UST INC
Form PREM14A
October 03, 2008

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

SCHEDULE 14A

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

Filed by the Registrant þ
Filed by a Party other than the Registrant o

Check the appropriate box:

þ Preliminary Proxy Statement
o Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
o Definitive Proxy Statement
o Definitive Additional Materials
o Soliciting Material Pursuant to § 240.14a-12

UST INC.
(Name of Registrant as Specified in Its Charter)

N/A
(Name of Person(s) Filing Proxy Statement, if other than Registrant)

Payment of Filing Fee (Check the appropriate box):

o No fee required.

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

(1) Title of each class of securities to which transaction applies: Common Stock $0.50 par value

(2) Aggregate number of securities to which this transaction applies: 151,411,329 shares of Common (includes 963,551 shares of restricted stock, restricted stock units and deferred phantom units and options to purchase 2,586,810 shares of Common Stock).

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11. (Set forth the amount on which the filing fee is calculated and state how it was determined): The filing fee was based on the sum of (a) the product of 147,860,968 shares of Common Stock and the merger consideration of $69.50 per share of Common Stock, (b) the product of 963,551 shares of restricted stock, restricted stock units and deferred phantom units and $69.50 per share and (c) the product of options to purchase 2,586,810 shares of Common Stock and $34.19 (which is the difference between $69.50 and $35.31, the weighted average exercise price per share of the options to purchase Common Stock as of September 26, 2008). In accordance with Section 14(g) of the Securities Exchange Act of 1934, as amended, the filing fee was determined by multiplying 0.0000393 by the sum calculated in the preceding sentence.

(4) Proposed maximum aggregate value of transaction: $10,431,755,468

(5) Total fee paid: $409,968

o Fee paid previously with preliminary materials.

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

(1) Amount Previously Paid:

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

(3) Filing Party:

(4) Date Filed:

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Preliminary Proxy Statement, Subject to Completion, dated October 3, 2008

UST INC.
6 High Ridge Park, Building A
Stamford, Connecticut 06905
(203) 817-3000

[ ], 2008

To our Stockholders:

You are cordially invited to attend a special meeting of the stockholders of UST Inc. (the Company) at [ ] on [ ], 2008, beginning at [ ] local time.

At the special meeting, you will be asked to consider and vote upon a proposal to adopt the Agreement and Plan of Merger, dated as of September 7, 2008, as amended on October 2, 2008 among the Company, Altria Group, Inc. (Altria) and Armchair Merger Sub, Inc., a subsidiary of Altria (Merger Sub), and approve the merger.

The merger agreement provides, among other things, for the merger of Merger Sub with and into the Company, with the Company surviving the merger and becoming a wholly-owned subsidiary of Altria. If the merger is completed, you will be entitled to receive $69.50 in cash, without interest, less any required withholding tax, for each share of our common stock you own, unless you have properly exercised your appraisal rights.

After careful consideration, our board of directors has, by unanimous vote, approved and declared advisable the execution, delivery and performance of the merger agreement and the transactions contemplated by the merger agreement, including the merger, and has determined that the transactions contemplated by the merger agreement are fair to, and in the best interests of, the Company s stockholders. **Accordingly, our board of directors recommends that you vote FOR the adoption of the merger agreement and the approval of the merger.** This recommendation is based, in part, upon the recommendation of a committee of our board of directors consisting entirely of independent non-management directors specifically formed to assist our board of directors in its consideration of the proposed transaction, and advice received from financial advisors and outside legal counsel.

The proxy statement attached to this letter provides you with information about the proposed merger and the special meeting. We encourage you to read the entire proxy statement carefully because it explains the proposed merger, the documents related to the merger and other related matters, including the conditions to the completion of the merger. You may also obtain more information about the Company from documents we have previously filed with the Securities and Exchange Commission.

Your vote is very important. The merger cannot be completed unless the merger agreement is adopted and the merger is approved by the affirmative vote of holders of at least a majority of the outstanding shares of our common stock entitled to vote at the special meeting. If you fail to vote on the proposal to adopt the merger agreement and approve the merger, the effect will be the same as a vote AGAINST the adoption of the merger agreement and approval of the merger.

