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

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): March 12, 2024

Plug Power Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

1-34392
(Commission File
Number)

22-3672377
(IRS Employer
Identification No.)

**968 Albany Shaker Road,
Latham, New York**
(Address of principal executive offices)

12110
(Zip Code)

Registrant's telephone number, including area code: **(518) 782-7700**

N/A

(Former name or former address, if changed since last report.)

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

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

Securities registered pursuant to 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.01 per share	PLUG	The Nasdaq Capital Market

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

Emerging growth company ☐

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

Item 3.02 Unregistered Sales of Equity Securities.

The information set forth in Item 8.01 of this Current Report on Form 8-K is incorporated herein by reference.

Item 8.01 Other Events.

On March 12, 2024, Plug Power Inc., a Delaware corporation (“Plug” or the “Company”) entered into separate, privately negotiated exchange agreements (the “Exchange Agreements”) with certain holders of the Company’s outstanding 3.75% Convertible Senior Notes due 2025 (the “Existing Notes”), pursuant to which the Company will exchange \$138,816,000 in aggregate principal amount of the Existing Notes, and accrued and unpaid interest on such Existing Notes to, but excluding, March 20, 2024, for \$140,396,000 in aggregate principal amount of the Company’s new 7.00% Convertible Senior Notes due 2026 (the “New Notes”) (the “Exchange Transactions”), in each case, pursuant to the exemption from registration provided by Section 4(a)(2) under the Securities Act of 1933, as amended (the “Securities Act”). Following the closing of the Exchange Transactions, which is expected to occur on or about March 20, 2024, subject to customary closing conditions, approximately \$58.5 million in aggregate principal amount of the Existing Notes will remain outstanding with terms unchanged.

The foregoing description of the Exchange Agreements is only a summary and is qualified in its entirety by reference to the full text of the form of Exchange Agreement, which is filed as Exhibit 99.1 to this Current Report on Form 8-K and incorporated by reference herein.

The New Notes will be the Company’s senior, unsecured obligations and will be governed by the terms of an Indenture (the “Indenture”), dated as of March 20, 2024, to be entered into between the Company and Wilmington Trust, National Association, as trustee (the “Trustee”). The New Notes will bear cash interest at the rate of 7.00% per annum, payable semi-annually in arrears on June 1 and December 1 of each year, beginning on June 1, 2024, to holders of record at the close of business on the preceding May 15 and November 15, respectively. The New Notes will mature on June 1, 2026, unless earlier converted or redeemed or repurchased by the Company.

The conversion rate for the New Notes will initially be 235.4049 shares of the Company’s common stock per \$1,000 principal amount of New Notes, which is equivalent to an initial conversion price of approximately \$4.25 per share of common stock, which represents a premium of approximately 20% over the last reported sale price of Plug’s common stock on the Nasdaq Capital Market on March 12, 2024. The conversion rate and conversion price are subject to customary adjustments upon the occurrence of certain events. Prior to the close of business on the business day immediately preceding December 1, 2025, the New Notes will be convertible at the option of the holders of the New Notes only upon the satisfaction of specified conditions and during certain periods. On or after December 1, 2025 until the close of business on the second scheduled trading day immediately preceding the maturity date, the New Notes will be convertible at the option of the holders of the New Notes at any time regardless of these conditions. Conversions of the New Notes will be settled in cash, shares of Plug’s common stock, or a combination thereof, at Plug’s election.

Subject to certain exceptions and subject to certain conditions, holders of the New Notes may require the Company to repurchase their New Notes upon the occurrence of a “Fundamental Change” (as will be defined in the Indenture) prior to maturity for cash at a repurchase price equal to 100% of the principal amount of the New Notes to be repurchased plus accrued and unpaid interest, if any, to, but excluding, the repurchase date.

The New Notes will be redeemable, in whole or in part, at the Company's option at any time on or after June 5, 2025, at a cash redemption price equal to the principal amount of the New Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the redemption date, but only if the last reported sale price per share of the Company’s common stock exceeds 130% of the then-applicable conversion price then in effect for at least 20 trading days (whether or not consecutive), including at least one of the three trading days immediately preceding the date the Company sends the related redemption notice, during any 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date on which the Company sends such redemption notice.

In certain circumstances, conversions of New Notes in connection with “Make-Whole Fundamental Changes” (as will be defined in the Indenture) or conversions of New Notes called for redemption may result in an increase to the conversion rate, provided that the conversion rate will not exceed 282.4859 shares of the Company’s common stock per \$1,000 principal amount of New Notes, subject to adjustment. In such circumstance, a maximum of 39,659,890 shares of Common Stock, subject to adjustment, may be issued upon conversion of the New Notes.

The foregoing descriptions of the New Notes and the Indenture do not purport to be complete and are qualified in their entirety by reference to the Indenture (which will include the form of the New Note). A copy of the Indenture (which will include the form of the New Note) is expected to be attached as an exhibit to a Current Report on Form 8-K to be filed by the Company following the closing of the Exchange Transactions.

The Company offered the New Notes to certain holders of the Existing Notes in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act. The offer and sale of the New Notes to certain holders of the Existing Notes did not involve a public offering, the solicitation of offers for the New Notes was not done by any form of general solicitation or general advertising, and offers for the New Notes were only solicited from persons believed to be “qualified institutional buyers” within the meaning of Rule 144A promulgated under the Securities Act. The New Notes and any Company common stock that may be issued upon conversion of the New Notes will not be registered under the Securities Act, and may not be offered or sold in the United States absent registration under the Securities Act or an applicable exemption from registration requirements.

