

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**SCHEDULE TO**

**Tender Offer Statement under Section 14(d)(1) or 13(e)(1)  
of the Securities Exchange Act of 1934  
(Amendment No. 1)**

**OFFICIAL PAYMENTS HOLDINGS, INC.**

(Name of Subject Company)

**ACI WORLDWIDE, INC.  
OLYMPIC ACQUISITION CORP.**

(Names of Filing Persons—Offeror)

**Common Stock, Par Value \$0.01 Per Share**  
(Title of Class of Securities)

**67623R106**

(Cusip Number of Class of Securities)

**Dennis P. Byrnes, Esq.**  
**Executive Vice President, Chief Administrative Officer,**  
**General Counsel and Secretary**  
**ACI Worldwide, Inc.**  
**6060 Coventry Drive**  
**Elkhorn, Nebraska 68022**  
**(402) 778-2183**

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications on Behalf of Filing Persons)

**Copies to:**

**Robert A. Profusek, Esq.**  
**Jones Day**  
**222 East 41st Street**  
**New York, New York 10017**  
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**CALCULATION OF FILING FEE**

Transaction Valuation*	Amount of Filing Fee**
\$166,831,772.55	\$21,487.93

\* Estimated for purposes of calculating the filing fee only. This amount is based on the offer to purchase at a purchase price of \$8.35 cash per share all shares of common stock of the subject company, which represents (1) 16,738,772 outstanding shares of common stock of the subject company, other than those shares held by Official Payments Holdings, Inc., ACI Worldwide, Inc. and Olympic Acquisition Corp. and their wholly owned subsidiaries, (2) 3,187,081 shares of common stock of the subject company issuable by the subject company upon the exercise of outstanding stock options pursuant to the subject company's stock option plans, and (3) 54,000 shares of common stock issuable upon the full settlement of all outstanding restricted share unit awards. The foregoing share figures have been provided by the subject company to the offerors and are as of September 20, 2013, the most recent practicable date before filing.

\*\* The amount of the filing fee is calculated in accordance with Rule 0-11 of the Securities Exchange Act of 1934, as amended, and Fee Rate Advisory #1 for the fiscal year 2014, issued August 30, 2013, by multiplying the transaction valuation by 0.0001288.

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

Amount Previously Paid: \$21,487.93  
Form or Registration No.: Schedule TO

Filing Party: ACI Worldwide, Inc. and Olympic Acquisition Corp.  
Date Filed: October 4, 2013

☐ Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

- ☒ third-party tender offer subject to Rule 14d-1.
- ☐ issuer tender offer subject to Rule 13e-4.
- ☐ going-private transaction subject to Rule 13e-3.
- ☐ amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer. ☐

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This Amendment No. 1 (this “Amendment”) amends and supplements the Tender Offer Statement on Schedule TO (the “Schedule TO”) filed with the Securities and Exchange Commission on October 4, 2013, and is filed by (i) Olympic Acquisition Corp., a Delaware corporation (“Purchaser”) and a wholly owned subsidiary of ACI Worldwide, Inc., a Delaware corporation (“ACI”), and (ii) ACI. The Schedule TO relates to the offer by Purchaser and ACI to purchase all outstanding shares of common stock, par value \$0.01 per share (the “Shares”), of Official Payments Holdings, Inc., a Delaware corporation (“OPAY”), at \$8.35 per Share in cash, without interest, on the terms and subject to the conditions set forth in the Offer to Purchase, dated October 4, 2013 (the “Offer to Purchase”), and in the related Letter of Transmittal, copies of which were filed with the Schedule TO as Exhibits (a)(1)(A) and (a)(1)(B), respectively (which, together with any amendments or supplements, collectively constitute the “Offer”). The Offer is made pursuant to the Agreement and Plan of Merger, dated September 23, 2013, among ACI, Purchaser and OPAY.

The information in the Offer to Purchase and the related Letter of Transmittal is incorporated in this Amendment by reference to all of the applicable items in the Schedule TO, except that such information is amended and supplemented to the extent specifically provided in this Amendment. Capitalized terms used and not otherwise defined in this Amendment shall have the meanings assigned to such terms in the Offer to Purchase or in the Schedule TO.

**Items 1 through 9 and Item 11.**

Items 1 through 9 and Item 11 of the Schedule TO are hereby amended and supplemented as follows:

**The information set forth under the caption “QUESTIONS AND ANSWERS RELATING TO THE OFFER” of the Offer to Purchase is hereby amended and supplemented by deleting the sixteenth question in its entirety and inserting the following as the sixteenth question under the caption “QUESTIONS AND ANSWERS RELATING TO THE OFFER”:**

**“If I decide not to tender, what will happen to my Shares?”**

If all of the conditions to the Offer and the Merger are satisfied or, where permissible, waived, we intend to effect the Merger pursuant to Section 251(h) of the DGCL without a vote or any further action by the Stockholders promptly following the purchase of Shares pursuant to the Offer. Accordingly, if you do not tender your Shares in the Offer and you do not exercise your appraisal rights under Section 262 of the DGCL, your Shares will be converted in the Merger into the right to receive the same price per Share that is paid in the Offer.

Accordingly, if the Offer and the Merger are consummated, the only differences to you between tendering and not tendering your Shares in the Offer is that (1) you will be entitled to exercise appraisal rights under Section 262 of the DGCL following the Merger and (2) you would have been paid earlier had you tendered your Shares in the Offer and different brokerage fees may apply to Shares that are tendered in the Offer compared to Shares that are exchanged in the Merger.”

**The information set forth in Section 4 — “Withdrawal Rights” of the Offer to Purchase is hereby amended and supplemented by inserting the following sentence as the second sentence of the first paragraph under the caption “Withdrawal Rights”:**

“In addition, pursuant to Section 14(d)(5) of the Exchange Act, unless we have accepted Shares for payment in the Offer, Stockholders who tender their Shares in the Offer may withdraw them at any time on or after December 3, 2013.”

The information set forth in Section 8 — “Certain Information Concerning OPAY” of the Offer to Purchase is hereby amended and supplemented by deleting the second paragraph under the sub-heading “— OPAY Projections” in its entirety and inserting the following paragraph as the second paragraph under the sub-heading “— OPAY Projections”:

“The inclusion of the projections in this Offer to Purchase should not be regarded as an indication that any of ACI, us, OPAY or their respective affiliates or representatives considered or now considers the projections to be a reliable prediction of future events, and this information should not be relied upon as such. These projections are being provided in this document only because OPAY made them available to ACI in connection with ACI’s due diligence review of OPAY and are not being provided to influence any Stockholder to make any investment decision with respect to the Offer or any other purpose. None of ACI, us, OPAY or any of their affiliates or representatives presently intends to update, revise or correct the projections if any of it is or becomes inaccurate (even in the short term). In this regard, investors are cautioned not to place undue reliance on the projections.”

The information set forth in Section 8 — “Certain Information Concerning OPAY” of the Offer to Purchase is hereby amended and supplemented by inserting the following information at the end of the section with the sub-heading “— OPAY Projections”:

“The foregoing non-GAAP financial measures are reconciled to GAAP financial measures in the tables below:

#### Adjusted EBITDA from continuing operations

<i>(in thousands, except percentages)</i>	2013	2014	2015	2016	2017
<b>Net income (loss) from continuing operations</b>	<b>(2,073)</b>	<b>4,375</b>	<b>7,079</b>	<b>15,820</b>	<b>25,480</b>
<b>Adjustments:</b>					
Depreciation/ amortization	8,045	7,571	8,377	4,988	2,759
Stock-based compensation	1,928	1,919	2,035	2,130	2,230
<b>Adjusted EBITDA from continuing operations</b>	<b>7,900</b>	<b>13,865</b>	<b>17,491</b>	<b>22,938</b>	<b>30,469</b>

#### Reconciliation of Gross and Net Revenue

<i>(in thousands, except percentages)</i>	2013	2014	2015	2016	2017
<b>Revenue from continuing operations</b>	<b>140,146</b>	<b>150,522</b>	<b>167,889</b>	<b>189,975</b>	<b>217,509</b>
<b>Less:</b>					
OPAY discount fees	91,531	97,718	107,486	120,522	137,177
<b>OPAY Net Revenue</b>	<b>48,615</b>	<b>52,804</b>	<b>60,403</b>	<b>69,453</b>	<b>80,332</b>

The information set forth in Section 10 — “Source and Amount of Funds” of the Offer to Purchase is hereby amended and supplemented by deleting Section 10 in its entirety and inserting the following under the caption “Source and Amount of Funds”:

“We estimate that we will need \$150 million to purchase all Shares validly tendered in the Offer, to pay the Merger Consideration in connection with the Merger and to pay the related fees and expenses. ACI will provide us with the funds necessary to purchase the Shares in the Offer and the Merger. All or a portion of the \$150 million is expected to come from ACI’s cash on hand resulting from the senior notes offering and/or existing credit facility described below in this Section 10. The completion of the Offer is not conditioned upon obtaining or funding of any financing arrangements or condition.