IT IS IMPORTANT THAT YOUR SHARES BE REPRESENTED, EVEN IF YOU DO NOT PLAN ON ATTENDING THE SPECIAL MEETING IN PERSON. ACCORDINGLY, WE URGE YOU TO VOTE, BY COMPLETING, SIGNING, DATING AND PROMPTLY RETURNING THE ENCLOSED PROXY CARD IN THE ENVELOPE PROVIDED, WHICH REQUIRES NO POSTAGE IF MAILED IN THE UNITED STATES, OR YOU MAY VOTE THROUGH THE INTERNET OR BY TELEPHONE AS DIRECTED ON

THE ENCLOSED PROXY CARD. IF YOU RECEIVE MORE THAN ONE PROXY CARD BECAUSE YOU OWN SHARES THAT ARE REGISTERED DIFFERENTLY, PLEASE VOTE ALL OF YOUR SHARES SHOWN ON ALL OF YOUR PROXY CARDS.

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Voting by proxy will not prevent you from voting your shares in person if you subsequently choose to attend the special meeting.

We look forward to seeing you at the special meeting.

Sincerely,

Murray S. Kessler
Chairman of the Board of Directors
and Chief Executive Officer

This proxy statement is dated [ ], 2008 and is first being mailed to stockholders on or about [ ], 2008.

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Preliminary Proxy Statement, Subject to Completion, dated October 3, 2008

UST INC.
6 High Ridge Park, Building A
Stamford, Connecticut 06905
(203) 817-3000

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS
TO BE HELD ON [ ], 2008

Dear Stockholder:

The special meeting of stockholders of UST Inc., a Delaware corporation (the Company), will be held on [ ], 2008, at [ ] in order to:

1. consider and vote on a proposal to adopt the Agreement and Plan of Merger, dated as of September 7, 2008, among the Company, Altria Group, Inc. and Armchair Merger Sub, Inc. and to approve the merger contemplated by the merger agreement, as amended by Amendment No. 1 to the Agreement and Plan of Merger, dated October 2, 2008 (collectively, the merger agreement), and as it may be further amended from time to time. A copy of the merger agreement and Amendment No. 1 thereto are attached as Annex A and Annex B, respectively, to the accompanying proxy statement.

2. vote on the adjournment or postponement of the special meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the meeting to adopt the merger agreement and approve the merger.

3. transact such other business as may properly come before the special meeting or any adjournment or postponement thereof.

Only holders of record of shares of our common stock at the close of business on [ ], 2008, the record date for the special meeting set by our board of directors, are entitled to notice of the meeting and to vote at the meeting and at any adjournment or postponement thereof. A list of stockholders will be available for inspection by stockholders of record during business hours at the Company s executive offices at 6 High Ridge Park, Building A, Stamford, Connecticut 06905 for ten days prior to the date of the special meeting and will also be available at the special meeting. All stockholders of record are cordially invited to attend the special meeting in person.

Your vote is important, regardless of the number of shares of stock that you own. The adoption of the merger agreement and approval of the merger require the affirmative vote of the holders of a majority of the outstanding shares of our common stock that are entitled to vote at the special meeting. The proposal to adjourn or postpone the meeting, if necessary or appropriate, to solicit additional proxies requires the affirmative vote of the holders of a majority of the voting power present and entitled to vote at the special meeting, whether or not a quorum is present.

After careful consideration, our board of directors has, by the unanimous vote of the directors, approved and declared advisable the execution, delivery and performance of the merger agreement and the transactions contemplated by the merger agreement, including the merger, and has determined that the transactions contemplated by the merger agreement are fair to, and in the best interests of, the Company s stockholders.