This Current Report on Form 8-K does not constitute an offer to sell, or a solicitation of an offer to buy, any security and shall not constitute an offer, solicitation or sale in any jurisdiction in which such offering would be unlawful.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit Number	Description
99.1	Form of Exchange Agreement between the Company and certain holders of the Existing Notes.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

Forward-Looking Statements

This Current Report on Form 8-K contains “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995 that involve significant risks and uncertainties about Plug, including but not limited to statements regarding the Exchange Transactions, the principal amount of the Existing Notes subject to the exchange, the closing date for the Exchange Transactions and the resulting allocation of principal between the Existing Notes and New Notes.

You are cautioned that such statements should not be read as a guarantee of future performance or results as such statements are subject to risks and uncertainties. Actual performance or results may differ materially from those expressed in these statements as a result of various factors, including, but not limited to, the following: the risk that one or more of the holders of the Existing Notes participating in the Exchange Transactions do not deliver their Existing Notes to Plug for exchange when required pursuant to the terms of the Exchange Agreements or at all. For a further description of the risks and uncertainties that could cause actual results to differ from those expressed in these forward-looking statements, as well as risks relating to the business of Plug in general, see Plug’s public filings with the Securities and Exchange Commission, including the “Risk Factors” section of Plug’s Annual Report on Form 10-K for the year ended December 31, 2023 as well as any subsequent filings. Readers are cautioned not to place undue reliance on these forward-looking statements. The forward-looking statements are made as of the date hereof and are based on current expectations, estimates, forecasts and projections as well as the beliefs and assumptions of management. We disclaim any obligation to update forward-looking statements except as may be required by law.

SIGNATURES

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

Date: March 13, 2024

Plug Power Inc.

By: /s/ Paul Middleton

Name: Paul Middleton

Title: Chief Financial Officer

Form of Exchange Agreement
Execution Version

March 12, 2024

Plug Power Inc.
968 Albany Shaker Road
Latham, New York 12110
Attention: General Counsel

Re: Exchange for Plug Power Inc.'s 3.75% Convertible Senior Notes due 2025

Ladies and Gentlemen:

Pursuant to the terms of this exchange agreement (this “**Exchange Agreement**”), Plug Power Inc., a Delaware corporation (the “**Company**”), is offering a new series of its 7.00% Convertible Senior Notes due 2026 (the “**New Notes**”). The New Notes will be convertible into cash, shares of the Company’s common stock, par value \$0.01 per share (the “**Common Stock**”), or a combination of cash and shares of Common Stock in accordance with the terms of the New Notes Indenture (as defined below).

The undersigned (the “**Investor**”), for itself and, on behalf of the accounts (if any) listed on Exhibit A hereto, for whom the Investor has been duly authorized to enter into the Exchange (as defined below) (each, including the Investor if it is listed on Exhibit A, an “**Exchanging Holder**”), shall exchange 3.75% Convertible Senior Notes due 2025 (CUSIP: 72919P AD5) of the Company (the “**Old Notes**”) for an amount of New Notes as set forth herein (the “**Exchange**”), pursuant and subject to the terms and conditions set forth in this Exchange Agreement. Reference is made to the Indenture (the “**Old Notes Indenture**”), dated as of May 18, 2020, by and between the Company and Wilmington Trust, National Association (“**Old Notes Trustee**”).

The Exchanging Holders (including the Investor, as applicable) are referred to herein collectively as the “**Purchasers**,” and each Purchaser (other than the Investor) is referred to herein as an “**Account**.”

The Investor and each Account understands that the Exchange is being made without registration under the Securities Act of 1933, as amended (the “**Securities Act**”), or any securities laws of any state of the United States or of any other jurisdiction, and that the Exchange is only being made to investors who are “qualified institutional buyers” (as defined in Rule 144A under the Securities Act) in reliance upon an exemption from registration under the Securities Act. The Exchange is described in, and is being made pursuant to, the draft Indenture relating to the New Notes (the “**New Notes Indenture**”) to be entered into as of the Closing Date (as defined below) between the Company and Wilmington Trust, National Association, as Trustee (the “**New Notes Trustee**”), as supplemented by the Pricing Term Sheet, dated as of the date hereof (the “**Pricing Term Sheet**” and, together with the New Notes Indenture, the “**Transaction Documents**”).

1. **The Exchange.** On the basis of the representations, warranties and agreements contained in this Exchange Agreement and subject to the terms and conditions of this Exchange Agreement, each of the Exchanging Holders hereby agrees to deliver, assign and transfer to the Company all right, title and interest in the aggregate principal amount of Old Notes for such Exchanging Holder set forth in column 2 of Exhibit A hereto (such aggregate principal amount of Old Notes, the “**Exchanged Old Notes**”) in exchange for New Notes having an aggregate principal amount, for each Exchanging Holder, as set forth in Exhibit A (such aggregate principal amount of New Notes, the “**Exchanged New Notes**”), and the Company agrees to issue such Exchanged New Notes in exchange for such Exchanged Old Notes.

For the avoidance of doubt, Exchanged New Notes will be issued in denominations of \$1,000 principal amount and integral multiples of \$1,000 in excess thereof, and the Company will not make any separate cash payment in respect of rounded amounts or interest accrued and unpaid on the Exchange Old Notes to the Closing Date (as defined below). Instead, such amounts will be deemed to be paid in full rather than cancelled, extinguished or forfeited upon exchange of the Exchanged Old Notes for the Exchanged New Notes. Subject to the terms and conditions of this Exchange Agreement, the Investor, on behalf of itself and each Exchanging Holder, hereby (a) waives any and all other rights with respect to such Exchanged Old Notes, and (b) releases and discharges the Company from any and all claims the Investor and any other Exchanging Holder may now have, or may have in the future, arising out of, or related to, such Exchanged Old Notes.