#### Senior Notes Offering

On August 20, 2013, ACI completed its previously announced offering of \$300 million in aggregate principal amount of 6.375% senior notes due 2020 (the “Notes”). The Notes were issued pursuant to an indenture, dated as of August 20, 2013 (the “Indenture”), among ACI, the guarantors listed therein and Wilmington Trust, National Association, as trustee (the “Trustee”). The Notes are fully and unconditionally guaranteed, jointly and severally, on a senior unsecured basis by each of ACI’s subsidiaries that guarantees its Credit Facility (as defined below).

The Notes bear interest at a rate of 6.375% per annum, payable semi-annually in arrears on August 15 and February 15 of each year, commencing on February 15, 2014. The Notes will mature on August 15, 2020.

ACI may redeem some or all of the Notes at any time prior to August 15, 2016, at a price equal to 100% of the principal amount thereof, plus accrued and unpaid interest, if any, to, but not including, the redemption date, plus a make-whole premium set forth in the Indenture. On or after August 15, 2016, ACI may redeem some or all of the Notes at redemption prices set forth in the Indenture, plus accrued and unpaid interest, if any, to, but not including, the redemption date. In certain circumstances, if ACI experiences a change of control (as defined in the Indenture), ACI must offer to repurchase the Notes at 101% of their principal amount, plus accrued and unpaid interest, if any, to, but not including, the date of repurchase. In addition, at any time prior to August 15, 2016, ACI may redeem up to 35% of the Notes with the proceeds of certain sales of ACI's equity securities at 106.375% of the principal amount, plus accrued and unpaid interest, if any, to, but not including, the redemption date, if at least 65% of the aggregate principal amount of the Notes initially issued under the Indenture remains outstanding after such redemption and notice of redemption is mailed within 120 days after the date of the closing of such equity offering.

The Indenture contains covenants that limit, among other things, the ability of ACI and the ability of its restricted subsidiaries to: incur additional debt or issue preferred stock; pay dividends or make other distributions on, redeem or repurchase capital stock or make investments or other restricted payments; create liens on assets; agree to payment restrictions affecting subsidiaries; dispose of assets or issue stock of restricted subsidiaries; enter into transactions with affiliates; and effect a consolidation or merger or sell all, or substantially all, of ACI's assets. Each of these covenants is subject to a number of important exceptions and qualifications. Further, certain of these covenants will cease to apply at all times after the date on which the Notes receive investment grade ratings from either Moody's Investors Service, Inc. ("Moody's") or Standard & Poor's Ratings Group ("S&P"), provided no default or event of default under the Indenture exists at that time. Such terminated covenants will be reinstated if the Notes lose their investment grade ratings from either Moody's or S&P.

The Indenture provides for customary events of default, including: failure to make required payments; failure to comply with certain agreements or covenants; failure to pay, or acceleration of, certain other material debt; and certain events of bankruptcy and insolvency. An event of default under the Indenture will allow either the Trustee or the holders of at least 25% in aggregate principal amount of the then outstanding Notes to accelerate, or in certain cases, will automatically cause the acceleration of, the amounts due under the Notes.

#### *Credit Facility*

On November 10, 2011, ACI entered into the Credit Agreement (as amended from time to time, the "Credit Agreement") with a syndicate of financial institutions, as lenders, and Wells Fargo Bank, National Association ("Wells Fargo"), as administrative agent. The Credit Agreement consists of a senior secured revolving credit facility (the "Revolving Credit Facility"), which includes a sublimit for the issuance of standby letters of credit and a sublimit for swingline loans, and a senior secured term loan facility (the "Term Credit Facility" and, together with the Revolving Credit Facility, the "Credit Facility"). On August 20, 2013, Credit Agreement was amended.

The maturity date of the loans under the Credit Facility is August 20, 2018. The amount ACI may request for optional incremental term loans and/or increases in the revolving commitment is \$300 million. The Revolving Credit Facility will not amortize and the Term Credit Facility will amortize, with principal payable in consecutive quarterly installments. ACI's obligations and the obligations of the guarantors under the guaranty and cash management arrangements entered into with lenders under the Credit Facility (or affiliates thereof) are secured by first-priority security interests in substantially all assets of ACI and any guarantor, including 100% of the capital stock of ACI Corporation and each domestic subsidiary of ACI, each domestic subsidiary of any guarantor and 65% of the voting capital stock of each foreign subsidiary of ACI that is directly owned by ACI or a guarantor, subject to certain exclusions.

The Credit Agreement requires that, among other things, at any time that loans or letters of credit are outstanding, ACI maintain:

- a maximum consolidated total net leverage ratio of (1) 4.00:1.00 through the fiscal quarter ending June 30, 2014 and (2) 3.75:1.00 thereafter, in each case, measured as of the last day of each fiscal quarter;
- until the fiscal quarter ending March 31, 2014, a minimum fixed charge coverage ratio of 1.65:1.00, from the fiscal quarter ending June 30, 2014 to the fiscal quarter ending March 31, 2015, a minimum fixed charge coverage ratio of 1.50:1.00 and from and after the fiscal quarter ending June 30, 2015, a minimum fixed charge coverage ratio of 1.30:1.00, in each case, measured as of the last day of each fiscal quarter; and
- a consolidated senior secured net leverage ratio no greater than or equal to 3.00:1.00, measured as of the last day of each fiscal quarter.

Borrowings under the Credit Facility bear interest at a rate per annum equal to, at ACI's option, either (1) a base rate determined by reference to the highest of (i) the rate of interest per annum publicly announced by Wells Fargo as its Prime Rate, (ii) the federal funds effective rate plus 1/2 of 1%, and (iii) a LIBOR based rate determined by reference to the costs of funds for U.S. dollar deposits for a one-month interest period adjusted for certain additional costs plus 1% or (2) a LIBOR based rate determined by reference to the costs of funds for U.S. dollar deposits for the interest period relevant to such borrowing adjusted for certain additional costs, in each case plus an applicable margin. The applicable margin for borrowings under the Revolving Credit Facility is, based on the calculation of the applicable consolidated total leverage ratio, between 0.50% to 1.50% with respect to base rate borrowings and between 1.50% and 2.50% with respect to LIBOR based borrowings. Interest is due and payable monthly.

In addition to paying interest on the outstanding principal under the Credit Facility, ACI is required to pay a commitment fee in respect of the unutilized commitments under the Revolving Credit Facility, payable quarterly in arrears. ACI is also required to pay letter of credit fees on the maximum amount available to be drawn under all outstanding letters of credit in an amount equal to the applicable margin on LIBOR based borrowings under the Revolving Credit Facility on a per annum basis, payable quarterly in arrears, as well as customary fronting fees for the issuance of letters of credit fees and agency fees.

ACI is permitted to voluntarily reduce the unutilized portion of the commitment amount and repay outstanding loans under the Credit Facility at any time without premium or penalty, other than customary "breakage" costs with respect to LIBOR based loans.

The Credit Agreement also contains certain customary mandatory prepayment provisions. If certain events specified in the Credit Agreement occur, ACI may be required to repay all or a portion of the amounts outstanding under the Credit Facility. The Credit Agreement also contains certain customary affirmative covenants and events of default."

**The information set forth in Section 12 — "Purpose of the Offer; Plans for OPAY; the Merger Agreement; the Stockholder Agreement; Appraisal Rights; Going Private Transactions" of the Offer to Purchase is hereby amended and supplemented by deleting the first paragraph under the sub-heading "(f) Appraisal Rights" and inserting the following paragraph as the first paragraph under the sub-heading "(f) Appraisal Rights":**

"No appraisal rights are available to the Stockholders in connection with the Offer. If all of the conditions to the Offer and the Merger are satisfied or, where permissible, waived, we intend to effect the Merger pursuant to Section 251(h) of the DGCL without a vote or any further action by the Stockholders promptly following the purchase of Shares pursuant to the Offer. Each Stockholder at the Effective Time who complies with the applicable statutory procedures under Section 262 of the DGCL will be entitled to receive a judicial determination of the fair value of the Stockholder's Shares (exclusive of any element of value arising from the accomplishment or expectation of the Merger) and to receive payment of such judicially determined amount in cash, together with such rate of interest, if any, as the Delaware court may determine for Shares held by such holder."

**The information set forth in Section 15 — “Certain Legal Matters; Regulatory Approvals” of the Offer to Purchase is hereby amended and supplemented by deleting the first paragraph under the sub-heading “— Legal Proceedings” and inserting the following paragraph as the first paragraph under the sub-heading “— Legal Proceedings”:**

“On October 2, 2013, an alleged Stockholder filed a putative class action lawsuit entitled Williams v. Official Payment Holdings, et al., Case No. 8970, in the Court of Chancery of the State of Delaware. The complaint names as defendants OPAY and the members of the OPAY Board, as well as ACI and us. The complaint generally alleges that the individual members of the OPAY Board breached their fiduciary duties owed to the Stockholders by approving OPAY’s entry into the Merger Agreement with ACI and us and failing to take steps to maximize the value of OPAY to its Stockholders. The complaint further alleges that ACI aided and abetted such breaches of fiduciary duties by the individual defendants. The plaintiff seeks, among other things, an order enjoining the consummation of the merger, an award of rescissory damages if the Merger is consummated, and an award of attorneys’ fees, experts’ fees and costs. On October 14, 2013, an additional putative class action was filed by an alleged Stockholder captioned Giacherio v. Official Payment Holdings, et al., Case No. 13-A-08794-8, in the Superior Court of Gwinnett County of the State of Georgia against the same defendants and asserting substantially similar claims. The foregoing description is qualified in its entirety by reference to the complaints which are filed as Exhibit (a)(5)(C) and Exhibit (a)(5)(D) to the Schedule TO and which are incorporated herein by reference.”

**The information set forth in Section 15 — “Certain Legal Matters; Regulatory Approvals” of the Offer to Purchase is hereby amended and supplemented by deleting the second paragraph under the sub-heading “— Antitrust Compliance” and inserting the following paragraph as the second paragraph under the sub-heading “— Antitrust Compliance”:**

“On October 2, 2013, ACI filed a Notification and Report Form under the HSR Act with the DOJ and the FTC. The waiting period applicable to the purchase of Shares pursuant to the Offer expired at 11:59 p.m., New York City time, on October 17, 2013, without any action having been taken by the DOJ or the FTC. The Merger will not require an additional filing under the HSR Act if Purchaser owns more than 50% of the outstanding Shares at the time of the Merger or if the Merger occurs within one year after the HSR Act waiting period applicable to the Offer expires or is terminated.”

**Item 12. Exhibits.**

Item 12 of the Schedule TO is hereby amended and supplemented by adding the following exhibits:

<u>Exhibit No.</u>	<u>Description</u>
** (a)(5)(D)	Complaint filed on October 14, 2013 in Superior Court of Gwinnett County of the State of Georgia, captioned Joseph L. Giacherio v. Official Payment Holdings, et al. (Case No. 13-A-08794-8).
** (a)(5)(E)	Press Release, dated October 18, 2013
**	Filed herewith.

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SIGNATURES

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Date: October 18, 2013

ACI WORLDWIDE, INC.

By: /s/ Dennis P. Byrnes

Name: Dennis P. Byrnes

Title: Executive Vice President, Chief Administrative  
Officer, General Counsel and Secretary

OLYMPIC ACQUISITION CORP.

By: /s/ Dennis P. Byrnes

Name: Dennis P. Byrnes

Title: President



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## EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
*(a)(1)(A)	Offer to Purchase dated October 4, 2013.
*(a)(1)(B)	Form of Letter of Transmittal (including Internal Revenue Service Form W-9).
*(a)(1)(C)	Form of Notice of Guaranteed Delivery.
*(a)(1)(D)	Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.
*(a)(1)(E)	Form of Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.
*(a)(1)(F)	Form of Summary Advertisement published in The New York Times on October 4, 2013.
*(a)(5)(A)	Press Release, dated September 23, 2013 (incorporated by reference to Exhibit 99.2 to the Current Report on Form 8-K filed by ACI Worldwide, Inc. with the Securities and Exchange Commission on September 23, 2013).
*(a)(5)(B)	Investor Presentation Materials, dated September 23, 2013 (incorporated by reference to Exhibit 99.3 to the Current Report on Form 8-K filed by ACI Worldwide, Inc. with the Securities and Exchange Commission on September 23, 2013).
*(a)(5)(C)	Complaint filed on October 2, 2013 in Court of Chancery of the State of Delaware, captioned Charles Williams v. Official Payments, Inc., et al. (Case No. 8970).
***(a)(5)(D)	Complaint filed on October 14, 2013 in Superior Court of Gwinnett County of the State of Georgia, captioned Joseph L. Giacherio v. Official Payment Holdings, et al. (Case No. 13-A-08794-8).
***(a)(5)(E)	Press Release, dated October 18, 2013
*(d)(1)	Agreement and Plan of Merger, dated September 23, 2013, by and among ACI Worldwide, Inc., Olympic Acquisition Corp. and Official Payments Holdings, Inc. (incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K filed by ACI Worldwide, Inc. with the Securities and Exchange Commission on September 23, 2013).
*(d)(2)	Stockholder Agreement, dated September 23, 2013, by and among ACI Worldwide, Inc., Olympic Acquisition Corp. and Giant Investment, LLC (incorporated by reference to Exhibit 99.1 to the Current Report on Form 8-K filed by ACI Worldwide, Inc. with the Securities and Exchange Commission on September 23, 2013).

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\* Previously filed.

\*\* Filed herewith.

**SUPERIOR COURT OF GWINNETT COUNTY  
STATE OF GEORGIA**

JOSEPH L. GIACHERIO, individually and on behalf of all others similarly situated,	)	
	)	
	)	
Plaintiff,	)	
	)	Civil Action No.
v.	)	
	)	
OFFICIAL PAYMENTS HOLDINGS INC.,	)	
CHARLES W. BERGER, MORGAN P.	)	
GUENTHER, JAMES C. HALE, ALEX P.	)	
HART, DAVID A. POE, ZACHARY F.	)	
SADEK, KATHERIN A. SCHIPPER	)	
OLYMPIC ACQUISITION CORP. and ACI	)	
WORLDWIDE INC.	)	
Defendants.		

**VERIFIED CLASS ACTION COMPLAINT**

Plaintiff Joseph L. Giacherio (“Plaintiff”), by his attorneys, alleges upon information and belief, except for his own acts, which are alleged on knowledge, as follows:

**I. NATURE OF THE ACTION**

1. Plaintiff brings this class action on behalf of the public stockholders of Official Payments Holdings, Inc. (“Official Payments” or the “Company”) against Official Payments’ Board of Directors (the “Board” or the “Individual Defendants”) for their breaches of fiduciary duty arising out of the Board’s attempt to sell the Company to ACI Worldwide Inc. and Olympic Acquisition Corp. (collectively, “ACI”) by means of an unfair process, for an unfair price pursuant to a materially misleading Recommendation Statement (defined below).

2. Official Payments, through its wholly owned subsidiary Official Payments Corporation, is a leading provider of electronic payment solutions in the United States, Puerto Rico and the District of Columbia.

3. On September 23, 2013, Official Payments entered into an agreement and plan of merger (“Merger Agreement”) in which ACI has commenced a tender offer (the “Tender Offer”) to acquire all of the Company’s issued and outstanding shares of common stock for \$8.35 per share in a transaction valued at approximately \$109 million. Compared to the closing price on the day prior to the merger announcement, this value represents a discount to the Company’s unaffected stock price.

4. The Tender Offer is set to expire at midnight on November 1, 2013.

5. In breach of its fiduciary duties, the Board conducted a flawed process designed to reach a deal with the first willing bidder, rather than the highest bidder. In this regard, the Board, in some instances, outright eliminated possible acquirors without first contacting them to determine possible interest, while in other instances, imposed unreasonable due diligence deadlines and other restrictions on parties and/or required to enter into confidentiality and standstill agreements that prevented them from making topping bids for the Company.

6. While the Board created a subcommittee consisting of purported independent directors (the “Development Committee”) to oversee the process, in reality, the Development Committee was a sham and was not independent at all. The committee did not retain its own independent legal or financial advisors and allowed conflicted Board members Zachary Sadek (“Sadek”), who beneficially owns 10.7% of the Company, and Alex P. Hart (“Hart”) Official Payments’ President and Chief Executive Officer (“CEO”), to participate in committee meetings discussing the process.

7. The Board then rushed into a deal with AIC, the first bidder to submit its final offer, for the inadequate merger price of \$8.35 per share. As described in more detail below, given Official Payments' strong financial performance, position in the market, growth, asset value and strong balance sheet, the consideration shareholders will receive in the Proposed Transaction is inadequate and undervalues the Company. Indeed, some analysts value the Company as high as \$10.00 per share. Moreover, William Blair & Company LLC ("William Blair"), the Company's own financial advisor, valued the Company as high as \$12.07 per share.

8. To ensure no competing bidders emerge, defendants have agreed to lock up the Proposed Transaction with deal protection devices that preclude other bidders from making a successful competing offer for the Company. Specifically, pursuant to the Merger Agreement, defendants agreed to: (i) a strict no-solicitation provision that prevents the Company from soliciting other potential acquirors or even in continuing discussions and negotiations with potential acquirors; (ii) a provision that provides AIC with three (3) business days to match any competing proposal in the event one is made; and (iii) a termination fee of \$5.2 million, payable to ACI if the Company terminates the Merger Agreement in favor of a superior proposal.

9. ACI is also the beneficiary of a Top-Up Option, which allows ACI to acquire the shares needed to obtain 90% of the Company's outstanding shares in the Tender Offer necessary to effect a short-form merger with no required shareholder vote on the transaction.

10. In addition, in connection with the Merger Agreement, ACI entered into a voting agreement (the "Voting Agreement") with a fund affiliated with Parthenon Capital Partners ("Parthenon"), Official Payments' second largest shareholder, which owns 10.7% of Official Payments' outstanding common stock. Defendant Zachary Sadek is a principal of Parthenon and beneficially owns Parthenon's 10.7% interest. Pursuant to the Voting Agreement, Parthenon has agreed to tender all of its shares in the Tender Offer and vote against any alternative acquisition proposals made by a third party.

11. AIC needs to obtain a majority of Official Payments' outstanding shares in the Tender Offer (Minimum Condition). As a result of the Voting Agreement, AIC already has nearly 11% of the Company's outstanding shares locked up in favor of the Proposed Transaction.

12. These deal protection provisions, termination fee and Voting Agreement, particularly when considered collectively, substantially and improperly limit the Board's ability to act with respect to investigating and pursuing superior proposals and alternatives, including a sale of all or part of Official Payments.

13. On October 4, 2013, Official Payments filed a Recommendation Statement on Schedule 14D-9 with the U.S. Securities and Exchange Commission ("SEC") and disseminated it to the Company's public shareholders in an attempt to convince shareholders to tender their shares in the tender offer. In contravention of the Board's duty of candor and full disclosure, and in violation of Sections 14(d)(4) and 14(e) of the Exchange Act, the Recommendation Statement fails to provide the Company's shareholders with material information and/or provides them with materially misleading information critical to the total mix of information available to the Company's shareholders concerning the financial and procedural fairness of the Proposed Transaction. Without such information, Official Payments shareholders will be forced to decide whether to tender their shares in the Tender Offer without all information necessary to make a fully informed decision.

14. If the Proposed Transaction closes, the Individual Defendants, collectively, will receive financial windfalls of more than \$19 million from cashing in their stock, restricted stock, stock options and golden parachute payments.

15. The Individual Defendants have breached their fiduciary duties of loyalty, good faith, due care and candor, and AIC has aided and abetted such breaches by Official Payments' officers and directors. Plaintiff seeks to enjoin the Proposed Transaction unless and/or until Defendants cure their breaches of fiduciary duty.

## **II. JURISDICTION AND VENUE**

16. This Court has jurisdiction over this action because Official Payments is a corporation headquartered in Georgia and because the improper conduct alleged in this Complaint occurred in and/or was directed at this State. Additionally, this Court has jurisdiction over each of the Defendants because they conducted business in, resided in, or were citizens of, Georgia and their wrongful conduct challenged in this Complaint was directed at, and intended to have its primary effect in, this State.

17. Venue is proper pursuant to the Constitution of Georgia, Art. VI, § 2, Para. III, VI, and IV and O.C.G.A. §§ 9-10-31, 9-10-93, and 14-2-510 because Official Payments maintains its principal office and its registered agent in Gwinnett County, and the Defendants' wrongful acts arose or were substantially performed in this county.

18. This action arises under Delaware substantive law (which applies because Official Payments is incorporated in Delaware) and challenges the internal affairs or governance of Official Payments and hence is not removable to Federal Court under the Class Action Fairness Act of 2005 or the Securities Litigation Uniform Standards Act ("SLUSA"), 15 U.S.C. § 78bb(f).

## **III. PARTIES**

19. Plaintiff is, and has been at all relevant times, the owner of shares of Official Payments common stock.

20. Defendant Official Payments is a corporation duly organized and existing under the laws of the State of Delaware. The Company maintains its principal executive offices at 3550 Engineering Drive, Suite 400, Norcross, GA 30092.

21. Defendant Charles W. Berger (“Berger”) has served as director of Official Payments since January 2002. Berger is a member of the Nominating and Governance Committee as well as a member of the Data Security Committee.

22. Defendant Morgan P. Guenther (“Guenther”) has served as a director of Official Payments since August 1999. Guenther is Chair of the Nominating and Governance Committee and a member of the Compensation Committee.

23. Defendant James C. Hale (“Hale”) is Chairman of the Board and has been a director since April 2011. Hale is also the Chair of the Audit Committee and a member of the Compensation Committee.

24. Defendant Alex P. Hart is President and CEO of the Company and has been a director since August 2010.

25. Defendant David A. Poe (“Poe”) is a director of the Board, a member of the Audit Committee, a member of the Nominating and Governance Committee and Chair of the Data Security Committee.

26. Defendant Zachary F. Sadek is director of the Board and is Chair of the Compensation Committee.

27. Defendant Katherine A. Schipper (“Schipper”) is a director of the Board of the Company, a member of the Audit Committee and a member of the Data Security Committee.

28. Defendants referenced in ¶¶ 21 through 27 are collectively referred to herein as the Individual Defendants and/or the Official Payments Board. The Individual Defendants as officers and/or directors of Official Payments, have a fiduciary relationship with Plaintiff and other public shareholders of Official Payments and owe them the highest obligations of good faith, fair dealing, loyalty and due care.

29. Defendant ACI is a corporation organized and existing under the laws of the State of Delaware. It maintains its principal executive offices at 3520 Kraft Road, Suite 3000, Naples, FL 34105. ACI develops, markets, installs, and supports a line of software products and services for facilitating electronic payments worldwide.

30. Defendant Merger Sub is a Delaware Corporation formed solely for the purpose of effectuating the Proposed Transaction. ACI owns 100% of the issued and outstanding capital stock of Merger Sub.

#### **IV. THE INDIVIDUAL DEFENDANTS' FIDUCIARY DUTIES**

31. By reason of the Individual Defendants' positions with the Company as officers and/or directors, they are in a fiduciary relationship with Plaintiff and the other public shareholders of Official Payments and owe them a duty of the highest good faith, fair dealing and loyalty.

32. Where the officers and/or Directors of a publicly traded corporation undertake a transaction that will result in either: (i) a change in corporate control; (ii) a breakup of the corporation's assets; or (iii) sale of the corporation, the Directors have an affirmative fiduciary obligation to obtain a fair price for the corporation's shareholders. To diligently comply with their fiduciary duties, the directors and/or officers may not take any action that:

(a) adversely affects the value provided to the corporation's shareholders;

(b) favors themselves or will discourage or inhibit alternative offers to purchase control of the corporation or its assets;



(c) contractually prohibits them from complying with their fiduciary duties;

(d) will otherwise adversely affect their duty to search and secure the best value reasonably available under the circumstances for the corporation's shareholders; and/or

(e) will provide the directors and/or officers with preferential treatment at the expense of, or separate from, the public shareholders.

33. In accordance with their duties of loyalty and good faith, the Individual Defendants, as directors and/or officers of Official Payments, are obligated to refrain from:

(a) participating in any transaction where the directors or officers' loyalties are divided;

(b) participating in any transaction where the directors or officers receive, or are entitled to receive, a personal financial benefit not equally shared by the public shareholders of the corporation; and/or

(c) unjustly enriching themselves at the expense or to the detriment of the public shareholders.

34. Plaintiff alleges herein that the Individual Defendants, separately and together, in connection with the Proposed Transaction, are knowingly or recklessly violating their fiduciary duties, including their duties of loyalty, good faith and independence owed to Plaintiff and other public shareholders of Official Payments and AIC is aiding and abetting the Board's breaches.

## **V. CLASS ACTION ALLEGATIONS**

35. Plaintiff brings this action pursuant to O.C.G.A. §9-11-23 individually and on behalf of the shareholders of Official Payments common stock (the "Class"), who are being, and will continue to be harmed by Defendants' actions described herein. Excluded from the Class are Defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any of the Defendants.

36. The Class is so numerous that joinder of all members is impracticable. According to the Company's most recent Form 10-Q for the period ended June 30, 2013, filed with the U.S. Securities and Exchange Commission on August 6, 2013, as of July 31, 2013, Official Payments had 16,732,499 shares outstanding. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through discovery, Plaintiff believes that there are thousands of members in the Class.

37. Questions of law and fact are common to the Class, including, *inter alia*:

- (i) Whether the Individual Defendants breached their fiduciary duties of undivided loyalty or due care with respect to Plaintiff and other members of the Class in connection with the Proposed Transaction;
- (ii) Whether the Individual Defendants breached their fiduciary duty to secure and obtain a fair price for the Company in connection with the Proposed Transaction;
- (iii) Whether AIC aided and abetted the Individual Defendants' breaches of fiduciary duty; and
- (iv) Whether Plaintiff and the other members of the Class would be irreparably harmed were the transactions complained of herein consummated.

38. Plaintiff's claims are typical of the claims of the other members of the Class. Plaintiff and the other members of the Class have sustained damages as a result of Defendants' wrongful conduct as alleged herein.

39. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff will fairly and adequately protect the interests of the Class and has no interests contrary to or in conflict with those of the Class that Plaintiff seeks to represent.

40. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications for individual members of the Class and of establishing incompatible standards of conduct for the party opposing the Class.

41. Conflicting adjudications for individual members of the Class might as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

42. Defendants have acted on grounds generally applicable to the Class, making appropriate final injunctive relief with respect to the Class as a whole.

## **VI. FURTHER SUBSTANTIVE ALLEGATIONS**

### **A. Company Background And Strong Financial Performance**

43. Official Payments has been a leading provider of electronic payment solutions for over fifteen years. The Company partners with direct billers across the country including the IRS, 27 states, 350+ colleges and universities, 450+ utilities, 450+ courts and 4,600 municipalities in all 50 states. It processes over 8,500 types of payments and is the only company to enable electronic payments continuously for the IRS since 1999. Official Payments currently has over 3,000 customers representing access to over 100 million end users.

44. During the quarter ended December 31, 2011, the Company restructured and moved its principal executive offices from Reston, Virginia to Norcross, Georgia to reduce general and administrative costs and take advantage of the electronic payments industry employee resources in the Atlanta area.

45. During fiscal 2011 and fiscal 2012, Official Payments performed an \$8.3 million infrastructure upgrade, in order to facilitate plans to consolidate the Company's platforms. The platform consolidation, which is expected to be completed by the end of December 2013, is anticipated to result in significant operating efficiencies and enable Official Payments to develop and incorporate new features and functionality into its core product set.

46. On May 9, 2013, Official Payments issued a press release announcing its second quarter results from fiscal year 2013. Defendant Hart reported the Company's "sixth consecutive quarter of positive Adjusted EBITDA" and stated that the Company is "particularly excited about the launch of the electronic bill delivery (e-Bill) and mobile payment apps for the iPad, iPhone, and Android phones and tablets, all of which will give consumers even more ways to utilize [the Company's] services." Hart continued:

On the operations front, our platform consolidation project continues to progress, and the infrastructure upgrade we completed last year yielded tremendous results during the recently completed tax season. We handled a peak volume of 460,000 transactions on April 15<sup>th</sup> without incident, a record number of transactions, but well below our peak capacity: as a result of the infrastructure upgrade, our system is capable of handling one million transactions in a 24 hour period.

The record IRS tax season bodes very well for our anticipated third quarter results and is cause for optimism for the remainder of FY13 and beyond[.]

47. Hart further boasted in the press release that "[t]he quality of this tax season, and our continued ability to handle significant increases in volume without incident, gives us confidence that we're on the right track, technologically, operationally and financially."

48. In a report dated May 13, 2013, Barrington Research (“Barrington”) found that the Company’s six consecutive quarter of positive operating results “validat[ed] management’s efforts at transforming the business[,]” and that “evidence continues to manifest itself that O[fficial Payments’] operational turnaround is being successfully orchestrated by management.”

49. Barrington further noted that the Company was “in the final stages of its successful turnaround efforts putting in place all of the pieces needed for the sustainment of long-term growth and the enhancement of shareholder value.”

50. A second Barrington report was issued on June 5, 2013, discussing the Company’s growth potential. Suggesting that the Company “is poised to enter a growth phase[,]” the report stated that “there remains a large and underpenetrated market for the company” and that:

The new e-Bill product represents a significant growth opportunity in terms of both new client development and cross-selling efforts to a client base totaling well over 3,000 entities and a registered user base of 3.4 million. O[fficial Payments] expects to begin to realize e-Bill revenues during FY/14.

51. Furthermore, the June 5 Barrington report wrote that “it look[s] for adjusted EBITDA margins to increase from 10% net revenue in FY/12 to over 26% in FY/14 trending north of 30% by FY/16[.]”

52. As of June 30, 2013, the Company had total assets of \$104,062,000.

53. As a result of the Company’s cost-savings and infrastructure initiatives, and increased electronic functionality through services such as its recently launched eBill capabilities, Official Payments has been performing exceptionally well. Most recently, on August 6, 2013, Official Payments issued a press release announcing the Company’s financial results for the third quarter of 2013, reporting the Company’s seventh consecutive quarter of positive adjusted EBITDA. In the August 6 Press Release, the Company reported the following financial highlights:

- Revenue from continuing operations of \$45.8 million, an increase of \$6.6 million as compared to the same quarter the previous year;
- Payments solutions net revenue increased to \$13.2 million from \$11.8 million from the same quarter the year before;
- Official Payments processed \$3.2 billion of payment transactions in the third quarter of 2013 compared to \$2.7 billion of payment transactions in the third quarter of 2012, with the average size of transaction processed increasing 19.3%;
- Net income from continuing operations of \$0.6 million, or \$0.04 per share, compared to the prior year's third quarter net of \$0.6 million, or negative \$0.03 per share; and
- Adjusted EBITDA of \$3.4 million for the third quarter of 2013 compared to \$1.4 million in the same quarter of the prior year.

54. Touting the Company's strong financial performance in the third quarter, defendant Hart was quoted in the August 6, 2013 press release as stating:

We're pleased to report positive Adjusted EBITDA from continuing operations for our seventh consecutive quarter and positive earnings per share for the first time in several years. Our platform consolidation project remains on target to be substantially complete by the end of the calendar year. We expect significant savings from this project in terms of both improved operational efficiency and reduced capital expenditures for the next fiscal year. We're confident that we've positioned ourselves for even better financial results in fiscal year 2014.

55. The day after this press release, Barrington issued a report, noting that:

Consolidation of Official Payments' three existing payment platforms should be completed by the end of calendar 2013. The single platform will drive greater operational efficiencies estimated at \$2.5 million in FY/14 while also facilitating increased growth opportunities.

We believe the company continues to have room to rationalize its operating expense structures. We believe that a gross margin of close to 35% is attainable over a three- to five-year period versus FY/12 gross margin of 29.75% for the EPS business segment....

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We have an OUTPERFORM investment rating on the shares and have raised our price target to \$10 from \$8.

56. Summarizing its key findings, the Barrington report stated that the Company's new electronic bill presentment solution (e-bill) and mobile apps "remain key factors in driving growth[.]" and that strategies for growth include "increasing adoption within the existing client base, adding new clients through direct sales and tuck-in acquisitions[.]"

57. As a result of the Company's strong financial performance, Official Payments' stock price has more than doubled since the August 6 press release, closing at \$8.69 per share on September 19, 2013, up from \$3.94 per share on August 7, 2012.

58. Despite the Company's successes and bright future, the Board entered into the Proposed Transaction with AIC for an inadequate price.

**B. The Board Ran A Flawed Process Designed To Enter Into A Transaction With The First Bidder, Rather Than The Highest Bidder, In Breach Of Its Fiduciary Duties**

59. On January 30, 2013, the Board began considering strategic alternatives for the Company. In an effort to secure a quick transaction and cash out their shares of Official Payment stock, the Board brushed aside other potential strategic alternatives without giving them due consideration. While the Board contacted parties that purportedly might be interested in a possible acquisition of Official Payments, as described further below, it failed to ensure an impartial process free from bias and conflicts.

60. On February 7, 2013, the Board formed a supposedly independent board committee (the "Development Committee"), consisting of defendants James Hale, Morgan Guenther and Charles Berger, to purportedly oversee the process and "lead the exploration and review of strategic alternatives." The Development Committee, however, was a sham created to deceptively portray impartiality. In reality, the Development Committee was not independent at all. Rather, it included in its regular meetings conflicted Board members Hart and Sadek, who stand to receive lucrative financial windfalls if the Proposed Transaction is consummated; did not have any authority or responsibilities to oversee the process; and did not retain its own independent financial and legal advisors.

61. Tellingly, despite the fact that defendant Sadek was employed by Parthenon, the Company's second largest shareholder, the Development Committee allowed Sadek to attend and participate in its meetings at which the Company's strategic process was discussed. In deciding to permit Sadek to participate in the process, the Development Committee and the Board merely accepted Sadek's representation that Parthenon did not intend to acquire the Company, without even investigating whether Parthenon would be interested in a possible transaction or may be able to offer a higher price for the Company. The Board then prematurely foreclosed any possible transaction with Parthenon by entering into a standstill agreement with Parthenon in exchange for allowing Sadek to participate in these meetings. Thus, the Board utterly failed to inform itself of what could have been a viable acquisition alternative.

62. After preempting any transaction with Parthenon, the Board then conducted a flawed process, which inexplicably eliminated potential acquirors from the process. Thus, while creating the facade that the Board was conducting a fulsome process, in reality, the process was limited and designed to steer a transaction to the first willing bidder.

63. On March 5, 2013, the Development Committee discussed three potential acquisition targets but, for reasons unknown, decided not to pursue an acquisition strategy with any of them.



64. With respect to the parties it did contact, the Board prevented them from making topping offers to acquire the Company through the implementation of confidentiality and standstill agreements. Of the potential acquirors purportedly contacted by the Company's financial advisor, William Blair, certain acquirors, but not others, were required to enter into confidentiality and standstill agreements with the Company. The majority of the confidentiality and standstill agreements contained a standstill provision preventing the potential bidder from offering to purchase shares for two years. The confidentiality agreements also contained a provision stating that the potential bidder was not permitted to ask for a waiver of the standstill (a "no-ask, no-waiver" provision). These agreements unfairly prevented potential acquirors from making competing bids to the Company. It is not clear from the Recommendation Statement why, and on what basis, the Board cherry-picked which parties would be required to enter into these anti-competitive standstill agreements.

65. On June 27, 2013, William Blair received non-binding preliminary indications of interest from 15 parties, including ACI, ranging from a transaction price of \$6.22 to \$9.65 per share.

66. On August 13, 2013, a financial sponsor ("Financial Buyer A") submitted a definitive written proposal to acquire the Company at \$8.50 per share. Official Payments then insisted that Financial Buyer A rush through its due diligence in order to make its final offer, forcing Financial Buyer A to rescind its proposal later that same day.

67. On September 9, 2013, ACI submitted its final offer to acquire the Company for \$8.35 per share.

68. Tellingly, the Board did not contact Financial Buyer A to determine whether it would be interested in submitting a bid higher than ACI's \$8.35.

69. Rather than allowing other bidders ample time to complete their due diligence, the Board agreed to enter into a transaction with the first willing buyer, despite earlier preliminary bids higher than the Proposed Transaction price.

70. On September 21, 2013, the Board approved the terms of the Proposed Transaction for \$8.35 per share with ACI.

**C. The Proposed Transaction is Unfair And Undervalues The Company**

71. In a press release dated September 23, 2013, Official Payments and ACI announced that they had entered into a definitive agreement pursuant to which ACI will acquire Official Payments in an all cash transaction for \$8.35 per share in a transaction valued at approximately \$109 million. ACI thereafter commenced a cash tender offer to purchase all outstanding shares of common stock of Official Payments. The Tender Offer is set to expire at midnight on November 1, 2013.

72. Given the Company's size, financial performance, position for growth and the success it has had, the Proposed Transaction consideration is inadequate and significantly undervalues the Company. Indeed, as a result of Official Payments' recent strong financial performance, the Company's stock price has more than doubled from \$3.94 per share on August 7, 2012 to \$8.69 per share on September 19, 2013.

73. Despite Official Payments strong growth and financial performance, the Board agreed to sell the Company for the inadequate merger price of \$8.35 per share.

74. William Blair, the Company's own financial advisor, determined an implied price per share for the Company in its *Discounted Cash Flow Analyses* as high as \$12.07 per share. Moreover, at least one analyst valued the Company at \$10.00 per share just before the Proposed Transaction was announced.

75. In order to reach the Board's desired conclusion that the \$8.35 per share price was fair, William Blair also overlooked Official Payments' abnormally low multiples in comparison to the multiples observed in its *Selected Public Companies Analysis* to value the Company. For example, in its *Selected Public Companies Analysis*, William Blair endorsed the 2.5lx EV / LTM Net Revenue multiple implied by the Offer for the Company, which was significantly below the median multiple of 3.10x observed among OPAY's public peers. Moreover, the \$8.35 proposed merger consideration is well below the Company's 52-week high share price of \$8.74.

76. The Proposed Transaction is, however, highly beneficial to AIC, who will gain from exploiting Official Payments' robust payment solutions business, while Official Payments shareholders will receive an unfair price for their shares. Indeed, as Philip Heasley, Official Payments' President and CEO, stated in the press release announcing the merger:

The acquisition will further extend ACI's leadership in the fast-growing EBPP space, expanding our portfolio across key sectors including federal, state and local governments, municipal utilities, higher education institutions and charitable giving organizations. The acquisition also reaffirms our customer model and supports our corporate Universal Payments strategy of providing a complete set of end-to-end payment services, all enabled by our Universal Payments Platform.

77. The transaction is expected to be accretive to full year earnings in 2014.

78. As demonstrated above, the Board has failed to secure a fair price for the Company, either for the intrinsic value of its assets or the value of the Company's assets to AIC. Accordingly, the Proposed Transaction consideration is inadequate and grossly undervalues the Company.

**D. Official Payments’ Officers and Directors Stand To Receive Special Benefits From The Proposed Transactions That The Company’s Public Shareholders Will Not Receive**

79. The Company’s executive officers and directors have material conflicts of interest and are acting to better their own personal interest through the Proposed Transaction at the expense of Official Payments’ public shareholders.

80. Each of the directors holds stock options and restricted stock awards that, upon consummation of the Proposed Transaction, will no longer be subject to the restrictions and will be automatically vested and converted to cash allowing the directors to receive material financial benefits from converting their stock options. The lucrative payments to be received by the Company’s officers and directors are detailed in the excerpt from the Recommendation Statement below:

<u>Name</u>	<u>Position</u>	<u>Number of Shares Subject to Vested Options</u>	<u>Number of Shares Subject to Unvested Options</u>	<u>Exercise Price Per Share</u>	<u>Consideration Payable in Respect of Vested Stock Options</u>	<u>Consideration Payable in Respect of Unvested Stock Options</u>	<u>Number of Shares of Company RSUs</u>	<u>Consideration Payable in Respect of Company RSUs</u>	<u>Total</u>
Alex P. Hart	Director and President and CEO	354,166	245,834	\$ 3.47–\$5.22	\$ 1,238,081	\$ 878,919	—	—	\$2,117,000
Charles W. Berger	Director	120,000	—	\$ 5.95–\$9.77	\$ 116,800	—	9,000	\$ 75,150	\$ 191,950
Morgan P. Guenther	Director	120,000	—	\$ 5.95–\$9.77	\$ 116,800	—	9,000	\$ 75,150	\$ 191,950
James C. Hale	Chairman of the Board of Directors	—	—	NA	—	—	9,000	\$ 75,150	\$ 75,150
David A. Poe	Director	6,688	—	\$ 7.06	\$ 8,602	—	9,000	\$ 75,150	\$ 83,752
Zachary F. Sadek	Director	—	—	NA	—	—	9,000	\$ 75,150	\$ 75,150
Katharine A. Schipper	Director	—	—	NA	—	—	9,000	\$ 75,150	\$ 75,150
Jeffrey W. Hodges	SVP and CFO	152,083	172,917	\$ 3.47–\$5.22	\$ 573,415	\$ 625,085	—	—	\$1,198,500
Sandip Mohapatra	STO and SVP	109,791	145,209	\$ 3.47–\$5.72	\$ 343,697	\$ 458,203	—	—	\$ 801,900
Atul Garg	SVP, Corporate Development	111,458	113,542	\$ 3.47–\$5.71	\$ 319,915	\$ 330,085	—	—	\$ 650,000
Keith Omsberg	VP, General Counsel and Secretary	133,208	57,792	\$3.47–\$10.20	\$ 256,673	\$ 207,497	—	—	\$ 464,170
Total									\$5,924,672

81. In addition, each of the Individual Defendants stands to cash out of their existing holdings to receive financial windfalls. As demonstrated below, the Individual Defendants collectively stand to cash out on 1,859,671 shares worth approximately \$15.5 million:

<u>Name</u>	<u>Position</u>	<u>Number of Shares</u>	<u>Consideration Payable in Respect of Shares</u>
Alex P. Hart	Director and President and CEO	—	—
Charles W. Berger	Director	15,100	\$ 126,085
Morgan P. Guenther	Director	16,250	\$ 135,687
James C. Hale	Chairman of the Board of Directors	14,000	\$ 116,900
David A. Poe	Director	15,000	\$ 125,250
Zachary F. Sadek(l)	Director	1,799,321	\$ 15,024,330
Katharine A. Schipper	Director	—	—

82. Furthermore, pursuant to an employment contract with the Company, defendant Hart stands to receive a total benefit of \$780,936 upon a change of control of Official Payments.

83. Thus, while the Proposed Transaction is not in the best interest of Official Payments shareholders, it will produce lucrative benefits for the Company's officers and directors that are not being equally shared by the Company's minority public stockholders.

**E. The Board Agreed To Lock Up The Deal With Preclusive Deal Protection Devices That Prevented Other Bidders From Making Topping Offers**

84. The Proposed Transaction is also unfair because, as part of the Merger Agreement, Defendants agreed to certain onerous and preclusive deal protection devices that operate conjunctively to make the Proposed Transaction a *fait accompli* and ensure that no competing offers will emerge for the Company.

85. By way of example, §7.3(a) of the Merger Agreement includes a no solicitation provision barring the Board and any Company personnel from attempting to procure a price in excess of the amount offered by AIC. This section also demands that the Company terminate any and all prior or on-going discussions with other potential suitors.

86. Despite the fact that they have locked up the Company and bound it to not solicit alternative bids, the Merger Agreement provides other ways that guarantee the only suitor will be AIC. Pursuant to §7.3(b) of the Merger Agreement, should an unsolicited bidder arrive on the scene, the Company must notify AIC of the bidder's offer. Thereafter, should the Board determine that the unsolicited offer is superior, AIC is granted three (3) business days to amend the terms of the Merger Agreement to make a counter-offer that only needs to be at least as favorable to the Company's shareholders as the unsolicited offer. AIC is able to match the unsolicited offer because it is granted unfettered access to the unsolicited offer, in its entirety, eliminating any leverage that the Company has in receiving the unsolicited offer.

87. In other words, the Merger Agreement gives AIC access to any rival bidder's information and allows AIC a free right to top any superior offer. Accordingly, no rival bidder is likely to emerge and act as a stalking horse for AIC because the Merger Agreement unfairly assures that any "auction" will favor AIC and piggy-back upon the due diligence of the foreclosed second bidder.

88. Official Payments and AIC have also agreed upon a Termination Fee, whereby if Official Payments terminates the Proposed Transaction in favor of a superior proposal or other change of control transaction, the Company shall pay AIC a termination fee of \$5,200,000.

89. In addition, ACI and Merger Sub entered into the Voting Agreement with Parthenon, which owned 10.7% of all outstanding shares of common stock of Official Payments as of May 6, 2013, whereby Parthenon will tender shares beneficially owned by it in the Tender Offer, will vote against any alternative acquisition proposals made by a third party and will vote against any action or agreement that would result in a breach in any respect by Official Payments under the Merger Agreement.

90. The Company also granted ACI a “Top-Up” option that ensures that ACI gains the shares necessary to effectuate a short-form merger. Pursuant to the Merger Agreement, if ACI receives 90% of the shares outstanding through its tender offer, it can effect a short-form merger. In the event ACI fails to acquire the 90% required, the Merger Agreement also contains a “Top-Up” provision that grants ACI an option to purchase additional shares from the Company in order to reach the 90% threshold required to effectuate a short-form merger.

91. Ultimately, these preclusive deal protection provisions, Termination Fees, and Voting Agreements illegally restrain the Company’s ability to solicit or engage in negotiations with any third party regarding a proposal to acquire all or a significant interest in the Company. The circumstances under which the Board may respond to an unsolicited written bona fide proposal for an alternative acquisition that constitutes or would reasonably be expected to constitute a superior proposal are too narrowly circumscribed to provide an effective “fiduciary out” under the circumstances.

92. Accordingly, Plaintiff seeks injunctive and other equitable relief to prevent the irreparable injury that Company shareholders will continue to suffer absent judicial intervention.

**F. Official Payments’ Materially Misleading Recommendation Statement**

93. On October 4, 2013, the Company filed its Recommendation Statement with the SEC and disseminated it to the Company’s public shareholders in an attempt to convince shareholders to tender their shares in the tender offer. The Recommendation Statement failed to provide the Company’s shareholders with material information and/or provided them with materially misleading information critical to the total mix of information available to the Company’s shareholders concerning the financial and procedural fairness of the Proposed Transaction, in contravention of the Board’s duty of candor and full disclosure in violation of Sections 14(d)(4) and 14(e) of the Exchange Act.

94. Without such information, Official Payments shareholders will be forced to decide whether to tender their shares in the tender offer and whether to seek appraisal without all information necessary to make a fully informed decision.

**1. Materially Misleading Statements/Omissions Regarding Management’s Financial Forecasts**

95. Page 36 of the Recommendation discloses certain of management’s financial projections for the Company. Defendants, however, failed to disclose in the Recommendation Statement several critical projections provided to William Blair that William Blair relied upon in its financial analyses supporting its fairness opinion necessary for Official Payments shareholders to make an informed decision on whether to tender their shares in the tender offer, including:

- a. The free cash flow projections that William Blair used in its *Discounted Cash Flow Analysis*;
- b. The components from managements projections needed to calculate future cash flows;
- c. The assumptions (if any) made by William Blair to estimate the future cash flows;
- d. Official Payments’ Net Operating Loss (“NOL”) balances;
- e. Official Payments’ NOL utilization;
- f. The estimated value of the synergies in the Proposed Transaction; and
- g. The financial projections provided by management and relied upon by William Blair for determining depreciation and amortization, taxes, capital expenditures, changes in net working capital, stock-based compensation expense, unlevered free cash flow, and NOL usage.



96. It is well-settled that management's financial projections are the lifeblood of the Company and are crucial to providing shareholders with management's inside view of the Company's value and future prospects. Thus, this information is necessary for making an informed decision about whether to vote in favor of the Proposed Transaction and, thus, must be disclosed.

## **2. Materially Incomplete and Misleading Disclosures Concerning William Blair's Financial Analyses and Potential Conflicts of Interest**

97. The Recommendation Statement discloses certain information regarding William Blair's financial analyses used to support its fairness opinion on pages 24-31. These disclosures concerning William Blair's financial analyses were materially incomplete and misleading in a number of respects. Specifically, Defendants failed to disclose in the Recommendation Statement:

- a. With respect to the *Selected Public Company Analysis* on pages 26-27 of the Recommendation Statement: (i) the objective selection criteria used by William Blair to select the sample of public companies; (ii) the company-by-company pricing multiples; (iii) any other pricing multiples examined by William Blair; (iv) whether the comparables' multiples were adjusted to exclude settlement cash; and (v) whether William Blair estimated Official Payments value per share based on the *Selected Public Company Analysis*;
- b. With respect to the *Selected Precedent Transactions Analysis* on pages 27-28 of the Recommendation Statement: (i) the objective selection criteria used by William Blair to select the sample of precedent transactions; (ii) the transaction-by-transaction pricing multiples; (iii) whether any other multiples were examined by William Blair; and (iv) whether William Blair estimated Official Payments' value per share based on the *Precedent Transactions Analysis*;

- c. With respect to the *Discounted Cash Flow Analysis* on page 28: (i) the weighted average cost of capital (“WACC”) assumptions; (ii) the assumptions used to estimate the present value of NOLs; (iii) whether the present value of NOLs were considered in the *Selected Public Company Analysis* or the *Selected Precedent Transactions Analysis* and, if they were considered, how much, or the reason for not considering them if that was the case; (iv) the basis for the perpetuity growth rates; (v) the basis for selecting the discount rates; (vi) the basis for selecting the exit multiple of adjusted EBITDA; (vii) the definition of free cash flow used by William Blair; and (viii) how stock-based compensation was treated in the analyses.
- d. With respect to the *Leveraged Acquisition Analysis* on page 29: (i) the identity, quantity and source of the assumptions regarding financing on “customary market terms,”; (ii) the assumptions used to estimate the present value of the NOLs; (iii) the reason(s) the present value of the NOLs differ from that used in the *Discounted Cash Flow Analysis*; and (iv) the assumed cost of debt; and
- e. William Blair’s services and fees paid to Official Payments and ACI, respectively, during the past two years.

98. Furthermore, the *Discounted Cash Flow Analysis* on page 28 inaccurately asserts that William Blair’s selected range of terminal multiples approximates the median observed among public companies and needs to be corrected.

99. These material facts that were used by William Blair in its financial analyses supporting its Fairness Opinion presented to the Board, as well as information concerning William Blair’s potential conflicts of interest, are critical to Official Payments’ shareholders’ ability to assess the credibility of William Blair’s analyses upon which the Board relied in recommending the Proposed Transaction and were necessary to provide shareholders with a fair summary of William Blair’s analyses and work.

### **3. Materially Incomplete and Misleading Disclosures Concerning the Flawed Process**

100. The Recommendation Statement also failed to disclose the following material information concerning the sales process discussed on pages 12-20:

- a. The specific authority given to the Development Committee, whether the committee considered hiring its own legal and financial advisors and the basis for not doing so;
- b. The reason Philip G. Heasley did not stand for re-election at the 2013 stockholders meeting;
- c. Who derived the initial list of seven potential acquisition targets on February 21, 2013 and what the basis was for their selection;
- d. Whether the financial projections referred to on page 13 are the same projections that were provided to William Blair and used in William Blair's analyses and, if not, why and what adjustments were made;
- e. Whether any of the 16 possible acquisition targets identified by William Blair were in common with the 13 potential acquisition targets identified by Alex Hart at the February 28, 2013 meeting and what the basis and selection criteria were for these targets;
- f. The basis for the Development Committee's decision not to pursue an acquisition strategy with the 3 potential candidates discussed on March 5, 2013, who the candidates were and how the Company initially selected them;
- g. Why the Company selected William Blair as its financial advisor over the other two firms that were considered;
- h. The valuation conclusions William Blair reached in its February, 21, 2013 analysis;
- i. Why the Company determined that Parthenon did not have an interest in acquiring the Company or was not a viable alternative;
- j. Why only the majority, rather than all, of the agreements contained provisions prohibiting the bidder from offering to purchase shares for two years without board approval, whether any of the standstill provisions were ultimately waived or expired and, if not waived, the reason for not doing so;

- k. The identity of the 15 parties submitting indications of interest on June 27, 2013 and the identity and criteria for selecting 9 out of the 15 parties;
- l. The dates and reasons concerning why each potential acquirer declined to continue in the process; and
- m. The closing price of Official Payments as of each date that the Company received a bid, including August 13, 15, 17 and 30, and September 9, 2013.

101. The above material disclosures are necessary for Official Payments' shareholders to assess the credibility of the Board's deliberations and the process conducted in connection with the sale of the Company to AIC.

## **CLAIMS FOR RELIEF**

### **COUNT 1**

#### **Breach of Fiduciary Duties (Against all Individual Defendants)**

102. Plaintiff repeats all previous allegations as if set forth in full herein.

103. As demonstrated by the allegations above, the Individual Defendants are knowingly or recklessly failing to exercise the care required, and are breaching their duties of loyalty, good faith, and independence owed to shareholders of Official Payments, because, *inter alia*:

- (a) They are taking steps to avoid competitive bidding, to cap the price of Official Payments common stock, and to give AIC an unfair advantage by, among other things, failing to adequately solicit other potential acquirers or alternative transactions;
- (b) They have failed to engage in a sales process that will result in a fair price for the Company;

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(c) They have undervalued the Company's common stock by ignoring the full value of its assets and future prospects;

(d) The Proposed Transaction does not reflect the true financial position of the Company; and

(e) The Company's intrinsic value, giving due consideration to its assets, its growth and profitability, and the underlying strength of its business, are significantly greater than the deal terms.

104. The fiduciary duties of the Individual Defendants in the circumstances of the Proposed Transaction require them to disclose to Plaintiff and the Class all information material to the decisions confronting the Company's shareholders.

105. As set forth above, the Individual Defendants have breached their fiduciary duty through materially inadequate disclosures and material disclosure omissions.

106. As a result of the Individual Defendants' breaches of their fiduciary duties, Plaintiff and the Class will suffer irreparable injury in that they have not and will not receive their fair portion of the value of Official Payments' assets and will be prevented from benefiting from a fair transaction.

107. Unless enjoined by this Court, the Individual Defendants will continue to breach their fiduciary duties owed to Plaintiff and the Class, and may consummate the Proposed Transaction, to the irreparable harm of the Class.

108. Plaintiff and the Class have no adequate remedy at law.

**COUNT II**  
**Aiding and Abetting**  
**(Against Merger Sub and AIC)**

109. Plaintiff repeats all previous allegations as if set forth in full herein.

110. As alleged in more detail above, Defendant AIC has aided and abetted the Individual Defendants' breaches of fiduciary duties.

111. As a result, Plaintiff and the Class members are being harmed.

112. Plaintiff and the Class have no adequate remedy at law.

**WHEREFORE**, Plaintiff demands judgment against Defendants jointly and severally, as follows:

(A) Declaring this action to be a class action and certifying Plaintiff as the Class representative and his counsel as Class counsel;

(B) Enjoining, preliminarily and permanently, the Proposed Transaction;

(C) In the event that the transaction is consummated prior to the entry of this Court's final judgment, rescinding it or awarding Plaintiff and the Class rescissory damages;

(D) Directing that Defendants account to Plaintiff and the other members of the Class for all damages caused by them and account for all profits and any special benefits obtained as a result of their breaches of their fiduciary duties;

(E) Awarding Plaintiff the costs of this action, including a reasonable allowance for the fees and expenses of Plaintiff's attorneys and experts; and

(F) Granting Plaintiff and the other members of the Class such further relief as the Court deems just and proper.

**LAW OFFICES OF DAVID A. BAIN, LLC**

By: /s/ David A. Bain

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**VERIFICATION**

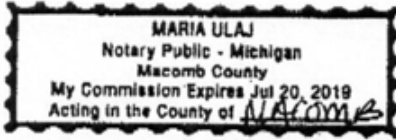
I, Joseph L. Giacherio, being duly sworn, depose and state as follows:

1. I have reviewed the Complaint dated October 8, 2013 and know the contents thereof.
2. I am informed and believe the matters therein are true and on that ground allege that the matters stated therein are true.

/s/ Joseph L. Giacherio

Sworn and subscribed  
before me this 11th  
day of October, 2013.

/s/ Maria Ulaj  
Notary Public







FOR IMMEDIATE RELEASE

**ACI WORLDWIDE ANNOUNCES EXPIRATION OF HSR WAITING PERIOD FOR ACI'S ACQUISITION OF OFFICIAL PAYMENTS HOLDINGS**

**NAPLES, FLA - October 18, 2013** – ACI Worldwide (NASDAQ: ACIW) announced today that the waiting period under the Hart-Scott-Rodino Antitrust Improvement Act of 1976 (the “HSR Act”), applicable to its proposed acquisition of Official Payments Holdings, Inc. (NASDAQ: OPAY), has expired.

As announced on September 23, 2013, ACI and Official Payments entered into a definitive agreement contemplating the acquisition of Official Payments by ACI pursuant to a tender offer to acquire all outstanding Official Payments common shares at \$8.35 per share, net to the seller in cash. The expiration of the HSR Act waiting period satisfies one of the conditions of the tender offer. The completion of the tender offer remains subject to other conditions as set forth in the Tender Offer Statement on Schedule TO filed by ACI with the Securities and Exchange Commission (the “SEC”) on October 4, 2013, as amended from time to time.

The tender offer will remain open for Official Payments shareholders to tender their shares until 12:00 midnight, New York City time, on Friday, November 1, 2013, unless extended in accordance with the merger agreement and applicable SEC rules. The offer to purchase and related documents have been filed with the SEC and can be viewed online at [www.sec.gov](http://www.sec.gov).

**About ACI Worldwide**

ACI Worldwide powers electronic payments and banking for more than 2,600 financial institutions, retailers and processors around the world. ACI software enables \$13 trillion in payments each day, processing transactions for more than 250 of the leading retailers globally and 18 of the world's 20 largest banks. Through our integrated suite of software products and hosted services, we deliver a broad range of solutions for payments processing; card and merchant management; online banking; mobile, branch and voice banking; fraud detection; trade finance; and electronic bill presentment and payment. To learn more about ACI, please visit [www.aciworldwide.com](http://www.aciworldwide.com). You can also find us on Twitter @ACI\_Worldwide.

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## Forward-Looking Statements

This press release contains forward-looking statements based on current expectations that involve a number of risks and uncertainties. All statements, other than statements of historical fact, are statements that could be deemed forward-looking statements, including statements about the planned completion of the tender offer and the merger. No forward-looking statement can be guaranteed and actual results may differ materially from those that ACI and Official Payments project. Numerous risks, uncertainties and other factors may cause actual results to differ materially from those expressed in any forward-looking statement, many of which are outside of the control of management. These factors include, but are not limited to: (1) the occurrence of any event, change or other circumstance that could give rise to the termination of the merger agreement; (2) successful completion of the proposed transaction on a timely basis; (3) the impact of regulatory reviews on the proposed transaction; (4) the outcome of any legal proceedings that may be instituted against one or both of ACI and Official Payments and others following the announcement of the merger agreement; (5) risks that the proposed transaction disrupts current plans and operations and the potential difficulties in employee retention as a result of the transaction; and (6) other factors described in ACI's and Official Payments' filings with the SEC, including their respective reports on Forms 10-K, 10-Q, and 8-K. Except to the extent required by applicable law, neither ACI nor Official Payments undertakes any obligation to revise or update any forward-looking statements, or to make any other forward-looking statements, whether as a result of new information, future results or otherwise.

## Important Information

This communication is neither an offer to purchase nor a solicitation of an offer to sell securities. The tender offer for the outstanding shares of Official Payments common stock is being made only pursuant to a Tender Offer Statement on Schedule TO containing an offer to purchase, forms of letters of transmittal and other documents relating to the tender offer (the "Tender Offer Statement"), which ACI filed with the SEC on October 4, 2013. On October 4, 2013, Official Payments filed with the SEC a Solicitation/Recommendation Statement with respect to the tender offer (the "Recommendation Statement"). INVESTORS AND SECURITY HOLDERS ARE URGED TO READ BOTH THE TENDER OFFER STATEMENT AND THE RECOMMENDATION STATEMENT REGARDING THE OFFER, AS THEY MAY BE AMENDED FROM TIME TO TIME, BECAUSE THEY CONTAIN IMPORTANT INFORMATION THAT SHOULD BE READ CAREFULLY AND CONSIDERED BEFORE ANY DECISION IS MADE WITH RESPECT TO THE TENDER OFFER. Both the Tender Offer Statement and the Recommendation Statement have been mailed to shareholders of Official Payments free of charge. Shareholders of Official Payments may also obtain free copies of the Tender Offer Statement, the Recommendation Statement and other documents filed by ACI and Official Payments on the SEC's website at <http://www.sec.gov>.

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