OUR BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT YOU VOTE FOR THE ADOPTION OF THE MERGER AGREEMENT AND APPROVAL OF THE MERGER AND FOR THE PROPOSAL TO ADJOURN THE SPECIAL MEETING TO A LATER DATE, IF NECESSARY OR APPROPRIATE, TO SOLICIT ADDITIONAL PROXIES IN FAVOR OF THE PROPOSAL TO ADOPT THE MERGER AGREEMENT AND APPROVE THE MERGER IF THERE ARE INSUFFICIENT VOTES AT THE TIME OF THE SPECIAL MEETING TO ADOPT THE MERGER AGREEMENT AND APPROVE THE MERGER.

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We urge you to read the entire proxy statement carefully. Whether or not you plan to attend the special meeting, please vote by promptly completing the enclosed proxy card and then signing, dating and returning it in the postage-prepaid envelope provided so that your shares may be represented at the special meeting. Alternatively, you may vote your shares of stock through the Internet or by telephone, as indicated on the proxy card. Prior to the vote, you may revoke your proxy in the manner described in the proxy statement. **Properly executed proxy cards with no instructions indicated on the proxy card will be voted FOR the adoption of the merger agreement and approval of the merger and FOR the proposal to adjourn the meeting to a later date, if necessary or appropriate, to solicit additional proxies in favor of the proposal to adopt the merger agreement and approve the merger if there are insufficient votes to adopt the merger agreement and approve the merger at the time of the special meeting. Your failure to vote will have the same effect as a vote AGAINST the adoption of the merger agreement and the approval of the merger, but will not affect the outcome of the vote regarding any adjournment proposal.**

Stockholders of the Company who do not vote in favor of the adoption of the merger agreement and the approval of the merger will have the right to seek appraisal of the fair value of their shares of common stock if the merger is completed, but only if they perfect their appraisal rights by complying with all of the required procedures under Delaware law. See Dissenters Rights of Appraisal beginning on page [ ] of the enclosed proxy statement and Annex E to the enclosed proxy.

By Order of the Board of Directors,

Gary B. Glass
Vice President, General Counsel and
Assistant Secretary

[ ], 2008

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SUMMARY

The following summary highlights selected information from this proxy statement and may not contain all of the information that is important to you. Accordingly, we encourage you to read carefully this entire proxy statement, its annexes and the documents referred to in this proxy statement. Each item in this summary includes a page reference directing you to a more complete description of that item in this document.

Unless we otherwise indicate or unless the context requires otherwise: all references in this document to Company, we, our, and us refer to UST Inc. and its subsidiaries; all references to Parent and Altria refer to Altria Group, Inc.; all references to Merger Sub refer to Armchair Merger Sub, Inc.; all references to merger agreement refer to the Agreement and Plan of Merger, dated as of September 7, 2008, among the Company, Altria and Merger Sub, as amended by Amendment No. 1 to the Agreement and Plan of Merger, dated October 2, 2008, and as it may be amended from time to time, copies of which are attached as Annex A and Annex B, respectively, to this proxy statement; all references to the merger refer to the merger contemplated by the merger agreement; all references to merger consideration refer to the per share merger consideration of $69.50 in cash contemplated to be received by the holders of our common stock pursuant to the merger agreement; all references to GAAP refer to generally accepted accounting principles in the United States; all references to the SEC refer to the Securities and Exchange Commission. All other capitalized terms used but not defined in this summary have the meanings ascribed to such terms in the merger agreement.

Parties to the Merger (page [ ])

UST Inc. UST Inc. was formed on December 23, 1986 as a Delaware corporation to serve as a publicly-held holding company for United States Tobacco Company (USTC), which was formed in 1911. Pursuant to a reorganization approved by stockholders at the 1987 Annual Meeting, USTC became a wholly-owned subsidiary of UST Inc. on May 5, 1987, and UST Inc. continued in existence as a holding company. Effective January 1, 2001, USTC changed its name to U.S. Smokeless Tobacco Company (USSTC). UST Inc., through its direct and indirect subsidiaries, is engaged in the manufacturing and marketing of consumer products in the following business segments:

Smokeless Tobacco Products: Our primary activities are the manufacturing and marketing of smokeless tobacco products. USSTC, our subsidiary, is the leading producer and marketer of moist smokeless tobacco products in the United States, including iconic premium brands such as Copenhagen and Skoal, and other value brands such as Red Seal and Husky. In addition, we market moist smokeless tobacco products internationally.

Wine: Ste. Michelle Wine Estates Ltd., our indirect subsidiary, produces and markets premium varietal and blended wines, and imports and distributes wines from Italy.

Altria Group, Inc. Altria Group, Inc., which we refer to as Parent or Altria, is a public company organized under the laws of the Commonwealth of Virginia. Altria is the holding company for its wholly-owned subsidiaries, Philip Morris USA Inc. and John Middleton, Inc., which are engaged in the manufacture and sale of cigarettes and other tobacco products. In addition, Philip Morris Capital Corporation, another wholly-owned subsidiary of Altria, maintains a portfolio of leveraged and direct finance leases. In addition, at June 30, 2008, Altria indirectly held a 28.5% economic and voting interest in SABMiller plc, which is engaged in the manufacture and sale of various beer products.

Armchair Merger Sub, Inc. Armchair Merger Sub, Inc., which we refer to as Merger Sub, is a Delaware corporation formed for the sole purpose of completing the merger with the Company. Merger Sub is an indirect wholly-owned

subsidiary of Altria.

The Merger Agreement (page [ ])

On September 7, 2008, the Company entered into a merger agreement with Altria and Merger Sub. Upon the terms and subject to the conditions of the merger agreement, Merger Sub will merge with and into the Company, with the Company as the surviving corporation. The Company will become an indirect wholly-

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owned subsidiary of Altria. As a consequence of the merger, you will have no equity interest in the Company or Altria after the effective time of the merger. At the effective time of the merger:

each share of our common stock, par value $0.50 per share (Common Stock), will be cancelled and, other than those held by the Company, Altria, Merger Sub or their subsidiaries and other than shares with respect to which appraisal rights have been properly perfected and not withdrawn, converted into the right to receive $69.50 in cash, without interest and less any applicable withholding tax;

each of our then-outstanding options to acquire shares of Common Stock, vested or unvested, will be converted into the right to receive for each share of Common Stock then subject to such option an amount equal to the excess, if any, of $69.50 (or such greater amount provided under the applicable option agreement) over the exercise price payable in respect of such share of Common Stock issuable under such option, less any required withholding taxes;

each of our then-outstanding shares of restricted stock and restricted stock units, vested or unvested, held or determined to be held if vesting based on performance criteria, will be cancelled and converted into the right to receive $69.50 in cash, less any required withholding taxes except that any such awards of restricted stock or restricted stock units granted after September 7, 2008 will be assumed and converted into comparable awards relating to Altria common stock at the effective time; and

each of our other then-outstanding company awards will be cancelled and converted pursuant to the applicable awards plan into the right to receive $69.50 in cash, less any required withholding taxes. Pursuant to the terms of the Company s Director Deferral Program, the fully vested deferred fees credited to each non-employee director s deferred fees as phantom stock units as of the effective time of the merger will be paid to the director in cash, in an amount equal to the number of units then credited times $69.50.

Certain Effects of the Merger (page [ ])

If the merger is completed, and you hold shares of Common Stock at the effective time of the merger, you will be entitled to receive $69.50 in cash without interest and less any applicable withholding tax for each share of Common Stock owned by you, unless you have perfected and not withdrawn your statutory appraisal rights under Delaware law with respect to the merger. As a result of the merger, the Company will cease to be an independent, publicly-traded company. You will not own any shares of the surviving corporation.

Financing of the Merger (page [ ])

The obligations of Altria and Merger Sub under the merger agreement are not subject to any conditions regarding their or any other person s ability to obtain financing for the consummation of the merger and related transactions. Prior to executing the merger agreement, Altria and Merger Sub provided the Company with a commitment letter pursuant to which Altria has received a commitment from financial institutions, on terms set forth in such commitment letter, to make available funds to Altria for the purpose of consummating the merger.

The Special Meeting (page [ ])

The special meeting will be held on [ ], 2008 starting at [ ], local time at [ ]. You will be asked to consider and vote upon (1) the adoption of the merger agreement and approval of the merger, (2) the adjournment or postponement of the special meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the meeting to adopt the merger agreement and approve the merger and (3) such other business as may properly come before the special meeting or any adjournments or postponements thereof.

Record Date, Quorum and Voting Power (page [ ])

Stockholders of record at the close of business on [ ], 2008 are entitled to notice of, and to vote at, the special meeting. On [ ], 2008 the outstanding voting securities consisted of [ ] shares of Common Stock. The presence at the special meeting, in person or by proxy, of the holders of a majority of the issued and outstanding shares of Common Stock will constitute a quorum for the purpose of considering

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the proposals. In the event that a quorum is not present at the special meeting, the meeting may be adjourned or postponed to a later date or time, if necessary or appropriate, to solicit additional proxies.

The holders of Common Stock have one vote per share on all matters on which they are entitled to vote.

Vote Required for Approval (page [ ])

The adoption of the merger agreement and approval of the merger requires the affirmative vote of holders of at least a majority of the outstanding shares of Common Stock entitled to vote.

Approval of any proposal to adjourn or postpone the special meeting, if necessary or appropriate, to solicit additional proxies in favor of adoption of the merger agreement and approval of the merger, requires the affirmative vote of holders of a majority of the voting power present and entitled to vote at the special meeting, whether or not a quorum is present.

Voting by Directors and Executive Officers (page [ ])

As of [ ], 2008, the record date for the special meeting, our current directors and executive officers held, in the aggregate, [ ] shares of Common Stock (excluding options) representing approximately [ ]% of outstanding Common Stock. Each of our directors and executive officers has informed the Company that he or she intends to vote all of his or her shares of Common Stock FOR the adoption of the merger agreement and approval of the merger.

Proxies; Revocation (page [ ])

If you vote your shares of Common Stock by returning a signed proxy card by mail, or through the Internet or by telephone as indicated on the proxy card, your shares will be voted at the special meeting in accordance with the instructions given. If no instructions are indicated on your signed proxy card, your shares will be voted FOR the adoption of the merger agreement and approval of the merger, FOR adjournment or postponement of the meeting, if necessary or appropriate to solicit additional proxies, and in accordance with the recommendations of our board of directors on any other matters properly brought before the special meeting for a vote.

If your shares of Common Stock are held in street name by your broker, you should instruct your broker on how to vote such shares of Common Stock using the instructions provided by your broker. If you do not provide your broker with instructions, your shares of Common Stock will not be voted, which will have the same effect as a vote AGAINST the adoption of the merger agreement and approval of the merger.

You may revoke or change your proxy at any time before the vote is taken at the special meeting, except as otherwise described below. If you are a registered stockholder, you may revoke or change your proxy before it is voted by:

- filing a notice of revocation, which is dated a later date than your proxy, with the Company s Corporate Secretary at 6 High Ridge Park, Building A, Stamford, Connecticut 06905;
- submitting a duly executed proxy bearing a later date;
- if you voted by telephone or the Internet, by voting a second time by telephone or Internet, but not later than [ ] p.m. (Eastern Time) on [ ], 2008 or the day before the meeting date, if the special meeting is adjourned or postponed; or

by attending the special meeting and voting in person (simply attending the meeting will not constitute revocation of a proxy; you must vote in person at the meeting).

If your shares are held in street name, you should follow the instructions of your broker, bank or other nominee regarding revocation or change of proxies. If your broker, bank or other nominee allows you to submit a proxy by telephone or through the Internet, you may be able to change your vote by submitting a new proxy by telephone or through the Internet.

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Recommendation of Our Board of Directors (page [ ])

Our board of directors, by unanimous vote, (i) determined that the transactions contemplated by the merger agreement are fair to, and in the best interests of the Company s stockholders, (ii) approved and declared advisable the execution, delivery and performance of the merger agreement and the transactions contemplated thereby, including the merger, (iii) recommends that our stockholders vote FOR adoption of the merger agreement and approval of the merger and (iv) recommends that our stockholders vote FOR the approval of any proposal to adjourn or postpone the special meeting, if necessary or appropriate, to solicit additional proxies in the event that there are not sufficient votes in favor of adoption of the merger agreement and approval of the merger at the time of the special meeting. This recommendation is based, in part, upon the recommendation of a committee of our board of directors consisting entirely of independent non-management directors specifically formed to assist our board of directors in its consideration of the proposed transaction, and advice received from financial advisors and outside legal counsel.

For a discussion of the material factors considered by such strategic transaction committee and our board of directors in reaching their conclusions, see The Merger Reasons for the Merger; Recommendation of Our Board of Directors beginning on page [ ].

Opinion of Citigroup Global Markets Inc. (page [ ] and Annex C)

Citigroup Global Markets Inc. (Citi) delivered its opinion to our board of directors that, as of September 7, 2008 and based upon and subject to the factors and assumptions set forth therein, the $69.50 cash per share merger consideration to be received by the holders of shares of Common Stock pursuant to the proposed transaction was fair from a financial point of view to such holders.

The full text of Citi s written opinion, dated as of September 7, 2008, which describes the assumptions made, procedures followed, matters considered and limitations on the review undertaken, is attached to this proxy statement as Annex C and is incorporated into this proxy statement by reference. Citi s opinion was provided to our board of directors in connection with its evaluation of the merger consideration from a financial point of view. Citi s opinion does not address any other aspects or implications of the merger and does not constitute a recommendation to any stockholder as to how such stockholder should vote or act on any matters relating to the proposed merger. The Company has agreed to pay Citi for its financial advisory services a fee, payable upon consummation of the merger, equal to 0.30% of the total consideration (including liabilities assumed) payable in the merger (expected to be approximately $36 million).

Opinion of Perella Weinberg Partners LP (page [ ] and Annex D)

Perella Weinberg Partners LP (Perella Weinberg) delivered its opinion to our board of directors and the strategic transaction committee of our board of directors that, as of September 7, 2008 and based upon and subject to the factors and assumptions set forth therein, the $69.50 cash per share merger consideration to be received by the holders of shares of Common Stock pursuant to the proposed transaction was fair from a financial point of view to such holders.

The full text of Perella Weinberg s written opinion, dated as of September 7, 2008, which describes the assumptions made, procedures followed, matters considered and limitations on the review undertaken, is attached to this proxy statement as Annex D and is incorporated into this proxy statement by reference. Perella Weinberg s opinion was provided to our board of directors and the strategic transaction committee of our board of directors in connection with their evaluation of the merger consideration from a financial point of

view. Perella Weinberg s opinion does not address any other aspects or implications of the merger and does not constitute a recommendation to any stockholder as to how such stockholder should vote or act on any matters relating to the proposed merger. The Company has agreed to pay Perella Weinberg for its services a fee of $2.5 million in connection with delivery of its opinion and, upon consummation of the merger, a fee equal to the greater of 0.10% of the transaction value (including liabilities assumed) and $10 million (in each case deducting the $2.5 million paid in connection with the opinion). At the discretion of our board of directors, we may pay Perella Weinberg

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up to an additional 0.03% of the transaction value (including liabilities assumed). Without giving effect to any discretionary amount which may be awarded by our board of directors, the total amount is expected to be approximately $11.5 million.

Reasons for the Merger (page [ ])

The merger will enable our stockholders to realize for each of their shares of Common Stock a price of $69.50, which price exceeded the highest price at which the Common Stock had previously traded and represented (i) a premium of approximately 29% to the $54.04 closing sale price per share of Common Stock on the New York Stock Exchange (NYSE) on September 3, 2008, the last trading day before there was increased speculation in the marketplace regarding a possible transaction involving the Company, (ii) a premium of approximately 30% and 29%, respectively, over the average per share closing sale price during the one-month and three-month trading periods ending on September 3, 2008 which were $53.38 and $53.72, respectively, and (iii) a premium of approximately 3% over the closing sale price per share of $67.55 on the NYSE on September 5, 2008, the last trading day before the announcement of the merger.

For these reasons, and the reasons discussed under The Merger Reasons for the Merger; Recommendation of Our Board of Directors beginning on page [ ], **our board of directors has determined that the merger agreement and the transactions contemplated thereby, including the merger, are advisable, fair to, and in the best interests of the Company and its stockholders.**

Restrictions on Solicitations (page [ ])

We have agreed that prior to the consummation of the merger, we and our subsidiaries will not, and we will use reasonable best efforts to cause our and our subsidiaries representatives not to:

- solicit, initiate, knowingly encourage or facilitate the making, submission or announcement of any takeover proposal from any third person or group;
- engage in, continue or participate in any substantive discussions or negotiations regarding any takeover proposal or furnish any non-public information with respect to, or that could reasonably be expected to lead to, any takeover proposal;
- fail to make, withdraw, modify or amend, or publicly propose or resolve to withhold, withdraw, modify or amend, in a manner adverse to Altria or Merger Sub, our board of directors recommendation that our stockholders adopt the merger agreement;
- approve, endorse or recommend, or publicly propose or resolve to approve, endorse or recommend, a takeover proposal to the Company s stockholders; or
- enter into any merger agreement, letter of intent, agreement in principle, stock purchase agreement, asset purchase agreement or stock exchange agreement, option agreement or other similar agreement, in each case providing for or relating to a takeover proposal, other than certain acceptable confidentiality agreements.

Notwithstanding these restrictions, the merger agreement provides that if we receive a bona fide written takeover proposal from a third party before the adoption of the merger agreement by our stockholders, that our board of directors determines in good faith, after consultation with our outside legal counsel and a financial advisor of nationally recognized reputation, that such takeover proposal constitutes or may reasonably be expected to lead to a superior proposal (as defined under The Merger Agreement Restrictions on Solicitations on page [ ]), the Company

may:

furnish non-public information to the third party making such takeover proposal (subject to executing an acceptable confidentiality agreement with the third party and, substantially contemporaneously, notify Altria of such action and furnish Altria with the same information to the extent it has not already been furnished); and

participate in substantive discussions or negotiations regarding the takeover proposal.

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In certain circumstances, if we receive a bona fide written superior proposal, the Company or its subsidiaries may enter into an alternative acquisition agreement with respect to such proposal if we give Altria a 72-hour opportunity to match the superior proposal, and our board of directors continues to believe, following the completion of the 72-hour period and after taking into account any revised offer by Altria, that such proposal is still a superior proposal and the Company pays Altria a termination fee.

The merger agreement also contains restrictions on the ability of our board of directors to withhold, withdraw, modify or amend its recommendation that our stockholders adopt the merger agreement and approve the merger. See The Merger Agreement Restrictions on Solicitations beginning on page [ ] for a description of these restrictions.

Conditions to the Merger (page [ ])

Conditions to Each Party s Obligations. Each party s obligation to complete the merger is subject to the satisfaction or waiver of the following conditions:

- the approval of the merger by holders of a majority of the outstanding shares of Common Stock;
- the termination or expiration of the Hart-Scott-Rodino Antitrust Improvements Act (HSR Act) or similar antitrust law waiting period or any other agreement with a governmental entity not to effect the merger entered into in accordance with the terms of the merger agreement;
- all other applicable regulatory consents having been obtained and being in full force and effect (except those approvals the failure of which to obtain would not reasonably be expected to have a Company Material Adverse Effect (as defined under The Merger Agreement Representations and Warranties on page [ ])); and
- the absence of any injunction, law or order, as applicable, by any court or other governmental entity prohibiting the merger.