2. [Reserved].
3. The Closing. The closing of the Exchange (the “**Closing**”) shall take place at the offices of Goodwin Procter LLP, 100 Northern Avenue, Boston, MA 02210, at 10:00 a.m., New York City time, on March 20, 2024 or at such other time and place as the Company and the Investor may mutually agree in writing (the “**Closing Date**”).
4. Closing Mechanics.
 - a. The Depository Trust Company (“**DTC**”) will act as securities depository for the New Notes.
 - b. At or prior to the times set forth in the Exchange Procedures set forth in Exhibit B hereto (the “**Exchange Procedures**”), the Investor, on behalf of itself and/or any other Account, shall deliver and/or cause the Exchanging Holders to deliver the Exchanged Old Notes, by book entry transfer through the facilities of DTC, to Wilmington Trust, National Association, in its capacity as the Old Notes Trustee, for the account/benefit of the Company for cancellation as instructed in the Exchange Procedures.
 - c. On the Closing Date, subject to satisfaction of the conditions precedent specified in Section 7 hereof, and the prior receipt by the Old Notes Trustee from each Exchanging Holder of the Exchanged Old Notes pursuant to clause (b) above:
 - (i) the Company shall execute and deliver the New Notes Indenture, dated as of the Closing Date, between the Company and the New Notes Trustee; and
 - (ii) the Company shall execute, cause the New Notes Trustee to authenticate and cause to be delivered to the DTC account(s) specified by the Investor or the relevant Account in Exhibit C hereto, the Exchanged New Notes.

All questions as to the form of all documents and the validity and acceptance of the Old Notes and the New Notes will be determined by the Company, in its sole discretion, which determination shall be final and binding.

Each of the Company and the Exchanging Holders acknowledge that the delivery of the New Notes to the Exchanging Holders may be delayed due to procedures and mechanics within the system of DTC or other events beyond the control of the Company and that such a delay will not be a default under this Exchange Agreement so long as (i) the Company is using its reasonable best efforts to effect the issuance of the New Notes and any such delay does not exceed five (5) Business Days after the Closing Date (provided that if such time limit is exceeded, the Exchanging Holders may terminate this Exchange Agreement by written notice to the Company), or (ii) such delay arises due to a failure by Investor to deliver valid settlement instructions in accordance with Section 9; provided, further, that no delivery of Exchanged New Notes will be made until the Exchanged Old Notes have been properly submitted for exchange in accordance with the Exchange Procedures and no accrued interest will be payable by reason of any delay in making such delivery.

5. **Representations and Warranties and Covenants of the Company.** The Company represents and warrants to and covenants with the Investor and each Account, as applicable, that:
- a. *Organization.* The Company is duly incorporated and is validly existing under the laws of Delaware.
 - b. *Due Authorization.* This Exchange Agreement has been duly authorized, executed and delivered by the Company.
 - c. *New Notes and Underlying Shares.* The New Notes and the offer and sale of the New Notes pursuant to this Exchange Agreement have been duly authorized by the Company and, when duly executed by the Company in accordance with the terms of the New Notes Indenture, assuming due authentication of the New Notes by the New Notes Trustee, upon delivery to the Purchasers in accordance with the terms of the Exchange, will be validly issued and delivered and will constitute valid and binding obligations of the Company entitled to the benefits of the New Notes Indenture, enforceable against the Company in accordance with their terms, except as such enforceability may be limited by bankruptcy, fraudulent conveyance, insolvency, reorganization, moratorium, and other laws relating to or affecting creditors' rights generally or by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law) (collectively, the "**Enforceability Exceptions**"). The maximum number of shares of Common Stock initially issuable upon conversion of the New Notes (assuming settlement solely in Common Stock and taking into account the maximum make-whole adjustment under the New Notes Indenture) (the "**Underlying Shares**") have been duly and validly authorized and reserved for by the Company and, when issued upon conversion of the New Notes in accordance with the terms of the New Notes, will be validly issued, fully paid and non-assessable, and the issuance of any Underlying Shares will not be subject to any preemptive, participation, rights of first refusal or similar rights.
 - d. *New Notes Indenture.* The Company has all requisite organizational power and authority to perform its obligations under the New Notes Indenture. The New Notes Indenture has been duly authorized by the Company, and will have been duly executed and delivered by the Company on or prior to the Closing. Assuming due authorization, execution and delivery by the New Notes Trustee thereto, the New Notes Indenture, upon execution and delivery thereof by the Company, will constitute the valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, subject to the Enforceability Exceptions.
 - e. *Exemption from Registration.* Assuming the accuracy of the representations and warranties of the Investor and each other investor executing an Exchange Agreement, (i) the issuance of the Exchanged New Notes, pursuant to this Exchange Agreement is exempt from the registration requirements of the Securities Act; (ii) the New Notes Indenture is not required to be qualified under the Trust Indenture Act of 1939, as amended; (iii) the Exchanged New Notes will, at the Closing, be free of any restrictions on resale by such Exchanging Holder pursuant to Rule 144 promulgated under the Securities Act; provided that such Exchanging Holder is not (and has not been in the preceding three months) an "affiliate" (within the meaning of Rule 144 under the Securities Act) of the Company; and (iv) will be issued in compliance with all applicable U.S. state and federal laws concerning the issuance of the Exchanged New Notes.
 - f. *Listing.* At the Closing, the Common Stock will be listed on the Nasdaq Capital Market (the "**Nasdaq**"), and the Company has taken no action designed to, or likely to have the effect of, delisting the Common Stock from Nasdaq nor has the Company received any notification that the Nasdaq is contemplating terminating such listing.

- g. *No Conflicts*. The issue of the New Notes pursuant to the Exchange Agreements, the execution, delivery and performance, as applicable, by the Company of its obligations under the New Notes, the New Notes Indenture, each Exchange Agreement, and the consummation of the transactions contemplated hereby and thereby, as the case may be, will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, impose any lien, charge or encumbrance upon any property or assets of the Company or its subsidiaries, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement, license, lease or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the property or assets of the Company or any of its subsidiaries is subject, (ii) result in any violation of certificate of incorporation or bylaws of the Company or (iii) result in any violation of any statute or any judgment, order, decree, rule or regulation of any court or arbitrator or U.S. federal, state, local or non-U.S. governmental agency or regulatory authority having jurisdiction over the properties or assets of the Company or its subsidiaries or any of their properties or assets, except, with respect to clauses (i) and (iii), conflicts, breaches, violations, impositions or defaults that would not reasonably be expected to have a material adverse effect on the condition (financial or otherwise), results of operations, stockholders' equity, properties, business or prospects of the Company and its subsidiaries, taken as a whole, or a material adverse effect on the performance by the Company of its obligations under this Exchange Agreement, the Old Notes Indenture, the New Notes Indenture, the Old Notes or the New Notes or the consummation of any of the transactions contemplated hereby or thereby.
- h. *Exchange*. The Company acknowledges that the terms of the Exchange have been mutually negotiated among the parties.
6. Representations and Warranties and Covenants of the Investor. The Investor hereby represents and warrants to and covenants with the Company, on behalf of itself and each Account, as applicable, that:
- a. The Investor is a corporation, limited partnership, limited liability company or other entity, as the case may be, duly formed, validly existing and in good standing under the laws of the jurisdiction of its formation.
- b. If the Investor is participating in the Exchange, the Investor has full power and authority to deliver, assign and transfer the Exchanged Old Notes in exchange for the Exchanged New Notes pursuant to this Exchange Agreement and to enter into this Exchange Agreement and perform all obligations required to be performed by the Investor hereunder. If the Investor is executing this Exchange Agreement on behalf of an Account, (i) the Investor has all requisite authority to enter into this Exchange Agreement on behalf of, and, bind, each Account to the terms of this Exchange Agreement and (ii) Exhibit A hereto is a true, correct and complete list of (A) the name of each Exchanging Holder, and (B) the principal amount of each Exchanging Holder's Exchanged Old Notes.
- c. Each Exchanging Holder participating in the Exchange is the current beneficial owner of the Exchanged Old Notes. When the Exchanged Old Notes are exchanged, the Company will acquire good, marketable and unencumbered title thereto, free and clear of all liens, restrictions, charges, encumbrances, adverse claims, rights or proxies.
- d. Participation in the Exchange will not contravene (1) any law, rule or regulation binding on the Investor or any investment guideline or restriction applicable to the Investor (or, if applicable, any Account) and (2) the charter or bylaws or similar organizational documents of the Investor (or, if applicable, any Account).

- e. The Investor (or applicable Account) is a resident of the jurisdiction set forth in Exhibit C and, unless otherwise set out in Exhibit A hereto, is not acquiring the Exchanged New Notes as a nominee or agent or otherwise for any other person.
- f. The Investor and each Account will comply with all applicable laws and regulations in effect in any jurisdiction in which the Investor or such Account purchases or acquires pursuant to the Exchange or sells New Notes and will obtain any consent, approval or permission required for such purchases, acquisitions or sales under the laws and regulations of any jurisdiction to which the Investor or such Account is subject or in which the Investor or such Account makes such purchases, acquisitions or sales, and the Company shall not have any responsibility therefor.
- g. The Investor and each Account has received a copy of the Transaction Documents. The Investor acknowledges that: (1) no person has been authorized to give any information or to make any representation concerning the Exchange, the Company or any of its subsidiaries, including the Company, other than as contained in this Exchange Agreement or the Transaction Documents or in the information given by the Company's duly authorized officers and employees in connection with the Investor's examination of the Company and its subsidiaries and the terms of the Exchange; and (2) the Company and its subsidiaries do not take any responsibility for, and cannot provide any assurance as to the reliability of, any other information that may have been provided to the Investor. Each of the Investor and each Account hereby acknowledges that (1) Morgan Stanley & Co. LLC (the "**Placement Agent**") does not take any responsibility for, and can provide no assurance as to the reliability of, the information set forth in the Transaction Documents or any such other information provided or deemed provided to the Investor by the Company and (2) the Placement Agent shall have no liability or obligation (including without limitation, for or with respect to any losses, claims, damages, obligations, penalties, judgments, awards, liabilities, costs, expenses or disbursements incurred by it or any other person or entity), whether in contract, tort or otherwise, to such Investor or Account, as the case may be, or to any person claiming through such Investor or Account, as the case may be, in respect of the Exchange.
- h. The Investor and each Account understands and accepts that acquiring the New Notes in the Exchange involves risks. The Investor and each Account has such knowledge, skill and experience in business, financial and investment matters that the Investor and each Account is capable of evaluating the merits and risks of the Exchange and an investment in the New Notes. With the assistance of its own professional advisors (to the extent the Investor and each Account has deemed appropriate), the Investor and each Account has made its own legal, tax, accounting and financial evaluation of the merits and risks of an investment in the New Notes and the consequences of the Exchange and this Exchange Agreement. The Investor and each Account has considered the suitability of the New Notes as an investment in light of its own circumstances and financial condition, and the Investor and each Account is able to bear the risks associated with an investment in the New Notes.
- i. The Investor confirms that neither it nor any Account is relying on any communication (written or oral) of the Company or the Placement Agent or any of their respective agents (including authorized officers and employees) or affiliates as investment advice or as a recommendation to participate in the Exchange and receive the Exchanged New Notes pursuant to the terms hereof. It is understood that information provided in the Transaction Documents, or by the Company or the Placement Agent or any of their respective agents or affiliates, shall not be considered investment advice or a recommendation with respect to the Exchange, and that none of the Company, the Placement Agent or any of their respective agents or affiliates is acting or has acted as an advisor to the Investor or any Account in deciding whether to participate in the Exchange. The Investor and each Account acknowledges and the Investor agrees that the Placement Agent has not acted as a financial advisor or fiduciary to the Investor or any Account and that the Placement Agent, its affiliates and its or their directors, officers, employees, representatives and controlling persons have no responsibility for making, and have not made, any independent investigation of the information contained herein or in the Company's filings with the Securities and Exchange Commission (the "**SEC**") and make no representation or warranty to the Investor or any Account, express or implied, with respect to the Company, the Exchanged Old Notes or the Common Stock or the accuracy, completeness or adequacy of the information provided to the Investor or any Account or any other publicly available information, nor shall any of the foregoing persons be liable for any loss or damages of any kind in connection with the Exchange.

- j. The Investor confirms, for itself and for each Account, that neither of the Company nor the Placement Agent has (1) given any guarantee or representation as to the potential success, return, effect or benefit (legal, regulatory, tax, financial, accounting or otherwise) of an investment in the New Notes; or (2) made any representation to the Investor regarding the legality of an investment in the New Notes under applicable investment guidelines, laws or regulations. In deciding to participate in the Exchange, neither the Investor nor any Account is relying on the advice or recommendations of the Company or the Placement Agent, and the Investor and each Account has made its own independent decision that the investment in the New Notes is suitable and appropriate for the Investor or such Account.
- k. The Investor and each Account is a sophisticated participant in the transactions contemplated hereby and has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of an investment in the New Notes, is experienced in investing in capital markets and is able to bear the economic risk of an investment in the New Notes. The Investor and each Account is familiar with the business and financial condition and operations of the Company and its subsidiaries, including the Company, and has conducted its own investigation of the Company and its subsidiaries and the New Notes and has consulted with its own advisors concerning such matters and shall be responsible for making its own independent investigation and appraisal of the transactions contemplated hereby. The Investor and each Account has had access to the Company's filings with the SEC and such other information concerning the Company and its subsidiaries and the New Notes as it deems necessary to enable it to make an informed investment decision concerning the Exchange. The Investor and each Account has been offered the opportunity to ask questions of the Company and its representatives and has received answers thereto as the Investor or such Account deems necessary to enable it to make its own informed investment decision concerning the Exchange and the New Notes.
- l. The Investor and each Account understands that no U.S. federal, state, local or non-U.S. agency has passed upon the merits or risks of an investment in the New Notes or made any finding or determination concerning the fairness or advisability of such investment.
- m. The Investor and each Account is a "qualified institutional buyer" as defined in Rule 144A under the Securities Act and an "accredited investor" within the meaning of Rule 501(a) (1), (2), (3) or (7) under the Securities Act. The Investor, for itself and on behalf of each Account, agrees to furnish any additional information reasonably requested by the Company or any of its affiliates to assure compliance with applicable U.S. federal and state securities laws in connection with the Exchange.
- n. The Investor and each Account is not directly, or indirectly through one or more intermediaries, controlling or controlled by, or under direct or indirect common control with, the Company and is not, and has not been for the immediately preceding three months, an "affiliate" (within the meaning of Rule 144 under the Securities Act) of the Company.

- o. The Investor and each Account is acquiring the New Notes solely for the Investor's or such Account's own beneficial account, or for an account with respect to which the Investor or such Account exercises sole investment discretion, for investment purposes, and not with a view to, or for resale in connection with, any distribution of the New Notes in violation of the Securities Act without prejudice, however, to such Investor's right at all times to sell or otherwise dispose of all or any part of such New Notes in compliance with applicable federal and state securities laws. The Investor and each Account understands that the offer and sale of the New Notes have not been registered under the Securities Act or any state securities laws by reason of specific exemptions under the provisions thereof that depend in part upon the investment intent of the Investor or each Account and the accuracy of the other representations made by the Investor and each Account in this Exchange Agreement.
- p. The Investor and each Account understands that the Company is relying upon the representations and agreements contained in this Exchange Agreement (and any supplemental information) for the purpose of determining whether the Investor's and such Account's participation in the Exchange meets the requirements for exemptions from the registration requirements of the Securities Act. In addition, the Investor and each Account acknowledges and agrees that any hedging transactions engaged in by the Investor or such Account after the "Confidential Information" (as described in the confirmatory email received by the Investor from the Placement Agent) was made available to the Investor and prior to the Closing in connection with the issuance and sale of the New Notes have been and will be conducted in compliance with the Securities Act and the rules and regulations promulgated thereunder.
- q. The Investor and each Account acknowledges that the terms of the Exchange have been mutually negotiated between the Investor (for itself and on behalf of each Account) and the Company. The Investor was given a meaningful opportunity to negotiate the terms of the Exchange on behalf of itself and each Account.
- r. The Investor and each Account acknowledges the Company intends to pay a placement fee to the Placement Agent.
- s. The Investor will, for itself and on behalf of each Account, upon request, execute and deliver any additional documents, information or certifications reasonably requested by the Company, the Old Notes Trustee or the New Notes Trustee to complete the Exchange.
- t. The Investor and each Account understands that, unless the Investor notifies the Company in writing to the contrary before the Closing, each of the Investor's representations and warranties contained in this Exchange Agreement will be deemed to have been reaffirmed and confirmed as of the Closing, taking into account all information received by the Investor.
- u. The participation in the Exchange by any Exchanging Holder was not conditioned by the Company on such Exchanging Holders' exchange of a minimum principal amount of Exchanged Old Notes.
- v. The Investor acknowledges that it and each Account had a sufficient amount of time to consider whether to participate in the Exchange and that neither the Company nor the Placement Agent has placed any pressure on the Investor or any Account to respond to the opportunity to participate in the Exchange. The Investor acknowledges that neither it nor any Account did become aware of the Exchange through any form of general solicitation or advertising within the meaning of Rule 502 under the Securities Act.

- w. The operations of the Investor and each Account have been conducted in material compliance with the rules and regulations administered or conducted by the U.S. Department of Treasury Office of Foreign Assets Control (“**OFAC**”) applicable to the Investor. The Investor has performed due diligence necessary to reasonably determine that its (or, where applicable, any Account’s) beneficial owners are not named on the lists of denied parties or blocked persons administered by OFAC, resident in or organized under the laws of a country that is the subject of comprehensive economic sanctions and embargoes administered or conducted by OFAC (“**Sanctions**”), or otherwise the subject of Sanctions.
- x. The Company and its agents shall be entitled to deduct and withhold from any consideration payable or deliverable pursuant to this Exchange Agreement such amounts as may be required (as determined by the Company in good faith) to be deducted or withheld under applicable law. Without limiting the generality of the foregoing, in the event that the Exchanging Holder (i) is a "United States person" (as defined in Section 7701(a) of the Internal Revenue Code of 1986, as amended (the "**Code**")), such Exchanging holder shall deliver to the Company, one (1) business day after the date of this Exchange Agreement, an accurately completed and duly executed IRS Form W-9 certifying that such Exchanging Holder is exempt from backup withholding or (ii) is not a "United States person" (as defined in Section 7701(a) of the Code), such Exchanging Holder shall deliver to the Company, one (1) business day after the date of this Exchange Agreement, either (A) in the case of such a Exchanging Holder which is the beneficial owner of the Exchanged New Notes, (x) a completed and duly executed IRS Form W-8BEN or W-8BEN-E, as applicable, and (y) a Form of Tax Certificate, substantially in the form of Exhibit D or (B) in the case of such a Exchanging Holder which is not the beneficial owner of the Exchanged New Notes, (x) a completed and duly executed IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members: (a) an IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, or an IRS Form W-9, or (b) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, or an IRS Form W-9, and (b) a Form of Tax Certificate, substantially in the form of Exhibit D. To the extent any amounts are withheld and remitted to the appropriate taxing authority (including, for the avoidance of doubt, due to the failure of the Exchanging Holder to comply with the obligations set forth in this Section 6(x)), such amounts shall be treated for all purposes of this Exchange Agreement as having been paid to the Exchanging Holder to whom such amounts otherwise would have been paid. If the Exchanging Holder fails to provide the properly completed tax forms under this Section 6(x), the Company’s sole remedy shall be to withhold taxes or other amounts under applicable law in connection with any payment or delivery made to the Exchanging Holder under this Exchange Agreement. Any forms, certificates and other documents required to be delivered to the Company pursuant to this Section 6(x) shall be delivered via electronic mail to each of the individuals named below at the address indicated next to such individual's name one (1) business day after the date of this Exchange Agreement:

The Exchanging Holder acknowledges that if it does not timely deliver correct and complete tax forms as described in this Section 6(x) to the Company, the Company may be required to withhold for taxes under applicable law.

7. Conditions to Obligations of the Investor and the Company. The obligations of the Investor to deliver, or to cause the Accounts to deliver, the Exchanged Old Notes, and of the Company to deliver the Exchanged New Notes are subject to the satisfaction at or prior to the Closing of the conditions precedent that the representations and warranties of the Company on the one hand, and of the Investor on the other contained in Sections 5 and 6, respectively, shall be true and correct as of the Closing in all material respects with the same effect as though such representations and warranties had been made as of the Closing and that the Investor has complied with its covenants contained in this Exchange Agreement, including in Section 9.
8. Covenants and Acknowledgment of the Company. The Company hereby agrees to publicly disclose at or before 9:00 a.m., New York City time (the “**Release Time**”), on the first business day after the date hereof, the terms of the Exchange as contemplated by this Exchange Agreement in a press release or a Current Report on Form 8-K filed with the SEC. The Company hereby acknowledges and agrees that, as of the Release Time, the Company will disclose all confidential information to the extent the Company believes such confidential information constitutes material non-public information, if any, with respect to the Exchange or that was otherwise communicated by the Company to the Investor or any Account in connection with the Exchange.
9. Covenant of the Investor. No later than one (1) business day after the date hereof, the Investor agrees to (i) deliver settlement instructions for each Purchaser to the Company substantially in the form of Exhibit C hereto, (ii) complete and deliver to the Company the required tax documentation required by Section 6(x) hereof and (iii) complete and deliver to the Placement Agent a signed copy of the investor representation letter substantially in the form of Exhibit E hereto.
10. Waiver, Amendment. Neither this Exchange Agreement nor any provisions hereof shall be waived, modified, changed, discharged or terminated except by an instrument in writing, signed by the party against whom any waiver, modification, change, discharge or termination is sought.
11. Assignability. Neither this Exchange Agreement nor any right, remedy, obligation or liability arising hereunder or by reason hereof shall be assignable by the Company or the Investor without the prior written consent of the other parties.
12. Waiver of Jury Trial. EACH OF THE COMPANY AND THE INVESTOR (FOR ITSELF AND, IF APPLICABLE, ON BEHALF OF EACH ACCOUNT) IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING ARISING OUT OF THE TRANSACTIONS CONTEMPLATED BY THIS EXCHANGE AGREEMENT.
13. Governing Law. THIS EXCHANGE AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK.
14. Submission to Jurisdiction. Each of the Company and the Investor (for itself and, if applicable, on behalf of each Account) (a) agrees that any legal suit, action or proceeding arising out of or relating to this Exchange Agreement or the transactions contemplated hereby shall be instituted exclusively in the courts of the State of New York located in the City and County of New York or in the United States District Court for the Southern District of New York; (b) waives any objection that it may now or hereafter have to the venue of any such suit, action or proceeding; and (c) irrevocably consents to the jurisdiction of the aforesaid courts in any such suit, action or proceeding. Each of the Company and the Investor (for itself and, if applicable, on behalf of each Account) agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

15. Venue. Each of the Company and the Investor (for itself and, if applicable, on behalf of each Account) irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Exchange Agreement in any court referred to in Section 14. Each of the Company and the Investor (for itself and, if applicable, on behalf of each Account) irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.
16. Service of Process. Each of the Company and the Investor (for itself and, if applicable, on behalf of each Account) irrevocably consents to service of process in the manner provided for notices in Section 19. Nothing in this Exchange Agreement will affect the right of any party to this Exchange Agreement to serve process in any other manner permitted by law.
17. Section and Other Headings. The section and other headings contained in this Exchange Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Exchange Agreement.
18. Counterparts. This Exchange Agreement may be executed, either manually or by way of a digital signature provided by DocuSign (or similar digital signature provider), by one or more of the parties hereto in any number of separate counterparts (including by facsimile or other electronic means, including telecopy, email or otherwise), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Exchange Agreement (whether executed manually or by way of a digital signature as described herein this Section 18) by facsimile or other transmission (e.g., "pdf" or "tif" format) shall be effective as delivery of a manually executed counterpart hereof.
19. Notices. All notices and other communications to the Company provided for herein shall be in writing and shall be deemed to have been duly given if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid or by electronic mail (so long as such transmission does not generate an error message or notice of non-delivery) to the following addresses, or, in the case of the Investor or any Account, the address provided in Exhibit C (or such other address as either party shall have specified by notice in writing to the other):
- | | |
|---|---|
| If to the Company: | Plug Power Inc.
968 Albany Shaker Road
Latham, New York 12110
Attention: General Counsel
Email: |
| In each case, with a copy to
(which shall not constitute
notice): | Goodwin Procter LLP
100 Northern Avenue
Boston, MA 02210
Attention: Jim Barri
Email: |
20. Binding Effect. The provisions of this Exchange Agreement shall be binding upon and accrue to the benefit of the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.
21. Notification of Changes. The Investor (for itself and, if applicable, on behalf of each Account) hereby covenants and agrees to notify the Company upon the occurrence of any event prior to the Closing that would cause any representation, warranty, or covenant of the Investor (and/or such Account) contained in this Exchange Agreement to be false or incorrect in any material respect.

22. Reliance by Placement Agent. The Placement Agent may rely on each representation and warranty of the Company, the Investor and each Account made herein or pursuant to the terms hereof with the same force and effect as if such representation or warranty were made directly to the Placement Agent. The Placement Agent shall be a third party beneficiary to this Exchange Agreement to the extent provided in this Section 22.
23. Severability. If any term or provision (in whole or in part) of this Exchange Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Exchange Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Investor (for itself and, if applicable, on behalf of each Account) has executed this Exchange Agreement as of the date first written above.

Legal Name of Executing Investor:

By _____
Name:
Title:
Legal Name:

ACCEPTED AND AGREED:

Plug Power Inc.,
as the Company

By _____
Name:
Title:

EXHIBIT A TO THE EXCHANGE AGREEMENT

Name of Exchanging Holder (i.e., Beneficial Owner)	Aggregate Principal Amount of Exchanged Old Notes	Aggregate Principal Amount of Exchanged New Notes
	\$	\$
Total:	\$	\$

EXHIBIT B TO THE EXCHANGE AGREEMENT

NOTICE OF EXCHANGE PROCEDURES

Attached are Exchange Procedures for the settlement of the exchange of (1) 7.00% Convertible Senior Notes due 2026 (the "**New Notes**") of Plug Power Inc., a Delaware corporation (the "**Company**") for (2) 3.75% Convertible Senior Notes due 2025 (the "**Old Notes**") of the Company.

These instructions supersede any prior instructions you received. Your failure to comply with the attached instructions may delay your receipt of the Exchanged New Notes.

If you have any questions, please contact Scott Finz at _____ or _____.

Thank you.

Delivery of Exchanged Old Notes

You must direct the eligible DTC participant through which you hold a beneficial interest in the Exchanged Old Notes to post **on March 20, 2024, no later than 9:00 a.m., New York City time**, one-sided withdrawal instructions through DTC via DWAC, the aggregate principal amount¹ of Exchanged Old Notes (CUSIP: 72919P AD5) set forth in column 2 of Exhibit A (“Aggregate Principal Amount of Exchanged Old Notes”) of the Exchange Agreement.

It is important that this instruction be submitted and the DWAC posted on March 20, 2024, no later than 9:00 a.m., New York City time.

To receive Exchanged New Notes

You must direct your eligible DTC participant through which you wish to hold a beneficial interest in the Exchanged New Notes to post and accept **on March 20, 2024, no later than 9:00 a.m., New York City time**, a one-sided deposit instruction through DTC via DWAC for the aggregate principal amount² of Exchanged New Notes (CUSIP: 72919P AF0) set forth in column 3 of Exhibit A (“Aggregate Principal Amount of Exchanged New Notes”) of the Exchange Agreement.

It is important that this instruction be submitted and the DWAC posted on March 20, 2024, no later than 9:00 a.m., New York City time.

¹ Note that the DWAC instruction should specify the principal amount, not the number, of Exchanged Old Notes.

² Note that the DWAC instruction should specify the principal amount, not the number, of Exchanged New Notes.

SETTLEMENT

On March 20, 2024, after the Company receives your Exchanged Old Notes and your delivery instructions as set forth above, and subject to the compliance of the covenants and satisfaction of conditions to closing, in each case, as set forth in your Exchange Agreement, the Company will deliver your Exchanged New Notes in accordance with the delivery instructions set forth above.

EXHIBIT C TO THE EXCHANGE AGREEMENT

Purchaser Settlement Details

These settlement instructions are to be delivered to the Company for each Purchaser no later than one (1) business day after the date of the Exchange Agreement.

Name of Purchaser: _____

Purchaser Address: _____

Telephone: _____

Email Address: _____

Country of Residence: _____

Taxpayer Identification Number: _____

Exchanged Old Notes

DTC Participant Number: _____

DTC Participant Name: _____

DTC Participant Phone Number: _____

DTC Participant Contact Email: _____

FFC Account #: _____

Account # at Bank/Broker: _____

Exchanged New Notes (if different from Exchanged Old Notes)

DTC Participant Number: _____

DTC Participant Name: _____

DTC Participant Phone Number: _____

DTC Participant Contact Email: _____

FFC Account #: _____

Account # at Bank/Broker: _____

EXHIBIT D TO THE EXCHANGE AGREEMENT

PORTFOLIO INTEREST TAX CERTIFICATE

Reference is made to the Exchange Agreement, dated as of March 12, 2024 (the “**Agreement**”), by and between Plug Power Inc., a Delaware corporation (the “**Company**”) and the Exchanging Holders party thereto. Unless otherwise defined herein, terms defined in the Agreement and used herein shall have the meanings given to them in the Agreement. [●] (“**Non-U.S. Holder**”) is providing this certificate pursuant to Section 6(x) of the Agreement. The Non-U.S. Holder hereby represents and warrants that:

1. The Non-U.S. Holder is not a “United States person” as defined in Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended (the “**Code**”), is the sole record and beneficial owner of the Exchanged Old Notes in respect of which it is providing this certificate and has furnished the Company with either (x) an IRS Form W-8BEN or W-8BEN-E or (y) an IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E.
2. The Non-U.S. Holder: (a) is not a “bank” for purposes of Section 881(c)(3)(A) of the Code, (b) is not subject to regulatory or other legal requirements as a bank in any jurisdiction, and (c) has not been treated as a bank for purposes of any tax, securities law or other filing or submission made to any Governmental Authority, any application made to a rating agency or qualification for any exemption from tax, securities law or other legal requirements.
3. The Non-U.S. Holder is not a “10-percent shareholder” of the the Company within the meaning of Section 881©(3)(B) of the Code.
4. The Non-U.S. Holder is not a “controlled foreign corporation” receiving interest from a related person within the meaning of Section 881(c)(3)(C) of the Code.
5. The Non-U.S. Holder’s office address is the address set forth in the applicable IRS Form W-8 provided to the Company by the Non-U.S. Holder.
6. The Non-U.S. Holder shall promptly notify the Company in writing in accordance with the Agreement if any of the representations and warranties made herein are no longer true and correct.

For purposes of the foregoing representations numbered 2, 3 and 4, if the Non-U.S. Holder provided the Company with an IRS Form W-8IMY, then references to the “Non-U.S. Holder” shall be deemed to also include the Non-U.S. Holder’s direct or indirect partners/members.

IN WITNESS WHEREOF, the undersigned has duly executed this certificate.

[NAME OF NON-U.S. HOLDER]

By: _____
Name:
Title:

Date: _____, _____

EXHIBIT E TO THE EXCHANGE AGREEMENT

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

Re: Exchange Offer (the “Exchange”) with respect to the outstanding 3.75% Convertible Senior Notes due 2025 (the “Old Notes”) of Plug Power Inc. (the “Company”)

Ladies and Gentlemen:

In connection with the Exchange, we represent, warrant, agree and acknowledge as follows:

1. No disclosure or offering document has been prepared in connection with the Exchange by Morgan Stanley & Co. LLC or any of its affiliates (“Morgan Stanley”).
 2. (a) We have conducted our own investigation of the Company and the securities to be issued in the Exchange (the “Securities”) and we have not relied on any statements or other information provided by Morgan Stanley concerning the Company or the Securities or the Exchange, (b) we have had access to, and an adequate opportunity to review, financial and other information as we deem necessary to make our decision to participate in the Exchange and invest in the Securities (c) we have been offered the opportunity to ask questions of the Company and received answers thereto, as we deemed necessary in connection with our decision to participate in the Exchange and invest in the Securities; and (d) we have made our own assessment and have satisfied ourselves concerning the relevant tax and other economic considerations relevant to our investment in the Securities.
 3. Morgan Stanley and its directors, officers, employees, representatives and controlling persons have made no independent investigation with respect to the Company, the terms of the Exchange or the Securities or the accuracy, completeness or adequacy of any information supplied to us by the Company.
 4. In connection with the Exchange, Morgan Stanley has not acted as our financial advisor or fiduciary.
 5. We are (x) a qualified institutional buyer (as defined in Rule 144A of the Securities Act of 1933 as amended (the “Securities Act”)), or (y) an accredited investor (as defined in Rule 501 of the Securities Act). Accordingly, we understand that the offering meets the exemptions from filing under FINRA Rule 5123(b)(1)(C) or (J).
 6. We (i) are an institutional account as defined in FINRA Rule 4512(c), (ii) are a sophisticated investor, experienced in investing in private equity transactions and capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities and (iii) have exercised independent judgment in evaluating our participation in the purchase of the Securities. Accordingly, we understand that the offering meets (i) the exemptions from filing under FINRA Rule 5123(b)(1)(A) and (ii) the institutional customer exemption under FINRA Rule 2111(b).
 7. We are aware that the Exchange is being made in reliance on a private placement exemption from registration under the Securities Act and are acquiring the Securities for our own account or for an account over which we exercise sole discretion for another qualified institutional buyer or accredited investor.
 8. We are able to fend for ourselves in the transactions contemplated herein; have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our prospective investment in the Securities; and have the ability to bear the economic risks of our prospective investment and can afford the complete loss of such investment.
-

9. The Securities have not been registered under the Securities Act or any other applicable securities laws, are being offered for resale in transactions not requiring registration under the Securities Act, and unless so registered, may not be offered, sold or otherwise transferred except in compliance with the registration requirements of the Securities Act or any other applicable securities laws, pursuant to any exemption therefrom or in a transaction not subject thereto.

Very truly yours,

[NAME OF INVESTOR]

By: _____

Name:

Title:

Date:
