CONSECO INC
Form S-1/A
December 14, 2009

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As filed with the Securities and Exchange Commission on December 14, 2009

Registration No. 333-163204

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

Amendment No. 1
to

Form S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Conseco, Inc.
(Exact name of registrant as specified in its charter)

Delaware	6321	75-3108137
(State or other jurisdiction of incorporation or organization)	*(Primary Standard Industrial Classification Code Number)*	*(I.R.S. Employer Identification Number)*

11825 N. Pennsylvania Street
Carmel, IN 46032
(317) 817-6708
(Address, including zip code, and telephone number,
including area code, of registrant s principal executive offices)

Karl W. Kindig, Esq.
Secretary
Conseco, Inc.
11825 N. Pennsylvania Street
Carmel, IN 46032
(317) 817-6708
(Name, address, including zip code, and telephone number,
including area code, of agent for service)
With copies to:

Gary Horowitz, Esq.
Roxane F. Reardon, Esq.
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017
(212) 455-2000

Deanna Kirkpatrick, Esq.
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017
(212) 450-4000

Approximate date of commencement of proposed sale to the public: As soon as practicable after this Registration Statement is declared effective.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. o

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer þ Accelerated filer o Non-accelerated filer o (Do not check if a smaller reporting company) Smaller reporting company o

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered(2)	Proposed Maximum Offering Price Per Share(3)	Proposed Maximum Aggregate Offering Price(2)	Amount of Registration Fee(4)
Common Stock, par value $0.01 per share (and associated Preferred Stock Purchase Rights)(1)	49,500,000 shares	$4.73	$234,135,000	$13,065

(1) Includes the associated preferred stock purchase rights, which (a) are not currently separable from the shares of Common Stock and (b) are not currently exercisable.
(2) Includes shares to be sold upon exercise of the underwriters option.
(3) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(c) under the Securities Act of 1933, as amended.
(4) A registration fee of $12,834 has already been paid by the registrant with respect to the securities being registered hereunder. Pursuant to Rule 457(p), the registrant is offsetting such amount that has already been paid against the $13,065 registration fee relating to such securities.

The registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this

Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

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The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and we are not soliciting offers to buy these securities in any state where the offer or sale is not permitted.

PRELIMINARY PROSPECTUS DATED DECEMBER 14, 2009 (Subject to Completion)

45,000,000 Shares

Conseco, Inc.

COMMON STOCK

Conseco, Inc. is offering 45,000,000 shares of its common stock.

The common stock is listed on the New York Stock Exchange under the symbol CNO. On December 11, 2009, the reported last sale price of the common stock on the New York Stock Exchange was $4.75 per share.

Investing in our common stock involves risks. See Risk Factors beginning on page 11.

PRICE $ A SHARE

	Price to	Underwriting Discounts and	Proceeds

	Public	Commissions	to Conseco
Per Share	$	$	$
Total	$	$	$

We have granted the underwriters the right to purchase up to an additional 4,500,000 shares from us to cover over-allotments, if any, within 30 days of the date of this prospectus.

None of the Securities and Exchange Commission, any state securities commission or any other regulatory body has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The underwriters expect to deliver the shares to purchasers on or about , 2009.

MORGAN STANLEY

Credit Suisse

FBR Capital Markets

Macquarie Capital

, 2009

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Conseco, Inc., a Delaware corporation (CNO), became the successor to Conseco, Inc., an Indiana corporation (our predecessor company), in connection with our bankruptcy reorganization which became effective on September 10, 2003 (the Effective Date). The terms Conseco, we, us, and our as used in this prospectus refer to CNO and its subsidiaries or, when the context requires otherwise, our predecessor company and its subsidiaries.

You should rely only on the information contained in this prospectus and in any free writing prospectus. We and the underwriters have not authorized anyone to provide you with information different from that contained in this prospectus. We and the underwriters are offering to sell, and are seeking offers to buy, shares of our common stock only in jurisdictions where offers and sales are permitted. The information in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or any sale of shares of our common stock.

For investors outside of the United States, neither we nor any of the underwriters have done anything that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for

that purpose is required. Persons outside the United States who come into possession of this prospectus must inform themselves about, and observe any restrictions relating to, the offering of the shares of common stock and the distribution of this prospectus outside of the United States.

State insurance holding company statutes applicable to us generally provide that no person may acquire control of us, and thus indirect control of our insurance subsidiaries, without prior approval of the relevant state insurance commissioners. Generally, any person who acquires beneficial ownership of 10% or more of our outstanding voting securities would be presumed to have acquired such control unless the relevant state insurance commissioners upon application determine otherwise. Beneficial ownership includes the acquisition, directly or indirectly (by revocable proxy or otherwise), of our voting shares. If any person acquires 10% or more of the outstanding shares of common stock in violation of such provisions, our insurance subsidiaries or the state insurance commissioners are entitled to injunctive relief, including enjoining any proposed acquisition, or seizing shares of common stock owned by such person, and such shares of common stock would not be entitled to be voted.

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ADDITIONAL INFORMATION

We are subject to the informational requirements of the Securities Exchange Act of 1934, as amended (the Exchange Act). In accordance with the Exchange Act, we and our predecessor company have filed annual, quarterly and current reports, proxy statements and other information with the Securities and Exchange Commission (the SEC). You may read and copy any document we file at the SEC s public reference facilities at 100 F Street, N.E., Room 1580, Washington, D.C., 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. Our SEC filings are also available to the public from the SEC s website at www.sec.gov or through our website at www.conseco.com. However, the information on our web site does not constitute a part of this prospectus. Our web site address and that of the SEC are intended to be inactive textual references only.

In this document, we incorporate by reference the information that we have filed with the SEC, which means that we can disclose important information to you by referring you to a document we filed with the SEC. The information incorporated by reference is considered to be a part of this prospectus. We incorporate by reference the documents listed below:

our annual report on Form 10-K for the fiscal year ended December 31, 2008 (including information specifically incorporated therein by reference from our definitive proxy statement on Schedule 14A filed with the SEC on April 23, 2009);

our quarterly reports on Form 10-Q for the periods ended March 31, 2009, June 30, 2009 and September 30, 2009; and

our current reports on Form 8-K filed on January 20, 2009, February 23, 2009, March 17, 2009, March 24, 2009 (Item 5.02 only), March 31, 2009 (the Item 1.01 Form 8-K only), April 8, 2009, May 4, 2009, May 13, 2009 (the Item 8.01 Form 8-K only), May 15, 2009, May 21, 2009 (the Item 8.01 Form 8-K only), June 22, 2009, June 26, 2009, July 23, 2009, August 31, 2009, September 8, 2009, October 13, 2009 (excluding Item 7.01), October 19, 2009, November 13, 2009 and December 9, 2009 (the Items 1.01 and 2.03 Form 8-K only).

You may request copies of the filings, at no cost, by writing to the following address or calling the following telephone number: Investor Relations, Conseco, Inc., 11825 N. Pennsylvania Street, Carmel, Indiana 46032, (317) 817-2893.

You should read the information relating to us in this prospectus together with the information in the documents incorporated by reference. You should rely only upon the information provided in this prospectus or incorporated in this prospectus by reference. Conseco has not authorized anyone to provide you with different information. You should not assume that the information in this prospectus, including any information incorporated by reference, is accurate as of any date other than the date indicated on the front cover.

CAUTIONARY NOTE ON FORWARD-LOOKING STATEMENTS

This prospectus contains and incorporates forward-looking statements within the meaning of the federal securities laws and the Private Securities Litigation Reform Act of 1995. Forward-looking statements typically are identified by the use of terms such as anticipate, believe, plan, estimate, expect, project, intend, may, will, would, possible, attempt, seek, should, could, goal, target, on track, comfortable with, optimistic and sim some forward-looking statements are expressed differently. You should consider statements that contain these words carefully because they describe our expectations, plans, strategies and goals and our beliefs concerning future business conditions, our results of operations, financial position, and our business outlook or they state other forward-looking information based on currently available information. The Risk Factors section of this prospectus provides examples of risks, uncertainties and events that could cause our actual results to differ materially from the expectations expressed in our forward-looking statements. Assumptions and other important factors that could cause our actual results to differ materially from those anticipated in our forward-looking statements include, among other things:

- our ability to continue to satisfy the financial ratio and balance requirements and other covenants of the Second Amended and Restated Credit Agreement dated as of October 10, 2006 among Conseco, Inc., Bank of America, N.A., as Agent, J.P. Morgan Chase Bank, N.A., as Syndication Agent, and other parties (referred to hereinafter as the senior credit agreement); as amended by Amendment No. 1 thereto dated June 12, 2007, Amendment No. 2 thereto dated March 30, 2009, and Amendment No. 3 thereto dated December 8, 2009 (which will become effective on the closing of this offering).

- liquidity issues associated with the right of holders of our 3.50% convertible debentures due 2035 to require us to repurchase such debentures on September 30, 2010;

- general economic, market and political conditions, including the performance and fluctuations of the financial markets which may affect our ability to raise capital or refinance our existing indebtedness and the cost of doing so;

- our ability to generate sufficient liquidity to meet our debt service obligations and other cash needs;

- our ability to obtain adequate and timely rate increases on our supplemental health products, including our long-term care business;

- the receipt of any required regulatory approvals for dividend and surplus debenture interest payments from our insurance subsidiaries;

- mortality, morbidity, the increased cost and usage of health care services, persistency, the adequacy of our previous reserve estimates and other factors which may affect the profitability of our insurance products;

- changes in our assumptions related to the cost of policies produced or the value of policies in force at the Effective Date;

- the recoverability of our deferred tax assets and the effect of potential ownership changes and tax rate changes on its value;

- our assumption that the positions we take on our tax return filings, including our position that the new debentures (as defined below) will not be treated as stock for purposes of Section 382 of the Internal Revenue

Code of 1986, as amended (the Code), and will not trigger an ownership change, will not be successfully challenged by the Internal Revenue Service (the IRS);

changes in accounting principles and the interpretation thereof;

our ability to achieve anticipated expense reductions and levels of operational efficiencies including improvements in claims adjudication and continued automation and rationalization of operating systems;

performance and valuation of our investments, including the impact of realized losses (including other-than-temporary impairment charges);

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- our ability to identify products and markets in which we can compete effectively against competitors with greater market share, higher ratings, greater financial resources and stronger brand recognition;
- the ultimate outcome of lawsuits filed against us and other legal and regulatory proceedings to which we are subject;
- our ability to complete the remediation of the material weakness in internal controls over our actuarial reporting process and to maintain effective controls over financial reporting;
- our ability to continue to recruit and retain productive agents and distribution partners and customer response to new products, distribution channels and marketing initiatives;
- our ability to achieve eventual upgrades of the financial strength ratings of Conseco and our insurance company subsidiaries as well as the impact of rating downgrades on our business and our ability to access capital;
- the risk factors or uncertainties listed from time to time in our filings with the SEC;
- regulatory changes or actions, including those relating to regulation of the financial affairs of our insurance companies, such as the payment of dividends and surplus debenture interest to us, regulation of financial services affecting (among other things) bank sales and underwriting of insurance products, regulation of the sale, underwriting and pricing of products, and health care regulation affecting health insurance products; and
- changes in the Federal income tax laws and regulations which may affect or eliminate the relative tax advantages of some of our products.

Other factors and assumptions not identified above are also relevant to the forward-looking statements, and if they prove incorrect, could also cause actual results to differ materially from those projected.

All forward-looking statements are expressly qualified in their entirety by the foregoing cautionary statements. Our forward-looking statements speak only as of the date made. We assume no obligation to update or to publicly announce the results of any revisions to any of the forward-looking statements to reflect actual results, future events or developments, changes in assumptions or changes in other factors affecting the forward-looking statements.

SUMMARY

This summary may not contain all the information that may be important to you. You should read this entire prospectus, and the financial data and related notes that are incorporated by reference, before making an investment decision.

You should pay special attention to the Risk Factors section beginning on page 11 of this prospectus in determining whether an investment in our common stock is appropriate for you.

Our Business

We are a holding company for a group of insurance companies operating throughout the United States that develop, market and administer supplemental health insurance, annuity, individual life insurance and other insurance products. We serve America s middle-income consumers, with a focus on seniors. We believe this is an attractive, underserved, high growth market. We sell our products through three distribution channels: career agents, professional independent producers (some of whom sell one or more of our product lines exclusively) and direct marketing.

As of September 30, 2009, we had $3.3 billion of shareholders equity and $30.3 billion of assets. For the nine months ended September 30, 2009, we had $3.3 billion of revenues and $67.5 million of net income, compared to the nine months ended September 30, 2008, for which we had $3.1 billion of revenues and $679 million of net losses.

We manage our business through the following three primary operating segments: Bankers Life, Colonial Penn and Conseco Insurance Group, which are defined on the basis of product distribution, and corporate operations, which consists of holding company activities and certain noninsurance company businesses that are not part of our other segments. Prior to the fourth quarter of 2008, we had a fourth operating segment comprised of other business in run-off. The other business in run-off segment had included blocks of business that we no longer market or underwrite and were managed separately from our other businesses. Such segment had consisted primarily of long-term care insurance sold in prior years through independent agents. As a result of the transfer of the stock of Senior Health Insurance Company of Pennsylvania (Senior Health) by Conseco and CDOC, Inc. (CDOC), a wholly owned subsidiary of Conseco, to Senior Health Care Oversight Trust, an independent trust, in November 2008, a substantial portion of the long-term care business in the former other business in run-off segment is presented as discontinued operations in our consolidated financial statements for the periods prior to 2009.

Bankers Life, which consists of the business of Bankers Life and Casualty Company, markets and distributes health and life insurance products and annuities to the middle-income senior market through a dedicated field force of over 5,600 career agents and sales managers supported by a network of over 150 community-based branch offices. Products include Medicare supplement insurance, life insurance, fixed annuities and long-term care insurance. Bankers Life also markets and distributes Medicare Part D prescription drug plans through a distribution and reinsurance arrangement with Coventry Health Care and Medicare Advantage plans primarily through a distribution arrangement with Humana Inc.

Colonial Penn, which consists of the business of Colonial Penn Life Insurance Company (Colonial Penn), markets primarily graded benefit and simplified issue life insurance directly to customers through television advertising, direct mail, the internet and telemarketing. Colonial Penn markets its products under its own brand name.

Conseco Insurance Group, which markets and distributes specified disease insurance, accident, disability, life insurance and annuities to middle-income consumers at home and at the worksite. These products are marketed through Performance Matters Associates, Inc., a wholly owned subsidiary, and through independent marketing organizations and insurance agencies. Products being marketed by Conseco Insurance Group are underwritten by Conseco Insurance Company, Conseco Health Insurance Company and Washington National Insurance Company. This segment also includes blocks of long-term care and other insurance business, in these companies and in Conseco Life Insurance Company, which we no longer market.

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The following table sets forth information on our segments for the nine months ended September 30, 2009 (dollars in millions):

	Collected Premiums $	Collected Premiums Percentage	Income (Loss) before Income Taxes
Bankers Life	$ 2,316.1	73%	$ 161.1
Colonial Penn	144.2	5	26.2
Conseco Insurance Group	702.5	22	74.6
Corporate			(106.0)
Total	$ 3,162.8	100%	$ 155.9

Our principal executive offices are located at 11825 N. Pennsylvania Street, Carmel, Indiana 46032, and our telephone number at this location is (317) 817-6100. Our website is www.conseco.com. Information on our website should not be construed to be part of this prospectus.

Our common stock is listed on the New York Stock Exchange (the NYSE) under the symbol CNO.

Competitive Strengths

We believe our competitive strengths have enabled and will continue to enable us to capitalize on the opportunities in our target markets. These strengths include the following:

Growing Distribution Force Enables Us to Access Our Middle-Income Market Customers. We are able to reach our customers through a growing distribution force consisting of:

over 5,600 Bankers Life career agents and sales managers who are trained to cater to the needs of the senior market. These agents sell a number of products such as supplemental health coverage, including Medicare supplement, Medicare Advantage and Medicare Part D products and long-term care insurance, as well as selected life and annuity products that are important to the financial well-being of seniors. This agency force typically visits the home of a policyholder or potential policyholder, which helps develop strong personal relationships;

over 800 agents with Performance Matters Associates, Inc., as well as the other agents associated with our Conseco Insurance Group segment, who specialize in the sale of supplemental health products which customers can purchase at home or through their worksite. These agents sell specified disease insurance, such as cancer and heart/stroke products, as well as accident, disability and life insurance to middle-income customers; and

Colonial Penn s direct contacts with customers through direct mail, television advertising and the Internet.

Products Designed for the Needs of Middle-Income Customers. We primarily sell small face amount risk protection products to our middle-income customers. We do not market variable life or variable annuity business, nor do we market other products such as guaranteed investment products that could increase the liquidity risk to our insurance companies.

Leading National Provider of Life and Health Insurance Products to the Senior Market. Our Bankers Life segment is one of the leading national providers of life and health insurance products focused primarily on the senior market. The career agents with Bankers Life provide a number of products such as supplemental health coverage, including Medicare supplement, Medicare Advantage and Medicare Part D products and long-term care insurance, as well as selected life and annuity products that are important to the financial well-being of seniors.

According to the most recently published report on Medicare supplement insurance by the National Association of Insurance Commissioners, we were ranked fourth in direct premiums earned of individual Medicare supplement insurance in 2008. Our approximately 5,600 career agents and sales managers are trained to cater to the needs of the senior market. Current demographic trends indicate that the senior market

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will continue to grow, and we believe our focus on seniors will provide us with a significant opportunity to increase our share of this market.

Experienced Management with a Proven Track Record. We have a strong, experienced senior management team. The nine members of our senior management team have, on average, more than 20 years of industry experience. We have made significant changes to our management team in recent years and it has been strengthened by the addition of many experienced industry executives, led by C. James Prieur, who has served as Chief Executive Officer since September 2006. Before joining Conseco, Mr. Prieur had been with Sun Life Financial, Inc. since 1979, where he served in a variety of investment management positions before being promoted to senior vice president and general manager for all U.S. operations of Sun Life Financial in 1997. Mr. Prieur became corporate president and chief operating officer of Sun Life Financial, Inc. in 1999, and he served in that capacity until joining Conseco.

Our Strategy

Our mission is to be a premier provider of life insurance, supplemental health products and annuities to America s middle-income consumers with a focus on seniors and to provide value to our shareholders. We believe we can accomplish this mission through the effective execution of the following strategies:

Remain focused on the Needs of Our Middle Income Market Customers. We define our business by our target markets and not by our products. We continue to adapt our distribution, product offerings and product features to the evolving needs of our middle income and senior customers. We provide a broad range of middle market products to meet the protection needs of our customers and to provide them with longevity solutions. We are able to reach our customers through our career agents and independent agent relationships, directly, through our Colonial Penn direct distribution platform, and at work, through our worksite marketing channel.

Expand and Improve the Efficiency of our Distribution Channels. The continued development and maintenance of our distribution channels is critical to our continued sales growth. We dedicate substantial resources to the recruitment, development and retention of our Bankers Life career agents and seek to maximize their productivity by providing them with high quality leads for new business opportunities. Investments in our Colonial Penn direct distribution platform have enabled us to achieve significant sales growth since 2004. In our Conseco Insurance Group segment, we have refocused efforts on supplemental health and life insurance products to utilize the competitive strengths of our wholly owned distributor, Performance Matters Associates, Inc.

Seek Profitable Growth. We continue to pursue profitable growth opportunities in the middle income market. We focus on marketing and selling products that meet the needs of our customers and we believe it will enable us to provide long-term value for our shareholders. As part of this strategy, we have de-emphasized products with return characteristics that we consider to be inadequate.

Pursue Operational Efficiencies and Cost Reduction Opportunities. We seek to strengthen our competitive position with a focus on cost control and enhanced operational efficiency. Our efforts include:

- improvements to our policy administration processes and procedures to reduce costs and improve customer service;
- continued consolidation of policy processing systems, including conversions and elimination of systems;
- streamlining administrative procedures and consolidating processes across the enterprise to reduce personnel costs; and

eliminating expenses associated with the marketing of those products that do not meet our return objectives.

Strengthen Our Financial Profile. In response to the challenging economic environment and to our financial situation, our management team has taken several capital and risk management initiatives to enhance our capital and liquidity position and to improve our profitability. These initiatives included entering into agreements to sell new convertible debentures and shares of our common stock and warrants. The initial phase of these recapitalization transactions was completed on November 13, 2009. See Recent Developments. The proceeds of these recapitalization transactions are being used to refinance our 3.50% Convertible Debentures and to decrease the outstanding indebtedness under our senior credit agreement, with the remaining amounts available for general corporate purposes. In addition, we have pursued several reinsurance transactions, which have improved the capitalization of our life insurance subsidiaries and have served to offset the negative effects of the adverse economic and investment environment.

Continue to manage and reduce the risk profile of our business where possible. We actively manage the risks associated with our business and have taken several steps to reduce the risk profile of our business. In the fourth quarter of 2007, we completed a transaction to coinsure 100 percent of a block of inforce equity-indexed annuity and fixed annuity business sold through our independent distribution channel. Such business was largely out of the surrender charge periods and had policyholder account balances in excess of $2.5 billion. This transaction significantly reduced the asset and liability risks associated with this business. In the fourth quarter of 2008, we transferred the stock of Senior Health to an independent trust, eliminating our exposure to a substantial block of long-term care business previously included in our run-off segment. In 2009, we began coinsuring a significant portion of the new long-term care business written through our Bankers Life segment. These transactions have reduced our exposure to long-term care business that has produced volatile earnings in the past.

We have purposefully avoided products like variable life, variable annuity and guaranteed investment contracts that we believe would expose us to risks that are not commensurate with potential profits. We plan to continue to emphasize products that are straight forward and have a lower risk profile. We believe such products meet various needs of the middle income markets we serve. We will continue to manage the investment risks associated with our insurance business by:

- maintaining a largely investment-grade, diversified fixed-income portfolio;
- maximizing the spread between the investment income we earn and the yields we pay on investment products within acceptable levels of risk; and
- continually tailoring our investment portfolio to consider expected liability durations, cash flows and other requirements.

Capitalize on favorable trends in our markets. It is our vision to be a premier provider of insurance products to America s middle-income families and seniors. We believe our middle-income target market is underserved by the financial services industry. In addition, our focus on seniors provides us with significant growth opportunities as an estimated 78 million baby boomer Americans born between 1946 and 1964 plan for retirement and become eligible for Medicare. Our middle-income market consumers are impacted by a number of trends, including:

- increased life expectancy;
- discontinuance or reduction in employer-sponsored benefit programs;
- rising healthcare costs; and
- projected gaps between the needs of seniors and amounts provided by government-sponsored plans such as Social Security and Medicare.

We believe that our focus on middle-income families and seniors will position us favorably to capitalize on the future growth in these markets.

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Recent Developments

Settlement of Cash Tender Offer

On November 13, 2009, we completed our previously announced cash tender offer (the Tender Offer) for any and all of the $293.0 million aggregate principal amount of our 3.50% Convertible Debentures due September 30, 2035 (the existing debentures). As of 12:00 midnight, New York City time, on November 12, 2009, the expiration date of the Tender Offer, $176.5 million aggregate principal amount (approximately 60.2% of the outstanding aggregate principal amount immediately prior to the expiration date) of the existing debentures were validly tendered and not withdrawn. The aggregate consideration for the existing debentures accepted by us in the Tender Offer, plus accrued and unpaid interest thereon, was $177.2 million. Following the settlement of the Tender Offer, there is $116.5 million aggregate principal amount of the existing debentures outstanding.

First Issuance of New Debentures

On November 13, 2009, we issued $176.5 million aggregate principal amount of our 7.0% Convertible Senior Debentures due 2016 (the new debentures) in the initial closing of our previously announced private offering of new debentures to Morgan Stanley & Co. Incorporated (Morgan Stanley), as the initial purchaser of the new debentures. The net proceeds from the initial closing of the offering of our new debentures were used to fund a substantial portion of the consideration payable in connection with the Tender Offer for the existing debentures. We expect to issue additional new debentures, and Morgan Stanley, as the initial purchaser, is required to purchase these additional new debentures, subject to the satisfaction of certain conditions, on the following dates:

- the settlement date of any subsequent tender offers we make for outstanding existing debentures that expire before October 5, 2010;
- September 30, 2010, the date on which we may be required by holders of the existing debentures, if any, to repurchase such existing debentures; and
- October 5, 2010, if we elect to redeem any existing debentures that remain outstanding on such date.

The net proceeds from any subsequent closings of the new debentures offering will be used to fund a substantial portion of the aggregate consideration payable for existing debentures that we may repurchase or redeem in accordance with the terms of the existing debentures.

The new debentures are not convertible prior to June 30, 2013, except under limited circumstances. Commencing on June 30, 2013, the new debentures will be convertible into shares of our common stock at the option of the holder at any time, subject to certain exceptions and subject to our right to terminate such conversion rights under certain circumstances relating to the sale price of our common stock. If the holders elect to convert their new debentures upon the occurrence of certain changes of control of Conseco or certain other events, we will be required, under certain circumstances, to increase the conversion rate for such holders of the new debentures who convert in connection with such events. Initially, the new debentures will be convertible into 182.1494 shares of our common stock for each $1,000 principal amount of new debentures, which conversion rate is subject to adjustment following the occurrence of certain events in accordance with the terms of the indenture governing the new debentures.

On November 17, 2009, two investment funds managed by Paulson & Co. Inc. (Paulson) purchased $120.5 million aggregate principal amount of new debentures from Morgan Stanley, and other purchasers purchased the remaining $56.0 million aggregate principal amount of new debentures from Morgan Stanley. We have been informed by Morgan Stanley that the two funds managed by Paulson have entered into agreements with Morgan Stanley to purchase up to a total of $79.5 million additional aggregate principal amount of new debentures, and other purchasers have agreed to purchase up to the remaining $37.0 million aggregate principal amount of new debentures.

For a description of our offering of new debentures and the terms of the new debentures, see our current report on Form 8-K filed on October 19, 2009, and the exhibits thereto, which are incorporated by reference herein.

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Issuance of Common Stock and Warrants to Paulson

On November 13, 2009, we also issued 16.4 million shares of our common stock and warrants to purchase 5.0 million shares of our common stock to several investment funds and accounts managed by Paulson in connection with our previously announced private placement of such securities to Paulson pursuant to a stock and warrant purchase agreement we entered into with Paulson on October 13, 2009. The aggregate purchase price was $77.9 million. After the payment of financial advisory and other offering expenses, we used $36.8 million to repay indebtedness under our senior credit agreement, pursuant to the terms of the senior credit agreement and $10.5 million to fund the portion of the settlement of the Tender Offer that was not funded by the issuance of new debentures. The remaining proceeds will be used:

- to pay the portion of the purchase price, repurchase price or redemption price of the existing debentures that are (i) tendered in any subsequent issuer tender offer for the existing debentures, (ii) repurchased by us as required by the holders thereof on September 30, 2010 or (iii) redeemed by us on October 5, 2010 respectively; and

- for general corporate purposes.

On November 13, 2009, concurrently with the completion of the private placement of our common stock and warrants, we entered into an investor rightsreComm Newco, Inc., an indirect, wholly-owned subsidiary of the Company, is currently in litigation with Ameritech Ohio, a supplier from whom it purchases telecommunications products and services, over the adequacy of Ameritech's performance under a 1998 contract between CoreComm Newco and Ameritech, and related issues. This litigation began in June 2001 when Ameritech threatened to stop processing new orders following CoreComm Newco exercise of its right under the contract to withhold payments for Ameritech's performance failures. In response to this threat, CoreComm Newco sought and received an order from an official of the Public Utilities Commission of Ohio barring Ameritech from refusing to process new CoreComm orders. Ameritech has appealed that order to the PUCO and the appeal is still pending. 38 ATX Communications, Inc. (formerly CoreComm Holdco, Inc. and Subsidiaries) On July 5, 2001, Ameritech filed a claim with the PUCO seeking payment from CoreComm Newco of approximately $8,600,000 allegedly owed under the contract. On August 8, 2001, Ameritech filed a second claim against CoreComm Newco in Ohio state court, seeking an additional approximately $4,300,000 in allegedly improperly withheld amounts. On August 28, 2001, CoreComm Newco exercised its right to remove the state court claim to the United States District Court for the Northern District of Ohio, and the parties then stipulated to a consolidation of both of Ameritech's claims in the United States District Court. To consolidate the two claims, on October 9, 2001, Ameritech filed an amended complaint in the United States District Court, seeking a total of approximately $14,400,000. On December 26, 2001, CoreComm Newco filed its answer to Ameritech's amended complaint and simultaneously filed three counterclaims against Ameritech and some of its affiliates, alleging breach of contract, antitrust violations, and fraudulent or negligent misrepresentation. In lieu of filing an answer to CoreComm Newco's counterclaims, Ameritech filed a series of motions on March 25, 2002, asking the Court to dismiss several of CoreComm Newco's counterclaims. On April 17, 2002, CoreComm Newco filed its opposition to Ameritech's requests for dismissal On July 25, 2002, the district court issued a decision denying Ameritech's motion to dismiss and upholding CoreComm Newco's right to proceed with its antitrust and misrepresentation claims against all counter-defendants. The Company believes that CoreComm Newco has meritorious defenses to Ameritech's amended complaint, and that the amount currently in dispute is substantially less than the $14,400,000 claimed in Ameritech's amended complaint. For example, the figure specified in Ameritech's complaint does not account for (a) more than $5.2 million in refunds that Ameritech contends it has already credited to CoreComm Newco's accounts since the filing its complaint, and (b) payments that were made by CoreComm Newco in the ordinary course after the time of Ameritech's submission. However, the Company cannot be certain how or when the matter will be resolved. The Company also believes that, to the extent Ameritech prevails with respect to any of its claims, Ameritech's award may be offset in whole or in part by amounts that CoreComm Newco is seeking to obtain from Ameritech under its counterclaims. However, it is impossible at this time to predict the outcome of the litigation. o On December 3, 2001, General Electric Capital Corp. filed a lawsuit in the Circuit Court of Cook County, Illinois against CoreComm Limited and MegsINet, Inc., an indirect subsidiary of the Company, seeking approximately $8 million in allegedly past due amounts and the return of equipment under a capital equipment lease agreement between Ascend and MegsINet. GECC is seeking all amounts allegedly owed under the lease as well as repossession of the equipment. On February 19, 2002, the defendants filed a motion to dismiss several of GECC's claims. In response, GECC withdrew its original complaint and on May 1, 2002 filed an amended complaint naming the Company as an additional defendant. On June 5, 2002, defendants filed a motion to dismiss and/or stay plaintiff's complaint, plaintiffs filed a reply and the court has established a schedule for 39 ATX Communications, Inc. (formerly CoreComm Holdco, Inc. and Subsidiaries) additional briefing on the matter to be followed by oral argument in late September 2002. Concurrently, on April 12, 2002, GECC filed a second complaint in the Circuit Court of Cook County, Illinois against MegsINet, CoreComm Limited and the Company seeking a court order allowing it to take repossession of its alleged equipment. After a hearing on the matter following defendants' opposition, GECC withdrew its complaint and filed a new action on May 3, 2002. Defendant's response to dismiss the May 3, 2002 complaint was filed on May 29, 2002 asking the court to dismiss plaintiff's complaint and that matter remains pending. Concurrently, the parties have been directed to submit proposed findings of fact and conclusions of law on the claims against MegsINet by August 23, 2002 with a decision to be rendered by the court by September 4, 2002. Defendants intend to defend themselves vigorously against both complaints and to pursue all available claims and defenses. However, it is impossible at this time to predict the outcome of the litigation. o On May 25, 2001, KMC Telecom, Inc. and some of its operating subsidiaries filed an action in the Supreme Court of New York for New York County against CoreComm Limited, Cellular Communications of Puerto Rico, Inc., CoreComm New York, Inc. and MegsINet, Inc. On that same date, KMC filed the same cause of action in the Circuit Court of Cook County, IL. Upon defendant's Motion to Stay the New York action, KMC voluntarily dismissed the Illinois litigation and the matter is currently proceeding in New York. KMC contends that it is owed approximately $2 million, primarily in respect of alleged early termination liabilities, under a services agreement and a co-location agreement with MegsINet. The defendants have denied KMC's claims and have asserted that the contracts at issue were signed without proper authorization, that KMC failed to perform under the alleged contracts, and that the termination penalties are not enforceable. The defendants have served discovery and intend to defend themselves in coordination with one of their insurance carriers. On March 27, 2002, certain of the defendants initiated litigation against several former principals of MegsINet seeking indemnification and contribution against KMC's claims. o On March 1, 2002, Easton Telecom Services, LLC., referred to as Easton LLC, initiated litigation in the Northern District of Ohio against CoreComm Internet Group, Inc. asserting that Easton LLC is the assignee of several rights of Easton Telecom Services, Inc., referred to as Easton Inc., under an asset purchase agreement approved as part of the bankruptcy disposition of Teligent, Inc., and demanding payment of approximately $5.1 million, primarily in respect of alleged early termination penalties, for telecommunications services purportedly provided under alleged contracts between Easton and MegsINet, Inc. Subsequently, on April 18, 2002, Easton filed an amended complaint in the above-referenced matter naming Voyager Information Networks, Inc. as an additional defendant and increasing the amount in dispute to approximately $5.1 million. On May 7, 2002, defendants' filed their answer denying Easton LLC's allegations and asserting multiple defenses, including defenses challenging the validity of the alleged contracts and plaintiffs claim to alleged damages, On July 8, 2002, plaintiff filed a motion for partial summary judgment on defendants' claim that approximately $4 million of the amount at issue constitutes an unenforceable penalty that must be dismissed by the court as a matter of law, and Defendants filed an opposition to that motion on July 29, 2002. Defendants intend to file a cross-motion for summary judgment declaring that the 40 ATX Communications, Inc. (formerly CoreComm Holdco, Inc. and Subsidiaries) $4 million penalty is void as a matter of law, and will defend themselves vigorously and pursue all available claims and defenses. However, it is impossible at this time to predict the outcome of this litigation. o On June 7, 2002, the Board of Revenue and Finance of the Commonwealth of Pennsylvania issued an order granting in part and denying in part the Company's petition for review of a decision by a lower administrative authority relating to the Company's alleged liability for sales and use tax for the period September 1, 1997 through July 31, 2000. Pursuant to the June 7 order, the Company has been assessed sales and use tax for the period at issue in the amount of $631,429. On July 8, 2002, the Company filed a petition for review of the board's order in the Commonwealth Court of Pennsylvania seeking a further reduction of the assessment. The Company believes that it has meritorious defenses and that the assessment should be reduced or eliminated, however it is not possible to predict how this matter will be resolved. o On August 13, 2002, the Company issued a demand to Worldcom, Inc. for payment of approximately $8.1 million, representing approximately $5.4 million in deposits for services and approximately $2.7 million in carrier access billing charges owed. On July 11, 2002, Worldcom filed a voluntary petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code. We do not believe Worldcom's bankruptcy filing will materially impact our ability to conduct our business operations. 41 ATX Communications, Inc. (formerly CoreComm Holdco, Inc. and Subsidiaries) ITEM 4 SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS. At a special stockholder meeting held on July 11, 2002, the stockholders of the Company unanimously approved a change of the name of the Registrant from "CoreComm Holdco, Inc." to "ATX Communications, Inc." The name change was made effective on July 15, 2002. ITEM 5. OTHER INFORMATION (a)In connection with the ATX Communications recapitalization, on July 2, 2002, Nasdaq transferred CoreComm Limited's listing on The Nasdaq National Market to the Company. On May 16, 2002, Nasdaq provided CoreComm Limited with notice of a Nasdaq Staff Determination indicating that CoreComm Limited common stock was subject to delisting from the Nasdaq National Market because CoreComm Limited did not comply with the minimum bid price and the minimum market value of publicly held shares requirements for continued listing. On June 28, 2002, a hearing was held before a Nasdaq Listing Qualifications Panel to review the Nasdaq Staff Determination. The Panel has not yet issued its opinion. Under Nasdaq rules, pending a decision by the Panel, the Company's common stock will continue to trade on the Nasdaq National Market. We cannot assure you that we will be able to maintain the Nasdaq National Market listing for shares of our common stock. If our common stock is delisted from the Nasdaq National Market, it could, among other things, have a negative impact on the trading activity and price of the common stock and could make it more difficult for us to raise equity capital in the future. If our common stock is delisted from the Nasdaq National Market, the shares will likely begin trading on the Over-the-Counter Bulletin Board (b)On July 31, 2002, we entered into definitive employment agreements with Thomas J. Gravina, our President and Chief Executive Officer and Michael A. Peterson, our Executive Vice-President, Chief Financial Officer and Chief Operating Officer reflecting the terms previously disclosed. ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K (a) Exhibits. 3.1 Restated Certificate of Incorporation of CoreComm Holdco, Inc. (incorporated by reference to Exhibit 3.1 to CoreComm Holdco, Inc.'s registration statement on Form S-1, file no, 333-82402) 3.2 Certificate of Amendment to the Certificate of Incorporation of CoreComm Holdco, Inc.* (incorporated by reference to Exhibit 3.2 CoreComm Holdco, Inc.'s registration statement on Form S-1, file no, 333-82402) 3.3 Certificate of Correction to the Certificate of Amendment to the Certificate of Incorporation of CoreComm Holdco, Inc. (incorporated by reference to Exhibit 3.3 CoreComm Holdco, Inc.'s registration statement on Form S-1, file no, 333-82402) 3.4 Certificate of Amendment to the Certificate of Incorporation of CoreComm Holdco, Inc. as filed with the State of Delaware on July 17, 2002 3.5 Amended By-laws of ATX Communications, Inc. (incorporated by reference to Exhibit 3.4 CoreComm Holdco, Inc.'s registration statement on Form S-1, file no, 333-82402) 4.1 Prospectus on Form S-1 as filed on June 27, 2002 (incorporated by reference to CoreComm Holdco, Inc.'s registration statement on Form S-1, file no, 333-82402) 10.1 Employment Agreement between ATX Communications, Inc. and Thomas J. Gravina dated July 31, 2002 and effective as of January 1, 2002. 10.2 Employment Agreement between ATX Communications, Inc. and Michael A. Peterson dated July 31, 2002 and effective as of January 1, 2002. 99.1 Certification of CEO and CFO Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to the Section 906 of the Sarbanes-Oxley Act of 2002 __________ 42 ATX Communications, Inc. (formerly CoreComm Holdco, Inc. and Subsidiaries) (b) Reports on Form 8-K. During the quarter ended June 30, 2002, the CoreComm Limited filed the following reports on Form 8-K: (i) Report dated April 1, 2002, reporting under Item 5, Other Events, that CoreComm Limited issued a press release announcing its earnings for the quarter and year ended December 31, 2001. (ii) Report dated April 15, 2002, reporting under Item 9, Regulation FD Disclosure, that CoreComm issued a press release announcing that it has extended its relationship with Public Financial Management ("PFM") for the third consecutive term as the company's telecommunications provider of choice. (iii) Report dated April 17, 2002, reporting under Item 9, Regulation FD Disclosure, that CoreComm issued a press release announcing that ATX Communications had filed an amendment to its Form S-4 Registration Statement, which includes an amended exchange offer prospectus, with the SEC. (iv) Report dated April 18, 2002, reporting under Item 9, Regulation FD Disclosure, that CoreComm issued a press release announcing that it has recently established relationships with several notable businesses throughout the Mid-Atlantic and Midwest regions. (v) Report dated May 1, 2002, reporting under Item 9, Regulation FD Disclosure, that CoreComm issued a press release announcing that CoreComm has signed a five-year agreement to provide dedicated Internet access to Vault9, a

Managed Service Provider in the Greater Toledo, Ohio market. (vi) Report dated May 10, 2002, reporting under Item 9, Regulation FD Disclosure, that CoreComm issued a press release announcing the extension of the expiration date of the registered public exchange offers by ATX Communications until 12:00 Midnight New York City time, on May 21, 2002, unless ATX Communications terminates the exchange offer or extends the expiration date. (vii) Report dated May 15, 2002, reporting under Item 9, Regulation FD Disclosure, that CoreComm issued a press release announcing their operating results for the quarter ended March 31, 2002. (viii)Report dated May 21, 2002, reporting under Item 9, Regulation FD Disclosure, that CoreComm issued a press release announcing the extension of the expiration date of the registered public exchange offers by ATX Communications until 5:00 P.M. New York City time, on May 28, 2002, unless ATX Communications terminates the exchange offer or extends the expiration date. 43 ATX Communications, Inc. (formerly CoreComm Holdco, Inc. and Subsidiaries) (ix) Report dated May 22, 2002, reporting under Item 9, Regulation FD Disclosure, that CoreComm issued a press release announcing that it had received notice of a Nasdaq Staff Determination on May 16, 2002, indicating that the common stock of the Company is subject to delisting from the Nasdaq National Market because the Company did not comply with the minimum market value of publicly held shares requirements for continued listing. The Company is filing a request for a hearing before a Nasdaq Listing Qualifications Panel to review the Nasdaq Staff Determination. Under Nasdaq rules pending a decision by the Panel, the common stock of the Company will continue to trade on the Nasdaq National Market. (x) Report dated May 28, 2002, reporting under Item 9, Regulation FD Disclosure, that CoreComm issued a press release announcing the extension of the expiration date of the registered public exchange offers by ATX Communications until 5:00 P.M. New York City time, on June 3, 2002, unless ATX Communications terminates the exchange offer or extends the expiration date. (xi) Report dated June 3, 2002, reporting under Item 9, Regulation FD Disclosure, that CoreComm issued a press release announcing the extension of the expiration date of the registered public exchange offers by ATX Communications until midnight, New York City time, on June 12, 2002, unless ATX Communications terminates the exchange offer or extends the expiration date. (xii) Report dated June 12, 2002, reporting under Item 9, Regulation FD Disclosure, that CoreComm issued a press release announcing the extension of the expiration date of the registered public exchange offers by ATX Communications until 5 pm, New York City time, on June 21, 2002, unless ATX Communications terminates the exchange offer or extends the expiration date. (xiii)Report dated June 24, 2002, reporting under Item 9, Regulation FD Disclosure, that CoreComm issued a press release announcing the extension of the expiration date of the registered public exchange offers by ATX Communications until 5 pm, New York City time on June 26, 2002, unless ATX Communications terminates the exchange offer or extends the expiration date. (xiv) Report dated June 26, 2002, reporting under Item 9, Regulation FD Disclosure, that CoreComm issued a press release announcing the extension of the expiration date of the registered public exchange offers by ATX Communications until Noon, New York City time, on July 1, 2002, unless ATX Communications terminates the exchange offer or extends the expiration date. No financial statements were filed with these reports. 44 ATX Communications, Inc. (formerly CoreComm Holdco, Inc. and Subsidiaries) SIGNATURES Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized. ATX COMMUNICATIONS, INC. Date: August 14, 2002 By: /s/ Michael A. Peterson ------------------------ Michael A. Peterson Executive Vice President, Chief Operating Officer and Chief Financial Officer Date: August 14, 2002 By: /s/ Gregg N. Gorelick -------------------------- Gregg N. Gorelick Senior Vice President-Controller and Treasurer (Principal Accounting Officer) 45