Conditions to Altria s and Merger Sub s Obligations. The obligation of Altria and Merger Sub to complete the merger is subject to the satisfaction or waiver of the following additional conditions:

- our representations and warranties relating to capital structure being true and correct in all material respects, our representations and warranties relating to the absence of any Company Material Adverse Effect (as defined under The Merger Agreement Representations and Warranties on page [ ]) since December 31, 2007 being true and correct in all respects, and all other representations and warranties being true and correct except where the failure to be so true and correct would not reasonably be expected to have a Company Material Adverse Effect;
- the performance in all material respects by us of all our obligations under the merger agreement;
- the absence of any effect, event, development, circumstance or change that, individually or in the aggregate with all other effects, events, developments, circumstances and changes, has resulted or would reasonably be expected to result in a Company Material Adverse Effect; and
- the receipt by Altria and Merger Sub of a closing certificate signed on behalf of the Company.

Conditions to the Company s Obligations. Our obligation to complete the merger is subject to the satisfaction or waiver of the following additional conditions:

the representations and warranties of Altria and Merger Sub being true and correct except where the failure to be so true and correct would not reasonably be expected to prevent the consummation of the merger;

the performance in all material respects by Altria and Merger Sub of all their obligations under the merger agreement; and

the receipt by the Company of a closing certificate signed on behalf of Altria.

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Termination of the Merger Agreement (page [ ])

The Company and Altria may agree in writing to terminate the merger agreement at any time without completing the merger. The merger agreement may also be terminated at any time in certain other circumstances, including:

by Altria or the Company if:

the merger has not been consummated by June 7, 2009, as such date may be extended (the end date) as follows: (i) until September 7, 2009 by mutual written agreement in the event more time is needed to obtain any regulatory approval or remove any other legal impediment; or (ii) for up to 10 business days if the special meeting has been postponed to a date after June 7, 2009 in accordance with the terms of the merger agreement, unless such termination was requested by the party whose breach of its obligations under the merger agreement was the principal cause of non-consummation;

there is a final and non-appealable governmental order restraining, enjoining or otherwise prohibiting the merger that did not result from the breach by the terminating party of its obligations under the merger agreement; or

our stockholders do not adopt the merger agreement and approve the merger at the special meeting or any adjournment or postponement thereof.

by the Company if:

at any time prior to a vote by our stockholders approving the merger, the Company enters into an alternative acquisition agreement with respect to a superior proposal, having been authorized through a process consistent with the solicitation provisions of the merger agreement, and immediately prior to or concurrently pays Altria the termination fee (as described under The Merger Agreement Termination Fees and Expenses on page [ ]); or

Altria or Merger Sub is in breach of its representations, warranties, covenants or agreements under the merger agreement, or any such representation or warranty becomes inaccurate, and such breach or inaccuracy would result in the failure of a condition of the Company s obligation to close and is not cured within 30 days following written notice from the Company, or which Altria or Merger Sub ceases to attempt to cure, or which by its nature cannot be cured by the end date; provided that the Company is not in material breach of any provision of the merger agreement.

by Altria if:

our board of directors fails to make, withdraws, modifies or amends its recommendation to our stockholders to adopt the merger agreement and approve the merger, or publicly proposes to do so, in a manner adverse to Altria or Merger Sub;

our board of directors approves, endorses or recommends a takeover proposal or enters into an agreement (other than certain acceptable confidentiality agreements) relating to a takeover proposal or publicly announces its intention to do so (other than in accordance with solicitation provisions of the merger agreement);

there is a material breach by the Company or certain other related persons of the solicitation provisions of the merger agreement;

we fail to include our board of directors recommendation that our stockholders adopt the merger agreement and approve the merger in the proxy statement delivered to our stockholders; or

we are in breach of our representations, warranties, covenants or agreements under the merger agreement, or any such representation or warranty becomes inaccurate, and such breach or inaccuracy would result in the failure of a condition of Altria s obligation to close and is not cured within 30 days following written notice from Altria, or which we cease to attempt to cure or which by its nature cannot be cured by the end date; provided that Altria is not in material breach of any provision of the merger agreement.

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Termination Fees and Expenses (page [ ])

Company Termination Fee

We have agreed to pay a termination fee of $250 million to Altria if: