expiration Date; or (c) if any change, event or development or series of changes, events or developments, individually or in the aggregate, has had a Material Adverse Effect subsequent to the Signing Date and which Material Adverse Effect is incapable of being cured prior to the Expiration Date, provided, that the right to terminate the December Stock Purchase Agreement pursuant to this provision is not available to any party whose failure to fulfill any obligation under the December Stock Purchase Agreement has been the cause of, or resulted in, such change, event or development.

Termination of the December Stock Purchase Agreement will terminate all obligations and liabilities of the Company and the Limited Partnerships under the December Stock Purchase Agreement except for certain liabilities and obligations, including liabilities for breach by any party thereunder and obligations or liabilities for the payment of fees and expenses and for indemnification.

### Indemnification

Pursuant to the December Stock Purchase Agreement, the Company agreed to indemnify the Limited Partnerships, their Affiliates (as defined in the December Stock Purchase Agreement), and their respective officers, directors, partners, members, employees, agents, representatives, successors and assigns (collectively, the "Investor Indemnified Persons") from and against all Losses (as defined in the December Stock Purchase Agreement) incurred or suffered by an Investor Indemnified Person arising from, relating to or as a result of (i) the breach of any of the representations or warranties (which breach shall be determined without regard to any materiality or Material Adverse Effect qualifications contained in the representation and warranty giving rise to such claim for indemnity), (ii) the breach of any covenants, obligations or agreements

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made by the Company in the December Stock Purchase Agreement and (iii) any actual or threatened Litigation (as defined in the December Stock Purchase Agreement) against an Investor Indemnified Person by any Person (other than an Investor Indemnified Person) in connection with (A) the transactions contemplated by the December Stock Purchase Agreement or by the Related Agreements, (B) the negotiation, execution, delivery and performance of the December Stock Purchase Agreement or the Related Agreements or (C) any actions taken (including, without limitation, the voting of, or failure to vote of, shares of the Company's common stock as contemplated by the December Stock Purchase Agreement) by any Investor Indemnified Person pursuant to the December Stock Purchase Agreement or any Related Agreement or in connection with the transactions contemplated by the December Stock Purchase Agreement or any Related Agreement (whether or not the transactions contemplated by the December Stock Purchase Agreement or any Related Agreement are consummated); provided, however, that the Company does not have any obligation to indemnify the Investor Indemnified Persons to the extent such suit, action, claim or proceeding arises from a breach of the December Stock Purchase Agreement by any Investor Indemnified Person or a failure of any representation or warranty of the Limited Partnerships set forth in the December Stock Purchase Agreement to be true and correct and such breach or failure of a representation or warranty to be true and correct results in any condition to the Company's obligation to close being incapable of being satisfied prior to May 30, 2003. Each Limited Partnership, solely on behalf of itself, separately and not jointly, agreed to indemnify the Company, its Affiliates, and their respective officers, directors, partners, members, employees, agents, representatives, successors and assigns (collectively, the "Company Indemnified Persons") from and against all Losses incurred or suffered by a Company Indemnified Person arising from, relating to or as a result of (i) the breach of any of the representations or warranties, and (ii) the breach of covenants, obligations or agreements made by the Limited Partnerships in the December Stock Purchase Agreement. No claim may be made against the Company for indemnification with respect to breaches of representations and warranties with respect to any Losses unless the aggregate amount of Losses incurred by the Investor Indemnified Persons exceeds \$2,000,000, and the Company will then only be liable for the amount of such Losses which exceed \$2,000,000. The maximum amount recoverable by the Investor Indemnified Persons with respect to breaches of representations and warranties made by the Company under the December Stock Purchase Agreement is \$10,000,000, except for breaches of a representation and warranty related to Securities and Exchange Commission reports where the maximum amount recoverable is \$47,125,000. No claim may be made against the Limited Partnerships for indemnification with respect to breaches of representations and warranties with respect to any Losses unless the aggregate amount of Losses incurred by the Company Indemnified Persons exceeds \$2,000,000, and the Limited Partnerships will then only be liable for the amount of such Losses which exceed \$2,000,000. The maximum amount recoverable by all Company Indemnified Persons in the aggregate with respect to breaches of representations and warranties made by the Limited Partnerships under the December Stock Purchase Agreement is \$10,000,000 in the aggregate for all of the Limited Partnerships.

The foregoing description of the December Stock Purchase Agreement is not intended to be complete and is qualified in its entirety by the complete text of the December Stock Purchase Agreement, which is filed as Exhibit 26 hereto and is incorporated herein by reference.

### Amended and Restated Governance Agreement

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In connection with the consummation of the transactions contemplated by the December Stock Purchase Agreement, at the Closing, the

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Limited Partnerships, the Original Purchasers and the Company will enter into the Amended and Restated Governance Agreement, which will amend and restate the Governance Agreement.

### Defined Terms

As used in the Amended and Restated Governance Agreement:

The term "Conversion Shares" means, at any time, those shares of Common Stock issuable upon conversion of the Preferred Stock (as equitably adjusted to reflect any stock split, combination, reorganization, recapitalization, reclassification or other similar event involving the Common Stock).

The term "Disinterested Director" means, with respect to any Buyout Transaction, a director of the Company who is not an interested director (within the meaning of Section 144 of the DGCL) with respect to such Buyout Transaction, it being understood that no director designated by the Limited Partnerships, the Original Purchasers and certain of their Affiliates (as defined in the Amended and Restated Governance Agreement) (collectively, the "GS Investors") will be deemed to be not interested with respect to any Investor Buyout Transaction.

The term "Independent Director" means a director of the Company who is not (x) a person designated by the GS Investors to serve as a member of the Board or (y) a person designated by the Other Purchasers and certain of their affiliates (the "Other Investors") to serve as a member of the Board and who (i) is not and has never been an officer, employee, partner or director of any of the GS Investors, the Other Investors or their respective Affiliates or associates (as defined in Rule 12b-2 under the Exchange Act) (in each case other than the Company) and (ii) has no affiliation or compensation, consulting or contractual relationship with any of the GS Investors, the Other Investors or their respective Affiliates or associates (in each case other than the Company) such that a reasonable person would regard such director as likely to be unduly influenced by any of such persons or any of their Affiliates or associates (in each case other than the Company).

The term "Investor Buyout Transaction" means a Buyout Transaction by the GS Investors or their Affiliates or any other Person (as defined in the Amended and Restated Governance Agreement) acting on behalf of the GS Investors or their Affiliates, or any Person who is part of a Group with the Investors, involving the acquisition of all (but not less than all) of the Voting Securities held by the Other Holders, provided that all Other Holders are entitled to receive Requisite Consideration upon consummation of such Buyout Transaction.

The term "Other Holders" means the holders of Voting Securities not Beneficially Owned (as defined in the Amended and Restated Governance Agreement) by any of the GS Investors.

The term "Third Party Offer" means a bona fide offer to enter into a Buyout Transaction by a Person other than any of the GS Investors or any of their respective Affiliates, any other Person acting on behalf of any of the GS Investors or any of their respective Affiliates, or any Person who is part of a Group with any of the GS Investors or any of their respective Affiliates, that does not treat the GS Investors or their respective Affiliates differently than the Other Holders.

The term "Total Voting Power of Hexcel" means the total number of votes that may be cast in the election of directors of the Company if all Voting Securities (as defined below) outstanding or treated as outstanding

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pursuant to the final two sentences of this definition were present and voted at a meeting held for such purpose. The percentage of the Total Voting Power of Hexcel Beneficially Owned by any Person is the percentage of the Total Voting Power of Hexcel that is represented by the total number of votes that may be cast in the election of directors of the Company by Voting Securities Beneficially Owned by such Person. In calculating such percentage, each share of Preferred Stock will be outstanding or will be treated as outstanding for all purposes of the Amended and Restated Governance Agreement without regard to the Person holding such share until such time as such share of Preferred Stock is redeemed or repurchased by the Company or converted into Common Stock in accordance with the Series A Preferred Stock Certificate of Designations or the Series B Preferred Stock Certificate of Designations, as applicable. In calculating such percentage, the Voting Securities Beneficially Owned by any Person that are not outstanding but are subject to issuance upon exercise or exchange of rights of conversion or any options, warrants or other rights Beneficially Owned by such Person shall be deemed to be outstanding for the purpose of computing the percentage of the Total Voting Power of Hexcel represented by Voting Securities Beneficially Owned by such Person, but shall not be deemed to be outstanding for the purpose of computing the percentage of the Total Voting Power of Hexcel represented by Voting Securities Beneficially Owned by any other Person.

The term "Voting Securities" means the Common Stock, the Preferred Stock and any other securities of the Company or any of its subsidiaries entitled to vote generally in the election of directors of the Company or such subsidiary.

### Board Representation; Voting Rights

For so long as the GS Investors Beneficially Own 20% or more of the Total Voting Power of Hexcel, the Company and the GS Investors will exercise all authority under applicable law to cause any Board Slate to consist of such nominees that, if elected, would result in the Board consisting of two directors designated by GS Capital, one director designated by LXH II and seven directors (including at least five Independent Directors), each of whom is not a person designated by the GS Investors to serve as a member of the Board and who is not and has never been an officer, employee, partner or director of any of the GS Investors or their Affiliates or associates (in each case other than the Company) and has no affiliation or compensation, consulting or contractual relationship with any of the GS Investors or their Affiliates or associates (in each case other than the Company) such that a reasonable person would regard such director as likely to be unduly influence by any of such persons or any of their Affiliates or associates (in each case other than the Company) (each, a "Non-Investor Director"); provided, however, that if the GS Investors, directly or indirectly, during the term of the Amended and Restated Governance Agreement, sell, transfer or otherwise dispose of, on a cumulative basis, Beneficial Ownership of shares of Common Stock and/or Preferred Stock together representing 33 1/3% or more of the Total Voting Power of Hexcel represented by the aggregate number of (i) Initial Shares, (ii) Shares and (iii) Conversion Shares (the Shares and Conversion Shares, collectively, the "New Goldman Shares") as of the Shares Closing Date to persons that are not GS Investors, then the Company and the GS Investors will exercise all authority under applicable law to cause any Board Slate to consist of such nominees that, if elected, would result in the Board consisting of one director designated by GS Capital, one director designated by LXH II and eight Non-Investor Directors (including at least six Independent Directors).

For so long as the GS Investors Beneficially Own less than 20% but at least 15% of the Total Voting Power of Hexcel, the Company and the

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GS Investors will exercise all authority under applicable law to cause any Board Slate to consist of such nominees that, if elected, would result in the Board consisting of one director designated by GS Capital, one director designated by LXH II and eight Non-Investor Directors (including at least six Independent Directors); provided, however, that if the GS Investors, directly or indirectly, during the term of the Amended and Restated Governance Agreement, sell, transfer or otherwise dispose of, on a cumulative basis, Beneficial Ownership of shares of Common Stock and/or Preferred Stock together representing 66 2/3% of the Total Voting Power of Hexcel represented by the aggregate number of Initial Shares and New Goldman Shares as of the Shares Closing Date to persons that are not GS Investors, then the Company and the GS Investors will exercise all authority under applicable law to cause any Board Slate to consist of such nominees that, if elected, would result in the Board consisting of one director designated by GS Capital and nine Non-Investor Directors (including at least seven Independent Directors).

For so long as the GS Investors Beneficially Own less than 15% but at least 10% of the Total Voting Power of Hexcel, the Company and the GS Investors will exercise all authority under applicable law to cause any Board Slate to consist of such nominees that, if elected, would result in the Board consisting of one director designated by GS Capital and nine Non-Investor Directors (including at least seven Independent Directors).

In order to determine (i) the number of directors that the GS Investors may designate to any Board Slate and (ii) the percentage of the Total Voting Power of Hexcel Beneficially Owned by the GS Investors for purposes of the provisions in the Amended and Restated Governance Agreement described below under the heading "Approval Rights," the GS Investors will be deemed to Beneficially Own a percentage of the Total Voting Power of Hexcel that is no more than 39.3% of the Total Voting Power of Hexcel less the percentage of the Total Voting Power of Hexcel represented by any Voting Securities disposed of, directly or indirectly, by the GS Investors to Persons that are not GS Investors.

The Company may increase the size of the Board through the appointment of one or more additional independent directors (as such term is used in the NYSE listing requirements) (each of which directors or directors will be selected by a majority of the Independent Directors and will be an Independent Director) in order to comply with any applicable law, regulation or NYSE rule; provided, that, in the event of any such change, the Company will use its commercially reasonable best efforts to give the GS Investors the right to nominate, as nearly as possible, that proportion of the directors as permitted by the terms of the Amended and Restated Governance Agreement. Each of the GS Investors will perform any and all actions as reasonably requested by the Company in order for the Board to be changed pursuant to this paragraph.

For so long as the GS Investors are entitled to designate two or more director nominees for election to the Board under the Amended and Restated Governance Agreement, the finance, compensation, nominating, audit and any other committee of the Board will consist of at least one director designated by the GS Investors; provided, however, that if no director designated by the GS Investors is eligible for membership on an above-listed committee under the then-applicable listing standards of the NYSE or any other applicable law, rule or regulation, then such committee of the Board will include a director nominated by the GS Investors only when so permitted by the listing standards of the NYSE or any other applicable law, rule or regulation; provided, further, that the Company will exercise all authority under applicable law, rule and regulation to permit the inclusion of any director designated by the GS Investors on such committee including, without limitation, causing an increase in the number

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of directors on such committee. To the extent that directors designated by the GS Investors are not eligible for membership on the finance, compensation, nominating, audit or other committee of the Board, then the GS Investors will be entitled to designate a representative to attend and observe such committee meetings, provided that the observation is not prohibited by applicable listing standards, laws, rules or regulations.

If, for any reason, any of the directors designated by the GS Investors are not elected to the Board by stockholders of the Company, then the Company will exercise all authority under applicable law to cause such person or persons designated by the GS Investors to be elected to the Board, and during any such absence of membership on the Board, the Company agrees that it will permit a representative of the GS Investors to attend all Board meetings (other than meetings solely of the Independent Directors) and all committees thereof (to the extent any director designated by the GS Investors would be entitled to attend such committee meetings) as an observer.

If at any time the number of directors that the GS Investors are entitled to designate decreases pursuant to the terms of the Amended and Restated Governance Agreement, within 10 days thereafter the GS Investors will cause a sufficient number of such directors to resign from the Board so that the number of such directors on the Board after such resignation(s) equals the number of directors that the GS Investors have the right to designate. The GS Investors will also cause a sufficient number of directors to resign from any relevant committees of the Board so that such committees are comprised in the manner contemplated by the Amended and Restated Governance Agreement after giving effect to such resignation(s). Any vacancies created by these resignations will be filled by Independent Directors.

### Right to Maintain Level of Board Representation Upon Certain Issuances

If at any time the percentage of the Total Voting Power of Hexcel Beneficially Owned by the GS Investors decreases as a result of an issuance of Voting Securities by the Company (other than certain issuances described in the Amended and Restated Governance Agreement), the GS Investors may notify the Company that the GS Investors intend to acquire a sufficient amount of additional Voting Securities necessary to maintain their then current level of Board representation within 90 days. In such event, until the end of such period, the Board will continue to have the number of directors designated by the GS Investors that corresponds to the percentage of the Total Voting Power of Hexcel Beneficially Owned by the GS Investors prior to any such issuance of Voting Securities by the Company.

### Approval Rights

Pursuant to the Amended and Restated Governance Agreement, the Board will not authorize, approve or ratify any of the following actions without the approval of a majority of the directors designated by the GS Investors for so long as and at any time the GS Investors Beneficially Own 15% or more of the Total Voting Power of Hexcel (and, if the GS Investors percentage Beneficial Ownership of the Total Voting Power of Hexcel is reduced below 15% by an issuance of Voting Securities by the Company, no such authorization, approval, or ratification will be given by the Board without the approval of a majority of the directors designated by the GS Investors (x) until 10 business days after the Company notifies the GS Investors in writing of such issuance, and (y) if the GS Investors will have notified the Company within 10 business days after their receipt of a written notification of such issuance that the GS Investors, pursuant to the Amended and Restated Governance Agreement, intend to acquire a sufficient amount of Voting Securities within the 90-day period referred to

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therein (as described above in "Right to Maintain Level of Board Representation Upon Certain Issuances), so that the GS Investors will Beneficially Own at least 15% of the Total Voting Power of Hexcel by the end of such 90-day period, during the 90-day period following an issuance of Voting Securities by the Company that causes the GS Investors to Beneficially Own less than 15% of the Total Voting Power of Hexcel):

(i) any merger, consolidation, acquisition or other business combination involving the Company or any subsidiary of the Company (other than a Buyout Transaction) if the value of the consideration to be paid or received by the Company and/or its stockholders in any such individual transaction or in such transaction when added to the aggregate value of the consideration paid or received by the Company and/or its stockholders in all other such transactions approved by the Board during the immediately preceding 12 months exceeds the greater of (x) \$75 million or (y) 11% of the Company's total consolidated assets;

(ii) any sale, transfer, assignment, conveyance, lease or other disposition or any series of related dispositions of any assets, business or operations of the Company or any of its subsidiaries (other than a Buyout Transaction) if the value of the assets, business or operations so disposed during the immediately preceding 12 months exceeds the greater of (x) \$75 million or (y) 11% of the Company's total consolidated assets; or

(iii) any issuance by the Company or any Significant Subsidiary of the Company of equity or equity-related securities (other than (1) pursuant to customary employee or director stock option or incentive compensation or similar plans approved by the Board or a duly authorized committee of the Board, (2) pursuant to transactions solely among the Company and its wholly owned subsidiaries, (3) upon conversion of convertible securities or upon exercise of warrants or options, which convertible securities, warrants or options are either outstanding on the Shares Closing Date or approved by the Board or a duly authorized committee of the Board after the Shares Closing Date, or (4) in connection with any mergers, consolidations, acquisitions or other business combinations involving the Company or any subsidiary of the Company which are approved by the Board or a duly authorized committee of the Board) for which the consideration received by the Company for such transactions during the immediately preceding 12 months exceeds \$25 million.

For so long as there are any directors appointed by the GS Investors serving on the Board, the Board may not authorize, approve or ratify any action, at a meeting of the Board, by written consent or otherwise, without the approval of a minimum of six members of the Board, of which at least two of such six members must be Independent Directors, or in the event that the Board will consist of less than six members due to vacancies on the Board, the approval of all members of the Board.

### Solicitation and Voting of Shares

Pursuant to the Amended and Restated Governance Agreement, in any election of directors or at any meeting of the stockholders of the Company called expressly for the removal of directors, for so long as the Board includes (and will include after any such removal) directors designated by the GS Investors contemplated by the Amended and Restated Governance Agreement, the GS Investors must be present for purposes of establishing a quorum and will vote all their Voting Securities entitled to vote (1) in favor of any nominee or director selected in accordance with the Amended and Restated Governance Agreement, (2) in favor of any nominee or director

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placed by the Company on the slate of directors presented to stockholders for election to the Board in accordance with the terms of any other stockholders agreement, existing on the Shares Closing Date, between the Company and a holder or holders of Voting Securities, (3) against the removal of any director designated in accordance with the Amended and Restated Governance Agreement and (4) against the removal of any director placed by the Company on the slate of directors presented to stockholders for election to the Board and elected to the Board by stockholders in accordance with the terms of any other stockholders agreement, existing on the Shares Closing Date, between the Company and a holder or holders of Voting Securities. Except as provided in the Amended and Restated Governance Agreement, the GS Investors will be free to vote in their sole discretion all their Voting Securities entitled to vote on any other matter submitted to or acted upon by stockholders; provided, however, that the GS Investors must vote against any amendment to the Company's certificate of incorporation with respect to the directors' and officers' indemnification provisions contained therein which would adversely affect the rights thereunder at any time prior to such vote of each of the individuals who at any time were officers and directors of the Company (and their respective heirs and personal and legal representatives), except for such modifications as are required by applicable law

### Restrictions on Company Action

Except with the prior written consent of the GS Investors, the Company will not cause or permit any amendment, restatement, modification or change to, or waiver of, any provision contained in any agreement (other than customary employee or director stock option or incentive compensation or similar plans approved by the Board or a duly authorized committee of the Board) between a stockholder or stockholders and the Company that provides such stockholder or stockholders (i) governance rights, board representation rights, voting rights, transfer rights or restrictions or any other similar rights relating to the Company and/or Voting Securities held by such stockholder or stockholders or (ii) registration rights with respect to Voting Securities held by such stockholder or stockholders.

### Third Party Offers and Investor Buyout Transactions

Pursuant to the Amended and Restated Governance Agreement, in the event that the Company becomes the subject of (i) a Third Party Offer or (ii) an Investor Buyout Transaction that is made during the term of the Amended and Restated Governance Agreement and such Third Party Offer or Investor Buyout Transaction is approved by (x) a majority of the Board and (y) a majority of Disinterested Directors, including the approval of at least two Independent Directors, the GS Investors have the right to act at their sole discretion with respect to such Third Party Offer or Investor Buyout Transaction.

In the event that the Company becomes the subject of a Third Party Offer that is made prior to the expiration of the eighteen-month period commencing on the Shares Closing Date (such period, the "Standstill Period") and such Third Party Offer is (i) not approved by a majority of the Board or (ii) approved by a majority of the Board but not by a majority of Disinterested Directors, including the approval of at least two Independent Directors, none of the GS Investors nor any of their respective Affiliates may, with respect to the New Goldman Shares, support such Third Party Offer, vote in favor of such Third Party Offer or tender or sell their New Goldman Shares to the person making such Third Party Offer.

In the event that the Company becomes the subject of a Third Party Offer that is made prior to December 19, 2003 and such Third Party Offer is (i) not approved by a majority of the Board or (ii) approved by a



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majority of the Board but not by a majority of Disinterested Directors, including the approval of at least two Independent Directors, none of the GS Investors nor any of their respective Affiliates (other than with respect to the Additional Shares) may support such Third Party Offer, vote in favor of such Third Party Offer or tender or sell their Voting Securities to the Person making such Third Party Offer.

In the event that the Company becomes the subject of a Third Party Offer or an Investor Buyout Transaction that is made after the Standstill Period and such Third Party Offer or Investor Buyout Transaction is (i) not approved by a majority of the Board or (ii) approved by a majority of the Board but not by a majority of Disinterested Directors, including the approval of at least two Independent Directors, the GS Investors and each of their Affiliates must vote all of their New Goldman Shares against such Third Party Offer or Investor Buyout Transaction in proportion to the votes cast against such Third Party Offer or Investor Buyout Transaction with respect to the Other Shares and may not tender or sell their New Goldman Shares to the person making such Third Party Offer or Investor Buyout Transaction in a proportion greater than the tenders or sales made by the Other Holders to the person making such Third Party Offer or Investor Buyout Transaction.

In the event that the Company becomes the subject of a Third Party Offer or an Investor Buyout Transaction that is made after December 19, 2003 and such Third Party Offer or Investor Buyout Transaction is (i) not approved by a majority of the Board or (ii) approved by a majority of the Board but not by a majority of Disinterested Directors, including the approval of at least two Independent Directors, the GS Investors and each of their Affiliates (other than with respect to the Ordinary Course Broker Dealer Shares and the Additional Shares) must vote all of their Initial Shares against such Third Party Offer or Investor Buyout Transaction in proportion to the votes cast against such Third Party Offer or Investor Buyout Transaction with respect to Other Shares and may not tender or sell their Voting Securities to the Person making such Third Party Offer or Investor Buyout Transaction in a proportion greater than the tenders or sales made by the Other Holders to the Person making such Third Party Offer or Investor Buyout Transaction.

### Preemptive Rights

Pursuant to the Amended and Restated Governance Agreement, at any time after the Shares Closing Date and for so long as the GS Investors are entitled to designate one or more directors for election to the Board, if the Company issues for cash any additional Voting Securities, then the Company will notify the GS Investors of such issuance and the price and terms thereof, and the GS Investors will have the option, for a period of 45 days after receipt of such notice, to purchase from the Company such number of securities that would allow the GS Investors to Beneficially Own the same percentage of the Total Voting Power of Hexcel as the GS Investors Beneficially Owned immediately prior to such issuance for the same consideration per security and on the same terms as were applicable to such issuance by the Company.

### Standstill Agreement

Except as otherwise expressly provided in the Amended and Restated Governance Agreement or as specifically approved by a majority of the Independent Directors, none of the GS Investors or any of their Affiliates may, directly or indirectly, (i) by purchase or otherwise, Beneficially Own, acquire, agree to acquire or offer to acquire any Voting Securities or direct or indirect rights or options to acquire Voting Securities (including any voting trust certificates representing such

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securities) other than certain exceptions, (ii) enter, propose to enter into, solicit or support any merger or business combination or similar transaction involving the Company or any of its subsidiaries, or purchase, acquire, propose to purchase or acquire or solicit or support the purchase or acquisition of any portion of the business or assets of the Company or any of its subsidiaries (except for proposals to purchase or acquire a non-material portion of the assets of the Company or any of its subsidiaries that are not required to be publicly disclosed), (iii) initiate or propose any securityholder proposal without the approval of the Board or make, or in any way participate in, any solicitation of proxies to vote, or seek to advise or influence any person with respect to the voting of, any Voting Securities or request or take any action to obtain any list of securityholders for such purposes with respect to any matter other than those upon which the GS Investors may vote in their sole discretion pursuant to the terms of the Amended and Restated Governance Agreement (or, as to such matters, solicit any person in a manner that would require the filing of a proxy statement under Regulation 14A of the Exchange Act), (iv) form, join or in any way participate in a Group (other than a Group consisting solely of the GS Investors) formed for the purpose of acquiring, holding, voting or disposing of or taking any other action with respect to Voting Securities that would be required under Section 13(d) of the Exchange Act to file a Statement on Schedule 13D with respect to such Voting Securities, (v) deposit any Voting Securities in a voting trust or enter into any voting agreement or arrangement with respect thereto (other than the Amended and Restated Governance Agreement, the Pledge Agreements and such voting trusts or agreements which are solely between the GS Investors or made between the GS Investors and the Company pursuant to the Amended and Restated Governance Agreement), (vi) seek representation on the Board, the removal of any directors from the Board or a change in the size or composition of the Board, (vii) make any request to amend or waive any provision of the standstill provisions in the Amended and Restated Governance Agreement, which request would require public disclosure under applicable law, rule or regulation, (viii) disclose any intent, purpose, plan, arrangement or proposal inconsistent with the foregoing (including any such intent, purpose, plan, arrangement or proposal that is conditioned on or would require the waiver, amendment, nullification or invalidation of any of the foregoing) or take any action that would require public disclosure of any such intent, purpose, plan, arrangement or proposal, (ix) take any action challenging the validity or enforceability of the foregoing or (x) assist, advise, encourage or negotiate with any person with respect to, or seek to do, any of the foregoing.

Nothing in the Amended and Restated Governance Agreement (i) prohibits or restricts the GS Investors from responding to any inquiries from any shareholders of the Company as to the GS Investors' intention with respect to the voting of any Voting Securities Beneficially Owned by the GS Investors so long as such response is consistent with the terms of the Amended and Restated Governance Agreement, (ii) restricts the right of any director designated by the GS Investors on the Board or any committee thereof to vote on any matter as such individual believes appropriate in light of his or her duties as a director or committee member or the manner in which such director may participate in his or her capacity as a director in deliberations or discussions at meetings of the Board or as a member of any committee thereof, (iii) prohibits the GS Investors from Beneficially Owning Voting Securities issued as dividends or distributions in respect of, or issued upon conversion, exchange or exercise of, securities which the GS Investors are permitted to Beneficially Own under the Amended and Restated Governance Agreement, (iv) prohibits any officer, director, employee or agent of the GS Investors from purchasing or otherwise acquiring Voting Securities so long as he or she is not a member of a Group that includes the GS Investors or is not otherwise acting on behalf of the GS Investors, (v) prohibits the GS Investors from disclosing in accordance

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with their obligations, if any, under the federal securities laws or other applicable law their desire, if any, that the Company become the subject of a Buyout Transaction, or (vi) restricts the ability of Goldman Sachs and its Affiliates who are not GS Investors, solely as agent, to engage in brokerage, investment advisory, anti-raid advisory, merger advisory, financing, asset management, trading, arbitrage and other similar activities, in each case on behalf of clients.

Nothing in the Amended and Restated Governance Agreement prohibits or restricts the GS Investors (i) after the Standstill Period, from proposing, participating in, supporting or causing the consummation of an Investor Buyout Transaction, subject to the voting requirements set forth in the Amended and Restated Governance Agreement with respect to Investor Buyout Transactions (as described above in "Third Party Offers and Investor Buyout Transactions") or (ii) from participating in a Third Party Offer in accordance with the voting requirements set forth in the Amended and Restated Governance Agreement with respect to Third Party Offers (as described above in "Third Party Offers and Investor Buyout Transactions").

### Transfer Restrictions

Pursuant to the Amended and Restated Governance Agreement, other than sales, transfers, or other dispositions (i) pursuant to the Series A Preferred Stock Certificate of Designations, (ii) pursuant to the Series B Preferred Stock Certificate of Designations or (iii) from one GS Investor to another GS Investor and other than sales, transfers or other dispositions of Additional Shares by persons holding such Additional Shares, none of the GS Investors or their Affiliates, directly or indirectly, may sell, transfer or otherwise dispose of Beneficial Ownership of New Goldman Shares for a period of eighteen months after the Shares Closing Date.

During the period commencing eighteen months after the Shares Closing Date, the GS Investors, directly or indirectly, may only sell, transfer or otherwise dispose of Beneficial Ownership of the New Goldman Shares (i) to another GS Investor (provided that such GS Investor is a signatory to the Amended and Restated Governance Agreement or has executed, at the time of such sale, transfer or other disposition, a joinder in which it agrees to be bound by the provisions of the Amended and Restated Governance Agreement to the same extent as the GS Investors signatory thereto), (ii) in accordance with Rule 144 under the Securities Act (including the volume and manner-of-sale limitations of Rule 144 regardless of whether such limitations are applicable) and otherwise subject to compliance with the Securities Act, (iii) in a registered public offering, (iv) in a transaction exempt from the registration requirements of the Securities Act in a manner calculated to achieve a Broad Distribution (it being understood that in connection with any registered offering under the Securities Act to permit distribution to, and resale by, the limited partners of, or other investors in, a Limited Partnership, such Limited Partnership may distribute Preferred Shares to such limited partners and such other investors), (v) in a Third Party Offer if and to the extent otherwise permitted under the Amended and Restated Governance Agreement or (vi) which are Additional Shares.

Except as contemplated by each of the Pledge Agreements, the GS Investors, directly or indirectly, may only sell, transfer or otherwise dispose of Beneficial Ownership of the Initial Shares (i) to another GS Investor (provided that such GS Investor is a signatory to the Amended and Restated Governance Agreement or has executed, at the time of such sale, transfer or other disposition, a joinder in which it agrees to be bound by the provisions of the Amended and Restated Governance Agreement to the same extent as the GS Investors signatory thereto), (ii) in accordance with Rule

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144 under the Securities Act and otherwise subject to compliance with the Securities Act (provided, however, that prior to any sale, transfer or other disposal of Initial Shares by a GS Investor pursuant to this clause (ii), such GS Investor must deliver to the Company an executed certificate stating that, to the knowledge, after due inquiry, of such GS Investor, the proposed transfer of such Initial Shares (x) will not cause the transferee to Beneficially Own 5% or more of the Total Voting Power of Hexcel and (y) such transferee does not Beneficially Own 5% or more of the Total Voting Power of Hexcel), (iii) in a registered public offering, (iv) in a transaction exempt from the registration requirements of the Securities Act in a manner calculated to achieve a Broad Distribution, (it being understood that in connection with any registered offering under the Securities Act to permit distribution to, and resale by, the limited partners of, or other investors in, a Limited Partnership, such Limited Partnership may distribute Initial Shares to such limited partners and such other investors), (v) in a Third Party Offer if and to the extent permitted under the Amended and Restated Governance Agreement or (vi) which are Additional Shares.

None of the GS Investors or their Affiliates may acquire, sell, transfer or otherwise dispose of Beneficial Ownership of Voting Securities if such acquisition, sale, transfer or other disposition would result in a default or acceleration of amounts outstanding under the Debt Instruments, unless prior to the consummation of such acquisition, sale, transfer or other disposition, any consents under the Debt Instruments required to effect such acquisition, sale, transfer or disposition are obtained.

The foregoing description of the Amended and Restated Governance Agreement is not intended to be complete and is qualified in its entirety by the complete text of the Amended and Restated Governance Agreement, the form of which is filed as Exhibit 27 hereto and is incorporated herein by reference.

Item 4 is hereby further amended by adding the following at the end thereof:

Except as described above or otherwise described in this Schedule 13D, the Filing Persons currently have no plans or proposals which relate to or would result in any transaction, event or action enumerated in paragraphs (a) through (j) of Item 4 of the form of Schedule 13D promulgated under the Act.

Each of the Filing Persons reserves the right, in light of its ongoing evaluation of the Company's financial condition, business, operations and prospects, the market price of the Common Stock, conditions in the securities markets generally, general economic and industry conditions, its business objectives and other relevant factors, to change its plans and intentions at any time, as it deems appropriate. In particular, any one or more of the Filing Persons (and their respective affiliates) reserves the right, in each case subject to (a) the restrictions contained in the Governance Agreement, the Notes, the Pledge Agreements and the December Stock Purchase Agreement and (b) any applicable limitations imposed on the sale of any of their Company securities by the Securities Act or other applicable law, to (i) purchase additional shares of Common Stock or other securities of the Company, (ii) sell or transfer shares of Common Stock beneficially owned by them from time to time in public or private transactions, and (iii) cause any of the Limited Partnerships to distribute in kind to their respective partners or members, as the case may be, shares of Common Stock or other securities owned by such Limited Partnerships. To the knowledge of each Filing Person, each of the persons listed on Schedules I, II-A-i, II-A-ii, II-B-i, II-B-ii, II-C-i, II-C-ii, II-D-i or II-D-ii hereto may make similar evaluations from time to time or on an ongoing basis.

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Except as described in this Schedule 13D and except for arrangements between and among the Filing Persons, none of the Filing Persons has any contracts, agreements, arrangements, understandings or relationships with any other person or entity for the purpose of acquiring, holding, voting or disposing of any shares of Common Stock or Preferred Stock.

### ITEM 5. INTERESTS IN SECURITIES OF THE ISSUER.

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Item 5 is hereby amended in its entirety as follows:

(a) Pursuant to a representation and warranty made by the Company in the December Stock Purchase Agreement, as of December 13, 2002, there were 38,419,559 shares of Common Stock outstanding. As of the date hereof, none of the Filing Persons beneficially owns any of the Shares, as the acquisition of the Shares and the consummation of the other transactions contemplated by the December Stock Purchase Agreement are subject to the satisfaction of certain conditions including, without limitation, the Company obtaining the Stockholder Approval.

As of the Signing Date, GS Group may be deemed to beneficially own an aggregate of 14,557,002 shares of Common Stock, consisting of (i) 14,525,000 shares of Common Stock that may be deemed to be beneficially owned by the Original Purchasers, as described below, and (ii) (a) (I) 10,000 options granted to Mr. Mehra on December 19, 2000 pursuant to the Hexcel Incentive Stock Plan, of which all of such options are currently exercisable and convertible into 10,000 shares of Common Stock, (II) 2,000 options granted to Mr. Mehra on May 10, 2001 pursuant to the Hexcel Incentive Stock Plan, of which two-thirds of such options are currently exercisable and convertible into 1,334 shares of Common Stock and the remaining one-third of such options will vest and become exercisable on May 10, 2003, (III) 8,000 options granted to Mr. Mehra on July 31, 2001 pursuant to the Hexcel Incentive Stock Plan, of which all of such options are currently exercisable and convertible into 8,000 shares of Common Stock and (IV) 2,000 options granted to Mr. Mehra on May 9, 2002 pursuant to the Hexcel Incentive Stock Plan, of which one-third of such options is currently exercisable and convertible into 667 shares of Common Stock, an additional one-third of such options will vest and become exercisable on May 9, 2003 and the remaining one-third of such options will vest and become exercisable on May 9, 2004 (Sanjeev K. Mehra has an understanding with GS Group pursuant to which he holds such options for the benefit of GS Group), and (b) (I) 10,000 options granted to Mr. Sacerdote on December 19, 2000 pursuant to the Hexcel Incentive Stock Plan, of which all of such options are currently exercisable and convertible into 10,000 shares of Common Stock, (II) 2,000 options granted to Mr. Sacerdote on May 10, 2001 pursuant to the Hexcel Incentive Stock Plan, of which two-thirds of such options are currently exercisable and convertible into 1,334 shares of Common Stock and the remaining one-third of such options will vest and become exercisable on May 10, 2003 and (III) 2,000 options granted to Mr. Sacerdote on May 9, 2002 pursuant to the Hexcel Incentive Stock Plan, of which one-third of such options is currently exercisable and convertible into 667 shares of Common Stock and an additional one-third of such options will vest and become exercisable on May 9, 2003 and the remaining one-third of such options will vest and become exercisable on May 9, 2004 (Peter M. Sacerdote has an understanding with GS Group pursuant to which he holds such options for the benefit of GS Group), representing in the aggregate approximately 37.9% of the outstanding shares of Common Stock.

As of the Signing Date, Goldman Sachs may be deemed to beneficially own an aggregate of 14,525,000 shares of Common Stock,

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consisting of 14,525,000 shares of Common Stock that may be deemed to be beneficially owned by the Original Purchasers, as described below, representing approximately 37.8% of the outstanding shares of Common Stock.

GS Group and Goldman Sachs disclaim beneficial ownership of the shares of Common Stock beneficially owned by the Original Purchasers and the Limited Partnerships to the extent that partnership or membership interests, as the case may be, in the Limited Partnerships are held by persons other than Goldman Sachs or its affiliates.

In accordance with Securities and Exchange Commission Release No. 34-39538 (January 12, 1998), this filing reflects the securities beneficially owned by the investment banking division of GS Group and its subsidiaries and affiliates (the "Investment Banking Division"). This filing does not reflect securities, if any, beneficially owned by any other operating unit of GS Group and its subsidiaries and affiliates. The Investment Banking Division disclaims beneficial ownership of securities, if any, beneficially owned by (i) any client accounts with respect to which the Investment Banking Division or its employees have voting or investment discretion, or both, and (ii) certain investment entities, of which the Investment Banking Division is the general partner, managing general partner or other manager, to the extent interests in such entities are held by persons other than the Investment Banking Division.

As of the Signing Date, GS Advisors may be deemed to beneficially own the aggregate of 11,278,155 shares of Common Stock that may be deemed to be beneficially owned by GS Capital and GS Offshore, representing, in the aggregate, approximately 29.4% of the outstanding shares of Common Stock.

As of the Signing Date, each of GS oHG and GS GmbH may be deemed to beneficially own the aggregate of 345,764 shares of Common Stock that may be deemed to be beneficially owned by GS Germany, representing approximately 0.9% of the outstanding shares of Common Stock.

As of the Signing Date, GS Employee 2000 may be deemed to beneficially own the aggregate of 2,628,354 shares of Common Stock that may be deemed to be beneficially owned by GS Employee, representing approximately 6.8% of the outstanding shares of Common Stock.

As of the Signing Date, Stone 2000 may be deemed to beneficially own the aggregate of 272,727 shares of Common Stock that may be deemed to be beneficially owned by Stone Street, representing approximately 0.7% of the outstanding shares of Common Stock.

As of the Signing Date, GS Capital may be deemed to beneficially own the aggregate of 8,272,312 shares of Common Stock that may be deemed to be beneficially owned by LXH representing approximately 21.5% of the outstanding shares of Common Stock.

As of the Signing Date, GS Offshore may be deemed to beneficially own the aggregate of 3,005,843 shares of Common Stock that may be deemed to be beneficially owned by LXH II, representing approximately 7.8% of the outstanding shares of Common Stock.

As of the Signing Date, LXH Corp. may be deemed to beneficially own 221,325.7 shares of Common Stock, that also may be deemed to be beneficially owned by LXH, LXH L.P. and GS Capital, representing approximately 0.6% of the outstanding shares of Common Stock.

As of the Signing Date, LXH L.P. may be deemed to beneficially own 257,299.2 shares of Common Stock, that also may be deemed to be

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beneficially owned by LXH and GS Capital, representing approximately 0.7% of the outstanding shares of Common Stock.

As of the Signing Date, LXH may be deemed to beneficially own 8,272,312 shares of Common Stock, representing approximately 21.5% of the outstanding shares of Common Stock.

As of the Signing Date, LXH II may be deemed to beneficially own 6,252,688 shares of Common Stock, representing approximately 16.3% of the outstanding shares of Common Stock.

None of the Filing Persons or, to their knowledge, the persons listed on Schedules I, II-A-i, II-A-ii, II-B-i, II-B-ii, II-C-i, II-C-ii, II-D-i or II-D-ii hereto, beneficially owns any shares of Common Stock other than as set forth herein.

(b) Each Filing Person shares the power to vote or direct the vote and to dispose or to direct the disposition of shares of Common Stock beneficially owned by such Filing Person as indicated above.

(c) Except as described above, no transactions in the shares of Common Stock were effected by the Filing Persons, or, to their knowledge, any of the persons listed on Schedules I, II-A-i, II-A-ii, II-B-i, II-B-ii, II-C-i, II-C-ii, II-D-i or II-D-ii hereto, during the past sixty days.

(d) Except for clients of Goldman Sachs who may have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, any shares of Common Stock held in managed accounts, no other person is known by any Filing Person to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, any shares of Common Stock that will be beneficially owned by any Filing Person after the Purchase.

(e) Not applicable.

### ITEM 6. CONTRACTS, ARRANGEMENTS, UNDERSTANDINGS OR RELATIONSHIPS WITH RESPECT TO SECURITIES OF THE ISSUER.

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Item 6 is hereby amended by adding the following immediately before the ultimate paragraph thereof:

The responses set forth in Items 3 and 4 of this Amendment No. 1 to the Schedule 13D are incorporated herein by reference in their entirety.

#### Amended and Restated Registration Rights Agreement

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Pursuant to and in connection with the consummation of the transactions contemplated by the December Stock Purchase Agreement, on the Shares Closing Date, the Limited Partnerships, the Original Purchasers and the Company will enter into the Amended and Restated Registration Rights Agreement, which will amend and restate the terms of the Registration Rights Agreement.

#### Defined Terms

The term "Holder" or "Holders" means any of the Limited Partnerships and the Original Purchasers and any Person (as defined in the Amended and Restated Registration Rights Agreement) who acquires and holds Registrable Securities (as defined below) in accordance with the terms of the Amended and Restated Governance Agreement.

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The term "Registrable Securities" means (i) any shares of Common Stock held by the Holders on the Shares Closing Date, (ii) any shares of Common Stock issued or issuable, directly or indirectly, upon conversion or redemption of shares of Series A Preferred Stock held by the Holders (including, without limitation, in satisfaction of a Conversion Payment (as defined below) or any payment of shares upon a redemption under the Series A Preferred Stock Certificate of Designations), (iii) any shares of Common Stock issued or issuable, directly or indirectly, upon conversion or redemption of shares of Series B Preferred Stock held by the Holders (including, without limitation, in satisfaction of any payment of shares upon a redemption under the Series B Preferred Stock Certificate of Designations), (iv) any shares of Common Stock issued or issuable, directly or indirectly, in exchange for or with respect to the Common Stock referenced in clause (i) above by way of stock dividend, stock split or combination of shares or in connection with a reclassification, recapitalization, merger, consolidation or other reorganization, (v) any shares of Series A Preferred Stock held by the Holders; provided, however, that the shares of Series A Preferred Stock will not be deemed to be Registrable Securities until the date that is three years after the Shares Closing Date, and (vi) any shares of Common Stock acquired by the Holders from third parties after the Shares Closing Date for so long as such Holder is an Affiliate of the Company. As to any particular Registrable Securities, such securities cease to be Registrable Securities when (A) a registration statement with respect to the sale of such securities has been declared effective under the Securities Act and such securities have been disposed of in accordance with such registration statement, or (B) such securities have been sold (other than in a privately negotiated sale) pursuant to Rule 144 (or any successor provision) under the Securities Act and in compliance with the requirements of paragraphs (f) and (g) of Rule 144 (notwithstanding the provisions of paragraph (k) of such Rule).

The term "Total Voting Power" has the same meaning as "Total Voting Power of Hexcel" as defined in the Amended and Restated Governance Agreement.

### Demand and Piggyback Registrations

Pursuant to the Amended and Restated Registration Rights Agreement, the Company will grant to the Holders the right, subject to certain limitations and restrictions: (i) to require the Company at the request of the Holders (any such request, a "Demand Registration Request") on three separate occasions to effect a registration of Registrable Securities held by the Holders which represents 20% or greater of the Total Voting Power of the then outstanding Registrable Securities (any such requested registration, a "Demand Registration"); provided, however, that no shares of Common Stock issued or issuable, directly or indirectly, upon conversion of shares of Preferred Stock held by the Limited Partnerships may be included in such request prior to the date that is eighteen months after the Shares Closing Date; and (ii) to require the Company to include Registrable Securities then held by the Holders in any other registration by the Company of its equity securities under the Securities Act. Pursuant to the Amended and Restated Registration Rights Agreement, the Company must pay certain expenses of the Holders in connection with such registrations as provided in the Amended and Restated Registration Rights Agreement.

Pursuant to the Amended and Restated Registration Rights Agreement, the Demand Registration rights granted to the Holders pursuant thereto are also subject to the following limitations: (i) the Company will not be required to cause a Demand Registration to be declared effective within a period of 180 days after the effective date of any other registration statement of the Company filed pursuant to the Securities Act;



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(ii) if the Board, in its good faith judgment, determines that any registration of Registrable Securities should not be made or continued because it would materially interfere with any material financing, acquisition, corporate reorganization or merger or other transaction or event involving the Company or any of its subsidiaries (a "Valid Business Reason"), the Company may postpone filing a registration statement relating to a Demand Registration Request until such Valid Business Reason no longer exists, but in no event for more than three months (such period of postponement or withdrawal, the "Postponement Period"); provided, however, the Company will not be permitted to postpone or withdraw a registration statement after the expiration of any Postponement Period until twelve months after the expiration of such Postponement Period; and (iii) the Company will not be required to effect a Demand Registration unless the Registrable Securities to be included in such registration have an aggregate anticipated offering price of at least \$25,000,000 (based on the then-current market price of the Registrable Securities).

The foregoing description of the Amended and Restated Registration Rights Agreement is not intended to be complete and is qualified in its entirety by the complete text of the Amended and Restated Registration Rights Agreement, the form of which is filed as Exhibit 28 hereto and is incorporated herein by reference.

### Series A Preferred Stock Certificate of Designations

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Pursuant to and in connection with the consummation of the transactions contemplated by the December Stock Purchase Agreement, immediately prior to the Shares Closing Date, the Company will file the Series A Preferred Stock Certificate of Designations with the Secretary of State of the State of Delaware and issue to the Limited Partnerships Series A Preferred Stock having the terms set forth in the Series A Preferred Stock Certificate of Designations.

### Rank

Pursuant to the Series A Preferred Stock Certificate of Designations, the Series A Preferred Stock, with respect to dividend distributions and distributions upon liquidation, winding-up and dissolution, whether voluntary or involuntary, of the Company, ranks senior to all Junior Stock (as defined in the Series A Preferred Stock Certificate of Designations) and ranks on parity with all Parity Stock (as defined in the Series A Preferred Stock Certificate of Designations) including the Series B Preferred Stock.

### Dividends

The Series A Preferred Stock Certificate of Designations provides that, commencing on the Dividend Commencement Date (as defined below) the holders of shares of Series A Preferred Stock are entitled to receive on each Dividend Payment Date (as defined in the Series A Preferred Stock Certificate of Designations) in respect of the Dividend Period (as defined in the Series A Preferred Stock Certificate of Designations) ending on (and including) the date immediately prior to such Dividend Payment Date dividends on each share of Series A Preferred Stock at the rate of 6% per annum on the Accrued Value (as defined below) thereof from the Dividend Commencement Date until the earliest of (A) the date on which the Liquidation Preference (as defined below) of such share of Series A Preferred Stock is paid to the holder thereof in connection with the Liquidation (as defined in the Series A Preferred Stock Certificate of Designations) of the Company; (B) the date on which the Company redeems such share of Series A Preferred Stock; (C) the date on which such share of

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Series A Preferred Stock is converted into shares of Common Stock; (D) the occurrence of a Mandatory Conversion Event (as defined below) and (E) the date on which such share of Series A Preferred Stock is otherwise acquired by the Company, provided that with respect to the Initial Dividend Period (as defined in the Series A Preferred Stock Certificate of Designations), the dividends set forth above must be prorated based on the number of days in such period. Such dividends are fully cumulative and accumulate and accrue on a daily basis (computed on the basis of a 360-day year of twelve 30-day months) and compound quarterly in arrears on the Dividend Payment Dates at the rate indicated above, whether or not they have been declared and whether or not there are profits, surplus or other funds of the Company legally available for the payment of dividends. Such dividends may, at the option of the Company, either be paid in cash or accrue and compound and be added to the Accrued Value on the applicable Dividend Payment Dates, provided, however, that all dividends payable on any given Dividend Payment Date must either (i) all be paid in cash or (ii) all accrue and compound and be added to the Accrued Value. "Dividend Commencement Date" is defined in the Series A Preferred Stock Certificate of Designations as the third anniversary of the original date of issuance of the Series A Preferred Stock (the "Issuance Date"). "Accrued Value" is defined in the Series A Preferred Stock Certificate of Designations as, with respect to a share of Series A Preferred Stock, the sum of (i) \$1,195.618 plus (ii) the aggregate of all accrued but unpaid dividends (whether or not declared) on such share which have been added to Accrued Value in accordance with the Series A Preferred Stock Certificate of Designations.

In addition, in the event any dividends are declared or paid or any other distribution is made on or with respect to the Common Stock, the holders of the Series A Preferred Stock as of the record date established by the Board for such dividend or distribution on the Common Stock are entitled to receive as additional dividends (the "Additional Dividends") an amount (whether in the form of cash, securities or other property) equal to the amount (and in the form) of the dividends or distribution that such holder would have received had the Series A Preferred Stock been converted into Common Stock as of the date immediately prior to the record date of such dividend or distribution on the Common Stock, provided, however, that for the purposes of determining the number of shares of Common Stock into which the Series A Preferred Stock is deemed to have been converted, the Conversion Limitation (as defined below) is disregarded. Such Additional Dividends are payable on the same payment date as the payment date for the dividend on the Common Stock established by the Board; provided, however, that if the Company declares and pays a dividend or makes a distribution on the Common Stock consisting in whole or in part of Common Stock (or options, rights, warrants or other securities convertible into or exchangeable for Common Stock), then no such dividend or distribution is payable in respect of the Series A Preferred Stock on account of the portion of such dividend or distribution on the Common Stock payable in Common Stock and in lieu thereof the applicable anti-dilution adjustment set forth in the Series A Preferred Stock Certificate of Designations will apply.

### Voting Rights

Except as otherwise required by law or as provided in the Series A Preferred Stock Certificate of Designations, the Series A Preferred Stock Certificate of Designations provides that the holders of record of shares of Series A Preferred Stock have full voting rights and powers, and are entitled to vote on all matters put to a vote or consent of stockholders of the Company, voting together with the holders of the Common Stock and Series B Preferred Stock as a single class, with each holder of shares of Series A Preferred Stock having the number of votes equal to the number of shares of Common Stock into which such shares of Series A Preferred Stock

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could be converted in accordance with the Series A Preferred Stock Certificate of Designations as of the record date for the vote or consent which is being taken.

In addition to any matters requiring a separate vote of the Series A Preferred Stock under applicable law, the Company may not, without the prior consent or approval of the holders of at least 70% of the issued and outstanding shares of Series A Preferred Stock, voting as a single class: (i) amend, alter, repeal or restate its certificate of incorporation, its by-laws or the Series A Preferred Stock Certificate of Designations (whether by reclassification, merger, consolidation, reorganization or otherwise) in a manner that alters or changes, in any adverse manner, the powers, preferences, privileges or rights of the Series A Preferred Stock or which otherwise would adversely affect the rights, privileges or preferences of the Series A Preferred Stock; or (ii) authorize, issue or otherwise create any shares of Senior Stock, Parity Stock or additional shares of Series A Preferred Stock.

### Mandatory Redemption

The Series A Preferred Stock Certificate of Designations provides that on January 22, 2010 (the "Mandatory Redemption Date"), the Company is required to redeem (subject to the legal availability of funds therefor) all remaining outstanding shares of Series A Preferred Stock for an amount in cash per share equal to the Liquidation Preference of such share (the "Mandatory Redemption Price"). "Liquidation Preference" is defined in the Series A Preferred Stock Certificate of Designations as an amount equal to the greater of (i) if measured prior to the Dividend Commencement Date, \$1,000 (as adjusted for any split, subdivision, combination, consolidation, recapitalization or similar event with respect to the Series A Preferred Stock) (the "Stated Value"), or, if measured on or following the Dividend Commencement Date, the Adjusted Accrued Value (as defined below), of such share and (ii) the amount that would be payable to a holder in respect of Common Stock issuable upon conversion of a share of Series A Preferred Stock if all outstanding shares of Series A Preferred Stock were converted into Common Stock immediately prior to the Liquidation; provided, however, that for the purposes of determining the number of shares of Common Stock outstanding and the number of shares of Common Stock into which the Series A Preferred Stock is deemed to have been converted, the Conversion Limitation (as defined below) is disregarded (the amount in clause (ii) being referred to as the "Participating Preference Amount"). "Adjusted Accrued Value" is defined in the Series A Preferred Stock Certificate of Designations as an amount per share of Series A Preferred Stock equal to the sum of (i) the Stated Value plus (ii) an amount equal to the aggregate of all accrued but unpaid dividends (whether or not declared) on such share which have been added to Accrued Value plus (iii) an amount equal to all accrued and unpaid dividends on such share which have not been added to Accrued Value; provided, however, that solely for purposes of determining the Liquidation Preference in a redemption upon a Change of Control (as such term is defined in the Indenture governing the "Notes"), the Adjusted Accrued Value component of Liquidation Preference means the product of (A) the Adjusted Accrued Value and (B) 1.01. Notwithstanding the foregoing, if the Mandatory Redemption Price of each share is equal to the Participating Preference Amount rather than the Adjusted Accrued Value of such share, the Company may pay all of the Mandatory Redemption Price in Common Stock valued at the Closing Price (as defined in the Series A Preferred Stock Certificate of Designations) of the Common Stock on the Business Day (as defined in the Series A Preferred Stock Certificate of Designations) immediately preceding the Mandatory Redemption Date; provided, however, that each holder of shares to be redeemed may elect to receive the Adjusted Accrued Value in cash, in lieu of a payment of the Participating Preference Amount in Common Stock.

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If, at the Mandatory Redemption Date, the Company does not have sufficient capital and surplus legally available to redeem all the outstanding shares of the Series A Preferred Stock, the Company must take all measures permitted under the DGCL to increase the amount of its capital and surplus legally available, and the Company must redeem as many shares of the Series A Preferred Stock as it may legally redeem, ratably from the holders thereof in proportion to the number of shares held by them, and must thereafter from time to time, as soon as it has funds available therefor, redeem as many shares of the Series A Preferred Stock as it legally may until it has redeemed all of the outstanding shares of the Series A Preferred Stock. Shares of the Series A Preferred Stock not redeemed on the Mandatory Redemption Date will accrue dividends at a rate equal to 10% per annum of the Accrued Value in the manner set forth in the Series A Preferred Stock Certificate of Designations from the Mandatory Redemption Date until such shares are redeemed by the Company in accordance with the Series A Pre