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- PNC Bank, the collateral agent under the current credit agreement with VTBH, shall have consented to the terms and conditions of any Qualified Equity Offering in connection with or following Parametric's consummation thereof and shall not have revoked such consent.

Additionally, Parametric is not obligated to effect the merger unless the following conditions are satisfied or waived, at or prior to the effective time:

- the representations and warranties of VTBH in the merger agreement must be true and correct, except to the extent that breaches of such representations and warranties (without giving effect to any materiality qualifiers) would not, individually or in the aggregate, reasonably be expected to result in a material adverse effect on VTBH (other than certain specified representations and warranties of VTBH concerning organization and good standing, capitalization and corporate authorization, which representations and warranties must be true and correct in all material respects);
- VTBH must have performed, in all material respects, all obligations to be performed by it under the merger agreement on or prior to the effective time and VTBH must have delivered a certificate dated as of the closing and signed by its chief executive officer or chief financial officer certifying as to the satisfaction thereof; and
- No change, state of facts, circumstance, event or effect shall have occurred that would have a material adverse effect on VTBH.

VTBH is not obligated to effect the merger unless the following conditions are satisfied or waived, at or prior to the effective time:

- the representations and warranties of Parametric in the merger agreement must be true and correct, except to the extent that breaches of such representations and warranties (without giving effect to any materiality qualifiers) would not, individually or in the aggregate, reasonably be expected to result in a material adverse effect on Parametric (other than certain specified representations and warranties of Parametric concerning organization and good standing, capitalization and corporate authorization, which representations and warranties must be true and correct in all material respects);
- Parametric must have performed, in all material respects, all obligations to be performed by it under the merger agreement on or prior to the effective time and Parametric must have delivered a certificate dated as of the closing and signed by its chief executive officer or chief financial officer certifying as to the satisfaction thereof;
- No change, state of facts, circumstance, event or effect shall have occurred that would have a material adverse effect on Parametric;
- Parametric shall have completed a "Qualified Offering" (defined below) unless the requirement to complete such transaction is waived by the requisite lenders under Turtle Beach's credit agreement (this condition was satisfied on November 15, 2013); and
- Certain individuals shall have delivered to Parametric valid and binding releases in the forms approved by VTBH.

Neither Parametric nor VTBH can give any assurance that all of the conditions of the merger will be either satisfied or waived or that the merger will occur.

### **Definition of "Material Adverse Effect"**

Under the merger agreement, a "material adverse effect" means any change, state of facts, circumstances, event or effect that, individually or in the aggregate, is materially adverse to the financial condition, properties, assets, liabilities, obligations (whether accrued, absolute, contingent or otherwise), businesses or results of

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operations of Parametric and its subsidiaries, taken as a whole, or VTBH and its subsidiaries, taken as a whole, as the case may be, and/or the ability of Parametric, Merger Sub or VTBH to perform their respective obligations under merger agreement. However, under the terms of the merger agreement, none of the following shall be considered in determining whether a material adverse effect has occurred or is reasonably expected to occur:

- conditions generally affecting the United States economy or generally affecting one or more industries in which Parametric and its subsidiaries operate or in which Turtle Beach and its subsidiaries operate, as the case may be;
- national or international political or social conditions, including terrorism or the engagement by the United States in hostilities or acts of war;
- financial, banking or securities markets (including any disruption thereof and any decline in the price of any security or any market index);
- changes in generally accepted accounting principles or other accounting requirements;
- changes in any laws, rules, regulations, orders, or other binding directives issued by any governmental entity;
- the public announcement, pendency or completion of the transactions contemplated by the merger agreement; or
- any failure, in and of itself, by Parametric or VTBH, as the case may be, to meet any internal or disseminated projections, forecasts or revenue or earnings predictions for any period (it being understood that the facts and circumstances giving rise or contributing to such failure may be taken into account in determining whether there has been a material adverse effect).

### **Qualified Offering; Financing Assistance**

As described above, VTBH is not obligated to consummate the transactions contemplated by the merger agreement unless Parametric completes a "Qualified Offering," which means either a "Qualified Equity Offering" or a "Qualified Debt Offering," and in the case of a Qualified Equity Offering, PNC Bank approves the terms and conditions of such offering. On November 15, 2013, Parametric completed a Qualified Equity Offering under which it offered and sold 364,286 shares of Parametric common stock at a purchase price of \$14.00 per share for net proceeds to Parametric of \$5.08 million.

A "Qualified Equity Offering" means a sale of Parametric common stock and/or warrants to purchase Parametric common stock, in one or more transactions, on or before the closing date under the merger agreement, resulting in net proceeds to Parametric of at least \$5,000,000 but not more than \$15,000,000, provided that, in connection with any such sale, unless VTBH otherwise consents in writing (such consent not to be unreasonably withheld, delayed or conditioned):

- Parametric will not agree to any redemption or repurchase rights, conversion or exchange rights, dividend rights or other obligations to make cash payments to investors after the closing of any such transaction other than customary fees and expenses related thereto;
- Parametric will not agree to any restrictions on the business or operations of the Parametric or its subsidiaries (including VTBH and its subsidiaries after the closing) or their ability to comply with their obligations under Turtle Beach's credit agreement after the closing or to any restrictions with respect to future financings; and
- Parametric will not agree to any terms and conditions that are otherwise not customary for such transactions, it being understood and agreed that, by way of example, customary representations and warranties, indemnification obligations and (in the event of an exempt transaction under the Securities Act) registration rights, which registration rights do not conflict with those set forth in the stockholder agreement, will not be objectionable.

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A "Qualified Debt Offering" means any incurrence of indebtedness for borrowed money, on or before the closing date, resulting in net proceeds to Parametric of at least \$5,000,000 but no more than \$10,000,000 on terms and conditions reasonably satisfactory to VTBH.

On or prior to the closing, VTBH has generally agreed to provide, and to cause its subsidiaries to provide, such cooperation as Parametric may reasonably request in connection with consummating a Qualified Offering. Additionally, on and prior to the closing, Parametric has generally agreed to provide, and to cause its subsidiaries to provide, such cooperation as VTBH may reasonably request in connection with a possible refinancing of Turtle Beach's existing credit facility.

### **Termination of the Merger Agreement**

The merger agreement may be terminated and the transactions contemplated by the merger agreement abandoned at any time prior to the effective time of the merger as follows:

- by mutual written consent of Parametric and VTBH;
- by either Parametric or VTBH, if the closing of the merger agreement shall not have been consummated on or before February 28, 2014, referred to as the "outside date," provided that such right to terminate is not available to any party if the inability to satisfy such condition was due to the failure of such party to perform in any material respect any of its obligations under the merger agreement;
- by either Parametric or VTBH, if a court or other governmental authority, by law or order, has restrained, enjoined or otherwise prohibited the transactions contemplated by the merger agreement and such law or order has become final and non-appealable, provided that such right to terminate is not available to any party if such restraint was due to the failure of such party to perform in any material respect any of its obligations under the merger agreement; or
- by either Parametric or VTBH, if Parametric stockholders have failed to approve the merger proposal at the Special Meeting;
- by VTBH, if Parametric has breached or failed to perform any of its representations, warranties, covenants or agreements set forth in the merger agreement (or if any of the representations and warranties of Parametric set forth in the merger agreement fail to be true), such that VTBH's closing conditions would not be satisfied, if occurring at the effective time, and such breach or failure is incapable of being cured, or is not cured by Parametric within 30 calendar days following receipt of written notice of such breach or failure, except that such right to terminate is not available to VTBH if, at the time of such termination, VTBH is in material breach of any of its representations, warranties, covenants or agreements contained in the merger agreement;
- by VTBH, if before receipt of the approval of the merger proposal by Parametric stockholders, the Parametric Board or any committee thereof effects a change of recommendation;
- by VTBH, if Parametric has materially breached its obligations relating to the calling of the Special Meeting or the solicitation or consideration of other acquisition proposals;
- by VTBH, if Parametric has entered into an alternative acquisition agreement;
- by Parametric, if VTBH has breached or failed to perform any of its representations, warranties, covenants or agreements set forth in the merger agreement (or if any of the representations and warranties of VTBH set forth in the merger agreement fail to be true), such that Parametric's closing conditions would not be satisfied, if occurring at the effective time, and such breach or failure is incapable of being cured, or is not cured by VTBH within 30 calendar days following receipt of written notice of such breach or failure, except that such right to terminate is not available to Parametric if, at the time of such termination, Parametric is in material breach of any of its representations, warranties, covenants or agreements contained in the merger agreement;
- by Parametric if, before receipt of the approval of the merger proposal by Parametric stockholders, the Parametric Board has authorized Parametric to enter into an alternative acquisition agreement with



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respect to a superior proposal and has complied in all material respects with its obligations under the merger agreement related to soliciting or considering other acquisition proposals; provided that substantially concurrently with such termination, Parametric pays the required termination fee to VTBH; or

- by Parametric if all required closing conditions (other than those conditions which by their nature are to be satisfied at the closing) have been satisfied other than the condition requiring PNC Bank to consent to any Qualified Equity Offering, except that such right to terminate is not available to Parametric if, at the time of such termination, Parametric is in material breach of any material breach of any of its representations, warranties, covenants or agreements contained in the merger agreement.

### **Effect of Termination of the Merger Agreement**

Except as described under “Termination Fees and Break-Up Fee License Agreement” below, if the merger agreement is terminated, the merger agreement will become null and void and there will be no liability on the part of Parametric or VTBH or their respective directors, officers and affiliates, except that the parties may have liability with respect to fees and expenses as provided in the merger agreement.

The provisions in the merger agreement relating to third-party beneficiaries, the merger agreement setting forth the entire agreement among the parties, governing law, jurisdiction, waiver of jury trial, specific performance, notices, severability, defined terms and severability will survive any termination of the merger agreement.

### **Termination Fees and Break-Up Fee License Agreement**

Parametric will be required to enter into a license agreement with VTBH with respect to Parametric's HyperSound technology, referred to as the “break-up fee license agreement,” if either VTBH or Parametric terminates the merger agreement because the Special Meeting has been held and Parametric's stockholders did not approve the merger proposal. The material terms and conditions of the break-up fee license agreement are described below under “Break-Up Fee License Agreement.”

Parametric will be required to enter into the break-up fee license agreement and pay to VTBH a termination fee of \$1,000,000 if the merger agreement is terminated under the following circumstances:

- VTBH terminates the merger agreement because Parametric willfully breaches or fails to perform any of its representations, warranties, covenants or agreements set forth in the merger agreement (or if any of the representations or warranties of Parametric set forth in the merger agreement fail to be true), which breach or failure (i) would (if it occurred or was continuing as of the closing date) give rise to the failure of one of VTBH's closing conditions and (ii) is incapable of being cured, or is not cured, by Parametric within 30 days following receipt of written notice from VTBH of such breach or failure;
- VTBH terminates the merger agreement because the Parametric Board or any committee thereof effects a change of recommendation;
- VTBH terminates the merger agreement because Parametric materially breaches its obligations with respect to (i) soliciting or considering alternative acquisition proposals or (ii) calling the Special Meeting;
- VTBH terminates the merger agreement because Parametric has entered into an alternate acquisition agreement;
- Prior to its stockholders approving the merger proposal, Parametric terminates the merger agreement as follows: (i) the Parametric Board authorizes Parametric to enter into an alternative acquisition agreement with respect to a superior proposal; (ii) Parametric has complied in all material respects with respect to its obligations concerning the consideration of alternative acquisition proposals; and (iii) substantially concurrently with such termination, Parametric enters into such alternative acquisition agreement, pays the termination fee and enters into the break-up fee license agreement; or



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- Either VTBH or Parametric terminates the merger agreement because (i) Parametric receives an acquisition proposal prior to the date of the Special Meeting, (ii) the Special Meeting is held and Parametric's stockholders do not approve the merger proposal and (iii) Parametric enters into an alternative acquisition agreement within 12 months of such termination.

The \$1,000,000 termination fee is payable by Parametric by the earlier of (i) 10 business days following the time that Parametric and its subsidiaries have \$3,000,000 in cash and (ii) six months after the date of such termination, except for the termination events described in the last two bullet points above, in which case the termination fee would be payable within one business day after the consummation of the transaction contemplated by the alternative acquisition agreement described in such bullets.

VTBH will be required to pay to Parametric a termination fee of \$1,000,000 if the merger agreement is terminated under the following circumstances:

- Parametric terminates the merger agreement because VTBH willfully breaches or fails to perform any of its representations, warranties, covenants or agreements set forth in the merger agreement (or if any of the representations or warranties of VTBH set forth in the merger agreement fail to be true), which breach or failure (i) would (if it occurred or was continuing as of the closing date) give rise to the failure of one of Parametric's closing conditions and (ii) is incapable of being cured, or is not cured, by VTBH within 30 days following receipt of written notice from VTBH of such breach or failure; or
- Parametric terminates the merger agreement because all closing conditions under the merger agreement have been satisfied except that PNC Bank has not consented to (or has revoked its consent to) the terms and conditions of a Qualified Equity Offering consummated by Parametric.

The \$1,000,000 termination fee is payable by VTBH within 10 business days following the date of such termination.

If either party fails to pay the required termination fee or execute the break-up fee license agreement when required, then such party will be required to pay all of the other party's reasonable costs and expenses (including reasonable attorneys' fees) in connection with the efforts to enforce such obligations. If Parametric delivers the break-up fee license agreement and any termination fee when required to be paid, then Parametric will have no further liability to VTBH of any kind in respect of the merger agreement and the transactions contemplated thereby. If VTBH delivers the termination fee when required, then VTBH will have no further liability to Parametric of any kind in respect of the merger agreement and the transactions contemplated thereby.

### ***Break-Up Fee License Agreement***

*License grants.* Under the form of break-up fee license agreement (attached as Exhibit C to the merger agreement, which is attached as Annex A to this proxy statement), Parametric (through its wholly-owned subsidiary, PSC Licensing Corp.) would grant to VTBH and its affiliates, under Parametric's intellectual property rights in certain patents, technology and materials related to HyperSound (as specified in the agreement):

- an exclusive (even as to Parametric), worldwide, royalty-bearing, sub-licensable license to use, develop, make, have made, sell, offer for sale, import, export, service, market and repair products in the "console audio products field" (defined below); and
- a non-exclusive, worldwide, royalty-bearing, non-sub-licensable license to use, develop, make, have made, sell, offer for sale, import, export, service, market and repair products in the "computer audio products field" (defined below).

*Fields of use.* The "console audio products field" would be defined in the break-up fee license agreement to mean gaming headsets and peripheral audio speakers that are (i) marketed specifically to be used in connection or combination with an entertainment console (including desktop consoles and mobile consoles), one of whose principal features is digital gaming, and (ii) which are designed to be connected directly to such entertainment

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consoles (including via audio cable, wireless or other future technology) or which are incorporated into such entertainment consoles. The console audio products field would specifically exclude products in the computer audio products field.

The "computer audio products field" would be defined in the break-up fee license agreement to mean headsets and peripheral audio speakers that are (i) marketed specifically to be used in connection or combination with personal computers (including PC computers, Apple® Mac® computers, and any future technologies) including desktop computers, laptop computers and mobile personal computing devices such as tablets, smartphones and other portable computing devices or future technologies similar to the foregoing and (ii) are designed to be connected directly to such devices (including via audio cable, wireless or other future technology).

*Term and termination.* The initial term of the break-up fee license agreement would be 10 years from the effective date of such agreement; at the end of such initial term, the agreement would automatically renew for successive two-year renewal terms, unless one party sends a written notice of non-renewal at least 90 days prior to the end of the then-current term (such initial term plus any renewal period(s) being referred to as the "term"). Either party may terminate the agreement if the other party materially breaches any of its obligations thereunder and, subject to certain exceptions, fails to cure such breach within 30 days after receiving written notice of such breach. Additionally, the agreement may be terminated at any time by VTBH upon written notice to Parametric.

*Royalties.* During the term (and any additional "sell-off period," as described in the break-up fee license agreement), with respect to the sale by VTBH (or its affiliate) to a third party of any product (i) that incorporates or utilizes the licensed technology and materials, (ii) was developed through the use of a process covered under the licensed patents or (iii) the manufacture, use or sale of which would otherwise infringe the licensed patents, VTBH would pay to Parametric an amount equal to six percent (6%) of the net sales of such product. Additionally, VTBH would pay to Parametric, with respect to any sublicenses granted under the break-up fee license agreement, an amount equal to 30% of the amount of any compensation received by VTBH from its sublicensee(s).

*Minimum royalty.* To maintain its exclusive license for the console audio products field, during the term, VTBH would be required to pay to Parametric at least \$2,000,000 in royalties during the first five years of the term, and at least \$1,000,000 in royalties in each year of the agreement thereafter (as applicable, the "minimum royalty"). If VTBH has not paid at least \$2,000,000 in royalties by the fourth anniversary of the effective date of the agreement, and it does not appear in Parametric's reasonable judgment likely based on a reasonable projection of VTBH's sales that VTBH will pay the full amount of the minimum royalty before the end of the fifth year of the term, at Parametric's option by notice to VTBH, VTBH's exclusive license to the licensed patents, technology and materials for the console audio products field would become non-exclusive until the termination or expiration of the agreement, provided that VTBH would have the option to pay the difference between the royalties actually paid to Parametric as of such date and the minimum royalty within 30 days of such notice from Parametric in order to retain such exclusive license through the end of the fifth year of the agreement. At the end of each successive year of the agreement, upon written notice to VTBH, Parametric would have the right to convert such exclusive license to a non-exclusive license if VTBH has not paid at least \$1,000,000 in royalties in the prior year of the agreement, but VTBH would have the right to retain such exclusive license by paying any balance of the applicable minimum royalty for such year within thirty 30 days of Parametric's notice. Parametric's right to convert such exclusive license to a non-exclusive license would be Parametric's sole remedy if VTBH has not paid the minimum royalty. At any time during the term, upon written notice to Parametric, VTBH could elect to convert such exclusive license to a non-exclusive license for the balance of the term.

*Transferability.* Except as otherwise agreed by Parametric, the license would not be transferable except that VTBH could assign the break-up fee license agreement without Parametric's consent: (i) to a third party in connection with a merger of VTBH or a sale of substantially all of VTBH's assets or business that related to the subject matter of the break-up fee license agreement; or (ii) in connection with an internal reorganization of VTBH that does not involve a third party.

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*Indemnification.* VTBH has agreed to indemnify Parametric for damages caused by third party claims arising out of (i) VTBH's use of the licensed patents and licensed technology and materials, (ii) claims relating to the products developed by VTBH, (iii) a breach by VTBH of the representations and warranties of the license agreement, (iv) VTBH's transactions with third parties or operation of its business and (v) acts of fraud or willful misconduct, except that this indemnity does not cover, and Parametric will indemnify VTBH for, those third party claims arising out of a Parametric design defect, or third party claims of IP infringement that arise from a non-modified or combined use of the licensed patents and licensed technology in accordance with the terms of the license agreement. In addition, Parametric has agreed to indemnify VTBH for damages caused by third party claims arising out of a Parametric breach of the representation and warranties of the break-up fee license agreement, or fraudulent or willful misconduct.

The foregoing summary of the break-up fee license agreement does not purport to be complete and you are encouraged to read the form of break-up fee license agreement in its entirety.

**Specific Performance**

In addition to any other remedy that they may be entitled to at law or in equity, Parametric and VTBH have agreed that they are each entitled to sue in equity for specific performance and/or to obtain an injunction to prevent breaches of the merger agreement and to enforce specifically the terms and provisions of the merger agreement in the Delaware Court of Chancery or any federal court sitting in the State of Delaware. Parametric and VTBH have further agreed that they will not oppose the granting of an injunction, specific performance and other equitable relief on the basis that the other party has an adequate remedy at law or that an award of specific performance is not an appropriate remedy for any reason at law or equity.

**Consequences If Not Approved**

Parametric has invested significant time and incurred, and expects to continue to incur, significant expenses related to the proposed merger. If the merger proposal is not approved by Parametric stockholders, or the merger otherwise does not close, the Parametric Board will continue to evaluate and review our business operations, properties and capitalization, among other things, make such changes as are deemed appropriate and continue to seek to identify strategic alternatives to enhance stockholder value. See "The Merger – Effect on Parametric if the Merger is Not Completed" on page 46.

**Vote Required**

Approval of the merger proposal requires the affirmative vote of a majority of the votes cast on the proposal, excluding abstentions, at a meeting at which a quorum is present. Abstentions and broker non-votes will have no effect on the outcome of the vote.

**THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT YOU VOTE "FOR" THE MERGER PROPOSAL**

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Table of Contents**PROPOSAL 2 – ADVISORY (NON-BINDING) PROPOSAL TO APPROVE SPECIFIED COMPENSATION THAT MAY BECOME PAYABLE TO PARAMETRIC NAMED EXECUTIVE OFFICERS IN CONNECTION WITH THE MERGER****The Non-Binding Advisory Proposal**

Section 14A of the Securities Exchange Act of 1934, which was enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, requires companies to provide their stockholders with the opportunity to vote to approve, on an advisory non-binding basis, certain golden parachute compensation arrangements for its named executive officers.

Therefore, Parametric is asking its stockholders to indicate their approval of golden parachute compensation arrangements and payments which the named executive officers will or may be eligible to receive in connection with the merger as disclosed in the section of this proxy statement entitled “The Merger – Interests of Parametric Executive Officers and Directors in the Merger – Golden Parachute Compensation Arrangements” beginning on page 76. These arrangements have previously constituted part of Parametric’s overall compensation program for its named executive officers and have been previously disclosed to Parametric’s stockholders in Parametric’s annual proxy statements and/or the “Executive Compensation” section of Parametric’s annual reports on Form 10-K, including the most recently filed Form 10-K which was filed with the SEC on November 26, 2013. These historical arrangements were generally adopted and approved by the independent members of the Parametric Board in separate meetings, such as during executive sessions of independent directors, and are believed to be reasonable and in line with marketplace norms. Estimated payments for these arrangements are specifically set forth in the table entitled “Golden Parachute Compensation” on page 77 of this proxy statement and the accompanying footnotes.

Accordingly, Parametric is seeking approval of the following resolution at the Special Meeting:

RESOLVED, that the stockholders of Parametric Sound Corporation hereby approve, solely on a nonbinding, advisory basis, the golden parachute compensation arrangements which may be paid to the named executive officers of Parametric Sound Corporation in connection with the merger, as disclosed pursuant to Item 402(t) of Regulation S-K in Parametric Sound Corporation’s proxy statement for the Special Meeting.

Stockholders should be aware that, consistent with applicable law, this proposal regarding certain merger-related golden parachute compensation arrangements is merely an advisory vote which will not be binding on Parametric, the Parametric Board or Turtle Beach. Further, the underlying compensation plans and arrangements are contractual in nature and are not, by their terms, subject to this stockholder approval. Accordingly, regardless of the outcome of this advisory vote, if the merger is consummated, the named executive officers will remain eligible to receive the various golden parachute compensation payments in accordance with the terms and conditions applicable to those payments.

**Vote Required**

Approval of the non-binding advisory proposal regarding the golden parachute compensation arrangements requires the affirmative vote of a majority of the votes cast on the proposal, excluding abstentions, at a meeting at which a quorum is present. Abstentions and broker non-votes will have no effect on the outcome of the vote.

**THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT YOU VOTE “FOR” THE ADVISORY (NON-BINDING) PROPOSAL TO APPROVE THE GOLDEN PARACHUTE COMPENSATION ARRANGEMENTS THAT MAY BECOME PAYABLE TO PARAMETRIC NAMED EXECUTIVE OFFICERS IN CONNECTION WITH THE MERGER AS DESCRIBED IN THIS PROXY STATEMENT**

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The Parametric Board is asking Parametric's stockholders to vote on a proposal to adjourn the Special Meeting, if necessary or appropriate, in order to allow for the solicitation of additional proxies if there are insufficient votes at the time of the Special Meeting to approve the merger proposal or if necessary to achieve a quorum.

**Vote Required**

Approval of the proposal to adjourn the Special Meeting, whether or not a quorum is present, requires the affirmative vote of a majority of the votes cast on the proposal, excluding abstentions. Abstentions and broker non-votes will have no effect on the outcome of the vote.

**Consequences If Not Approved**

If the proposal to adjourn the Special Meeting is not approved and there are insufficient votes at the time of the Special Meeting to approve the merger or proposal or achieve a quorum, Parametric may be required to incur additional time and expense in order to hold an effective stockholder meeting for the merger proposal to be considered and approved.

**THE BOARD OF DIRECTORS RECOMMENDS THAT YOU VOTE "FOR" THE APPROVAL OF THE ADJOURNMENT OF THE SPECIAL MEETING, IF NECESSARY OR APPROPRIATE, TO SOLICIT ADDITIONAL PROXIES.**

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**UNAUDITED PRO FORMA COMBINED  
CONSOLIDATED FINANCIAL INFORMATION**

On August 5, 2013, Parametric entered into the merger agreement with VTBH and Merger Sub. Subject to the terms and conditions of the merger agreement, Merger Sub will merge with and into VTBH, and Parametric will issue shares of its common stock to the former VTBH stockholders which, together with options to purchase shares of VTBH common stock that will be converted into options to purchase shares of Parametric common stock (and will be assumed by Parametric at the effective time of the merger), will represent approximately 80 percent of the shares of Parametric common stock on a fully-diluted basis after the merger, subject to adjustment as provided in the merger agreement.

The merger will be accounted for as a reverse acquisition under the acquisition method of accounting. For accounting purposes, VTBH is considered to be the accounting acquirer. This will result in VTBH allocating the total purchase consideration issued in the acquisition to the fair value of Parametric's assets and liabilities as of the assumed acquisition date, with any excess purchase consideration being recorded as goodwill.

The unaudited pro forma combined consolidated balance sheet is presented to show how Parametric might have looked had the acquisition occurred as of that reporting date. The unaudited pro forma combined consolidated statement of operations for the year ended September 30, 2013 is presented to show how Parametric might have looked had the acquisition occurred as of October 1, 2012, the beginning of the earliest period presented.

This pro forma information is based on, and should be read in conjunction with, the following:

- \* The historical audited financial statements of Parametric as of and for the fiscal year ended September 30, 2013, included in a Form 10-K filed on November 26, 2013;
- \* The historical audited financial statements of VTBH as of and for the fiscal year ended December 31, 2012, included in this proxy statement;
- \* The historical unaudited financial statements of VTBH as of and for the nine months ended September 28, 2013, included in this proxy statement; and
- \* The historical unaudited financial statements of VTBH for the three months ended December 31, 2012, not included in this proxy statement.

The unaudited pro forma combined consolidated balance sheet was derived from Parametric's audited financial statements as of September 30, 2013 and VTBH's unaudited financial statements as of September 28, 2013. The unaudited pro forma combined consolidated statement of operations for the fiscal year ended September 30, 2013 was derived from the audited financial statements of Parametric for the fiscal year ended September 30, 2013 and VTBH's unaudited results from operations for the three months ended December 31, 2012 and the nine months ended September 28, 2013.

The unaudited pro forma combined consolidated financial information was prepared, without audit, pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC"). The unaudited pro forma adjustments reflecting the acquisition have been prepared in accordance with the business combination accounting guidance and reflect the preliminary allocation of the purchase price to the acquired assets and liabilities based upon the preliminary estimate of fair values, using the assumptions set forth in the notes to the unaudited pro forma combined consolidated financial information. The detailed assumptions used to prepare the unaudited pro forma combined consolidated financial information are contained in the notes hereto and such assumptions should be reviewed in their entirety.

The unaudited pro forma combined consolidated financial information is provided for illustrative purposes only and is not necessarily indicative of the operating results or financial position that would have occurred if the acquisition had been completed as of the dates set forth above, nor is it indicative of the future results or financial



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position of the combined company. In connection with the unaudited pro forma combined consolidated financial information, the total purchase consideration was allocated based on the best estimates of fair value. The allocation is dependent upon certain valuation and other analyses that are not yet final. Accordingly, the pro forma acquisition price adjustments are preliminary and subject to further adjustments as additional information become available and as additional analyses are performed. There can be no assurances that the final valuations will not result in material changes to the preliminary estimated purchase price allocation. The unaudited pro forma condensed combined financial information also does not give effect to the potential impact of current financial conditions, any anticipated synergies, operating efficiencies or cost savings that may result from the transaction or any integration costs. Furthermore, the unaudited pro forma combined consolidated statements of operations do not include certain nonrecurring charges which resulting directly from the acquisition as described in the accompanying notes.

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**Unaudited Pro Forma Combined Consolidated Balance Sheet**  
**As of September 30, 2013**  
*(In thousands, except share and per share data)*

	Historical					Unaudited
	Parametric Sound Corporation	VTB Holdings, Inc.	Combined Subtotal	Pro Forma Adjustments		Pro Forma Combined
<b>ASSETS</b>						
Current assets:						
Cash and cash equivalents	\$ 1,598	\$ 5,062	\$ 6,660	\$ 5,080	4(a)	\$ 11,740
Accounts receivable, net	177	32,810	32,987	—		32,987
Inventories	723	62,270	62,993	—		62,993
Deferred tax assets	—	8,148	8,148	5,813	4(b)	13,961
Prepaid expenses and other current assets	98	6,897	6,995	—		6,995
Total current assets	2,596	115,187	117,783	10,893		128,676
Property and equipment, net	219	6,798	7,017	—		7,017
Deferred tax assets, long term portion	—	3,794	3,794	—		3,794
Intangible assets, net	1,451	4,243	5,694	38,479	4(c)	44,173
Goodwill	—	—	—	59,151	4(d)	59,151
Other assets, net	—	2,025	2,025	—		2,025
<b>TOTAL ASSETS</b>	<u>\$ 4,266</u>	<u>\$132,047</u>	<u>\$136,313</u>	<u>\$ 108,523</u>		<u>\$ 244,836</u>
<b>LIABILITIES, CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY (DEFICIT)</b>						
<b>CURRENT LIABILITIES:</b>						
Revolving line of credit	\$ —	\$ 30,186	\$ 30,186	\$ —		\$ 30,186
Term loan, current portion	—	18,750	18,750	—		18,750
Accounts payable	863	50,480	51,343	—		51,343
Accrued liabilities	184	9,545	9,729	2,627	4(e)	12,356
Due to shareholders, current portion	—	3,125	3,125	—		3,125
Capital lease obligation	37	—	37	—		37
Other current liabilities	—	878	878	—		878
Total current liabilities	1,084	112,964	114,048	2,627		116,675
Capital lease obligation, long-term portion	95	—	95	—		95
Term loan, long-term portion	—	5,000	5,000	—		5,000
Subordinated loan	—	10,000	10,000	—		10,000
Series B redeemable preferred stock	—	13,448	13,448	—		13,448
Income tax payable, long-term portion	—	1,934	1,934	—		1,934
Deferred tax liabilities	—	1,174	1,174	14,774	4(f)	15,948
<b>TOTAL LIABILITIES</b>	<u>1,179</u>	<u>144,520</u>	<u>145,699</u>	<u>17,401</u>		<u>163,100</u>
Series A convertible preferred stock	—	24,345	24,345	(24,345)	4(g)	—
<b>STOCKHOLDERS' EQUITY (DEFICIT):</b>						
Parametric common stock	7	—	7	30	4(h)	37
VTBH common stock	—	353	353	(353)	4(h)	—
Additional paid-in capital	17,383	(55,015)	(37,632)	103,433	4(h)	65,801
(Accumulated deficit) retained earnings	(14,303)	17,894	3,591	12,357	4(i)	15,948
Accumulated other comprehensive loss	—	(50)	(50)	—		(50)
<b>TOTAL STOCKHOLDERS' EQUITY (DEFICIT)</b>	<u>3,087</u>	<u>(36,818)</u>	<u>(33,731)</u>	<u>115,467</u>		<u>81,736</u>
<b>TOTAL LIABILITIES, CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY (DEFICIT)</b>	<u>\$ 4,266</u>	<u>\$132,047</u>	<u>\$136,313</u>	<u>\$ 108,523</u>		<u>\$ 244,836</u>

*The accompanying notes are an integral part of these unaudited pro forma condensed combined consolidated financial statements. The pro forma adjustments are explained in Note 4.*

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**Unaudited Pro Forma Combined Consolidated Statements of Operations**  
**Year Ended September 30, 2013**  
*(in thousands, except share and per share data)*

	<b>Historical</b>							
	<b>Parametric For the Fiscal Year Ended September 30, 2013</b>	<b>VTBH For the Twelve Months Ended September 28, 2013</b>	<b>Combination Adjustments</b>		<b>Combined Subtotal</b>	<b>Pro Forma Adjustments</b>		<b>Unaudited Pro Forma Combined</b>
Net revenue	\$ 563	\$ 202,389	\$ —		\$ 202,952	\$ —		\$ 202,952
Cost of revenue	292	138,664	—		138,956	675	5(a)	139,631
Gross profit	271	63,725	—		63,996	(675)		63,321
Operating expenses:								
Selling, general and administrative	4,602	—	(4,602)	3(a)	—	—		—
Research and development	2,056	—	(2,056)	3(b)	—	—		—
Selling and marketing	—	32,427	1,948	3(a)	34,375	89	5(a)	34,464
Product development	—	3,800	2,056	3(b)	5,856	(124)	5(a)	5,732
General and administrative	—	8,472	2,654	3(a)	11,126	—		11,126
Business transaction	1,280	2,629	—		3,909	(3,567)	5(b)	342
Total operating expenses	7,938	47,328	—		55,266	(3,602)		51,664
Operating (loss) income	(7,667)	16,397	—		8,730	2,927		11,657
Other income (expense), net:								
Interest expense	(5)	—	5		—	—		—
Interest income	9	—	(9)	3(c)	—	—		—
Interest expense, net	—	(6,445)	4	3(c)	(6,441)	—		(6,441)
Gain on bargain purchase from acquisition	—	2,303	—		2,303	—		2,303
Other income (expense), net	(7)	(264)	—		(271)	—		(271)
Total other income (expense), net	(3)	(4,406)	—		(4,409)	—		(4,409)
(Loss) income before provision for income taxes	(7,670)	11,991	—		4,321	2,927		7,248
Provision for income taxes	—	1,865	—		1,865	1,083	5(c)	2,948
Net (loss) income	\$ (7,670)	\$ 10,126	\$ —		\$ 2,456	\$ 1,844		\$ 4,300
Net (loss) income attributable to common stockholders:								
Basic	\$ (7,670)	\$ 4,255						\$ 4,300
Diluted	\$ (7,670)	\$ 4,255						\$ 4,300
Net (loss) income per share attributable to common stockholders:								
Basic	\$ (1.16)	\$ 0.12						\$ 0.12
Diluted	\$ (1.16)	\$ 0.12						\$ 0.11
Weighted-average shares used in computing net (loss) income per share attributable to common stockholders:								
Basic	6,587,337	35,282,286						36,537,711
Diluted	6,587,337	36,384,532						37,557,993

*The accompanying notes are an integral part of these unaudited pro forma condensed combined consolidated financial statements. The pro forma adjustments are explained in Note 3 and 5.*



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### 1. Basis of Presentation

The reverse acquisition of Parametric by VTBH is being accounted for using the acquisition method of accounting for business combinations. The excess purchase consideration over the fair values of assets acquired and liabilities assumed is recorded as goodwill.

The historical financial information has been adjusted to give pro forma effect to events that are (i) directly attributable to the transaction, (ii) factually supportable and (iii) with respect to the unaudited pro forma combined consolidated statements of operations, expected to have a continuing impact on the combined results. The pro forma adjustments are preliminary and based on estimates of the fair value and useful lives of the assets acquired and liabilities assumed and have been prepared to illustrate the estimated effect of the transaction and certain other adjustments.

Under the acquisition method, acquisition-related transaction costs (e.g. advisory, legal, valuation and other professional fees) are not included as consideration transferred but are accounted for as expenses in the periods in which the costs are incurred. These costs are not presented or reflected as pro forma adjustments in the unaudited pro forma combined consolidated statements of operations because they will not have a continuing impact on the combined results.

### Description of Transaction

On August 5, 2013, Parametric entered into the merger agreement with VTBH and Merger Sub. Subject to the terms and conditions of the merger agreement, Parametric will issue shares of its common stock to the former VTBH stockholders which, together with options to purchase shares of VTBH common stock that will be converted into options to purchase shares of Parametric common stock (and will be assumed by Parametric at the effective time of the merger), will represent approximately 80 percent of the shares of Parametric common stock on a fully-diluted basis after the Merger, subject to adjustment as provided in the merger agreement.

The acquisition will be effected by VTBH's issued and outstanding common stock being cancelled and converted into shares of Parametric's common stock upon the consummation of the merger, based on the formula set forth in the merger agreement. VTBH's issued and outstanding Series A convertible preferred stock will also be cancelled and converted into shares of Parametric's common stock upon the consummation of the merger, based on the same formula. VTBH's issued and outstanding Series B redeemable preferred stock and the phantom units issued under the 2011 Phantom Equity Appreciation Plan will remain outstanding following the merger.

As a condition to the consummation of the merger, Parametric is required to raise a minimum of an additional \$5.0 million of capital in a "Qualified Offering" as defined in the merger agreement. On November 15, 2013 Parametric completed a Qualified Offering involving the sale of 364,286 shares of its common stock in a registered direct offering, with net proceeds to Parametric of \$5.1 million.

The issued share capital on the assumed acquisition date of September 30, 2013 – based on an assumed 0.3567 shares of Parametric common stock being issued for each share of VTBH common stock or Series A Preferred Stock – will be comprised of the following:

Shares of Parametric common stock outstanding on September 30, 2013	6,835,321
Shares of Parametric common stock issued on November 15, 2013	364,286
Shares issued to VTBH stockholders	<u>29,950,374</u>
Total shares issued	<u>37,149,981</u>

### 2. Purchase Consideration Allocation

The purchase consideration in a reverse acquisition is determined with reference to the fair value of equity interests that the accounting acquirer (VTBH) has issued to the owners of the accounting acquiree

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(Parametric). As the reverse acquisition has not been consummated, the fair value of Parametric's common stock was determined based on the closing stock price of Parametric's common stock as of November 25, 2013.

The estimated total purchase consideration is calculated as follows (in thousands, except share and per share data):

Outstanding shares of common stock of Parametric as of acquisition date	7,199,607
Closing price per share of Parametric common stock as of November 25, 2013	\$ 12.65
Total purchase consideration	<u>\$ 91,075</u>

As the reverse acquisition has not been consummated, the estimated total purchase consideration will change as a result of changes in Parametric's closing stock price between November 25, 2013 and the acquisition date. A \$1.00 increase or decrease in the assumed closing price of \$12.65 per share would increase or decrease the total purchase consideration by approximately \$7.2 million.

### Preliminary Purchase Consideration Allocation

The following table summarizes the preliminary allocation of the estimated purchase consideration to the fair values of assets acquired and liabilities assumed of Parametric, with the excess recorded as goodwill (dollars in thousands):

Cash and cash equivalents	\$ 1,598
Accounts receivable	177
Deferred tax asset	5,132
Other current assets	820
Property and equipment	219
Intangible assets:	
In-process research and development (IPR&D) (1)	31,960
Developed technology (2)	7,490
Customer relationships (2)	290
Trade name (2)	190
Goodwill (3)	59,151
Accounts payable and accrued liabilities	(1,046)
Capital lease obligation	(132)
Deferred tax liability	(14,774)
Total	<u>\$ 91,075</u>

- (1) The amount allocated to in-process research and development represents an estimate of the fair value of purchased in-process technology for research projects, or IPR&D. IPR&D is considered an indefinite-lived intangible asset until the completion or abandonment of the associated research and development efforts. Accordingly, during the development period, the IPR&D is not amortized but subject to impairment review. The IPR&D is reflected as an acquired asset in the unaudited pro forma combined consolidated balance sheet. No amortization of the IPR&D has been reflected in the unaudited pro forma combined consolidated financial statements as the assets are considered indefinite-lived.
- (2) The acquired intangible assets relating to developed technology, customer relationships and trade name are subject to amortization. Developed technology will be amortized on a straight-line basis over an estimated useful life of approximately eight years with the amortization being included within cost of revenue. Customer relationships and trade name will be amortized on a straight-line basis over an estimated useful life of two years and five years with the amortization being included within sales and marketing expense.
- (3) The excess purchase consideration over the fair values of assets acquired and liabilities assumed is recorded as goodwill. Goodwill is not amortized but tested for impairment on an annual basis or when the indicator for impairment exists.

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The preliminary valuation of the intangible assets acquired was determined using currently available information and reasonable and supportable assumptions. The fair value of IPR&D, developed technology, and trade name intangible assets was determined using the "income method," which starts with a forecast of all the expected future net cash flows from such assets. Because customer relationships are not mature, the fair value customer relationship intangible assets were determined using the "cost method", which starts with an analysis of the estimated costs to replace the existing asset. Some of the more significant assumptions inherent in the development of intangible asset values, from the perspective of a market participant, include: the amount and timing of projected future cash flows (including revenue, cost of sales, research and development costs, sales and marketing expenses, capital expenditures and working capital requirements) as well as estimated contributory asset charges; the discount rate selected to measure the risks inherent in the future cash flows; and the assessment of the asset's life cycle and the competitive trends impacting the asset, among other factors.

### 3. Combination Adjustments

The accounting policies used in the preparation of the unaudited pro forma combined consolidated financial information are those set out in Parametric's audited financial statements as of September 30, 2013 and VTBH's audited financial statements as of December 31, 2012. The following adjustments represent the reclassification adjustments made to the consolidated statements of operations of Parametric to conform the presentation to that of VTBH as the accounting acquirer:

- 3a) **Sales and Marketing, General and Administrative** – The adjustment is to conform the presentation of Parametric's selling, general and administrative expenses to that of VTBH by classifying the expenses as selling and marketing or general and administrative, as applicable.
- 3b) **Research and Development** – The adjustment is to conform the presentation of Parametric's research and development expenses to that of VTBH by classifying the expenses as product development.
- 3c) **Interest Expense and Interest Income** – The adjustment is to conform the presentation of Parametric's interest income and interest expense to that of VTBH by classifying the interest income and interest expense as interest expense, net.

There were no conforming adjustments necessary for the unaudited pro forma combined consolidated balance sheet.

### 4. Unaudited Pro Forma Adjustments – Balance Sheet

The unaudited pro forma combined consolidated balance sheet has been prepared assuming an acquisition date of September 30, 2013 with the following pro forma adjustments:

- 4a) **Cash and Cash Equivalents** – Represents the \$5.1 million net increase in cash and cash equivalents as a result of Parametric's issuing its common stock on November 15, 2013, as required to consummate the closing under the merger agreement.
- 4b) **Deferred Tax Assets** – Represents the adjustment related to the net increase in Parametric's and VTBH's accrued expenses for estimated transaction costs and the reversal of the valuation allowance against Parametric's net operating loss carryforwards as the combined company expects to be able to utilize them.
- 4c) **Intangible Assets** – Represents the adjustment to record the acquired intangible assets from Parametric at fair value, as follows (in thousands):

Preliminary fair value of acquired intangible assets	\$39,930
Eliminate Parametric's historical intangible assets	(1,451)
Total	<u>\$38,479</u>

- 4d) **Goodwill** – Represents the adjustment to record the excess between the acquisition date fair value of the consideration expected to be transferred and the preliminary values assigned to the assets acquired and liabilities assumed.



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- 4e) Accrued Liabilities** – Represents the accrual for estimated transaction costs of \$2.6 million related to the acquisition that are not reflected in the consolidated financial statements.
- 4f) Deferred Tax Liabilities** – Represents the adjustment related to the net increase in the acquired intangible assets.
- 4g) Series A Convertible Preferred Stock** – Represents the cancellation and conversion of VTBH's outstanding Series A convertible preferred stock into shares of Parametric's common stock on the close of the acquisition.
- 4h) Common Stock and Additional Paid-In Capital** – The adjustments made to common stock and additional paid-in capital are as follows (in thousands):

#### *Common Stock*

Record the par value of the common stock that was issued	\$ 30
Eliminate VTBH's historical issued and outstanding common stock	(353)
Total common stock	<u>\$ (323)</u>

#### *Additional Paid-In Capital*

Eliminate Parametric's historical additional paid-in capital	\$(17,383)
Record the conversion of VTBH's outstanding Series A convertible preferred stock into Parametric common stock	24,328
Record the conversion of VTBH's issued and outstanding common stock into Parametric common stock	340
Record the issuance of Parametric common stock on November 15, 2013	5,080
Record purchase consideration, net of par value of Parametric common stock	91,068
Total additional paid-in capital	<u>\$103,433</u>
Total common stock and additional paid-in capital	<u>\$103,110</u>

- 4i) Retained Earnings (Accumulated Deficit)** – The adjustments made to retained earnings (accumulated deficit) are as follows:

Eliminate Parametric's historical accumulated deficit	\$14,303
Accrue estimated transaction costs to be incurred by Parametric and VTBH through accumulated deficit, net of expected tax impact	(1,946)
Total	<u>\$12,357</u>

#### 5. Unaudited Pro Forma Adjustments – Statements of Operations

The unaudited pro forma combined consolidated statements of operations were prepared assuming an acquisition date of October 1, 2012 with the following pro forma adjustments:

- 5a) Intangible Asset Amortization** – Represents the additional amortization recognized on the acquired intangible assets that are subject to amortization.
- 5b) Transaction Costs** – Represents the elimination of acquisition-related transaction costs as they have no continuing impact on the combined consolidated results of operations.
- 5c) Provision for Income Taxes** – Represents the change in the provision for income tax consisting of the income tax effect of the respective pro forma adjustments based on the statutory rate of 37%, except for the pro forma adjustments related to the amortization of intangible assets and the non-deductibility of certain transaction costs.

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### **TURTLE BEACH'S BUSINESS**

#### **Introduction and Summary**

Turtle Beach is a leading designer, developer and marketer of premium audio peripherals for video game, personal computer and mobile platforms. Audio technology and digital signal processing have been a core focus at Turtle Beach since the company was founded in 1977, and Turtle Beach management views continued innovation and state-of-the-art product development as critical factors in its continued success.

In 1985, Turtle Beach began developing audio playback and recording products for use with personal computers. The launch of the Xbox 360 console in 2005 and the PlayStation 3 console in 2006 enabled increased participation in multiplayer gaming, as the consoles made it possible for millions of console owners to play together online. Turtle Beach has played a significant role in developing the market for advanced gaming headsets, which allow video game players to experience high-quality, immersive sound and to communicate with others while playing video games. Turtle Beach launched its first gaming headset, which unlike headphones and other similar audio products have an integrated microphone, in 2005. Turtle Beach believes its gaming headsets have fulfilled a growing need among gaming enthusiasts for both chat communications and high-quality audio.

As gaming has grown in popularity, Turtle Beach has broadened its product portfolio to provide headset solutions across various gaming platforms. Turtle Beach's gaming headsets are compatible with the Microsoft Xbox, Sony PlayStation and Nintendo Wii console platforms, handheld console platforms including the Sony PlayStation Vita® and Nintendo DS®, PCs, Macs and mobile devices, including smartphones and tablets. Turtle Beach categorizes its headsets by price point based on the complexity of technology each headset offers, with higher price point headsets offering advanced features such as digital signal processing, surround sound and Bluetooth®. By offering products across multiple price points, Turtle Beach has reached a diverse base of consumers ranging from entry-level users to dedicated gamers.

In 2010, the Stripes Group, a private equity firm that makes investments in Internet, software, healthcare IT and branded consumer products businesses, became the majority stockholder of Turtle Beach. In connection with this recapitalization, the founders of VTB became minority stockholders of VTBH.

Turtle Beach has established and maintained a leading position in the gaming headset market through innovation in sophisticated audio technology, product quality, targeted marketing, retail distribution, and industry partnerships. Turtle Beach has a retail distribution network that it considers to be unrivaled in the gaming headset space, selling through more than 27,000 storefronts in 44 countries as of September 2013. Turtle Beach believes that its extensive retail footprint and broad floor presence have contributed to strong brand recognition and loyalty with consumers.

The size of the U.S. console gaming headset market in 2012 was estimated to be approximately \$370 million in sales according to a study conducted by The NPD Group, Inc. ("NPD"). Based on this estimate, Turtle Beach believes that the global console gaming headset market size in 2012 was approximately \$650 million in sales.

According to sales tracking data from NPD, Turtle Beach is the number one console gaming headset manufacturer in the U.S. based on dollar sales for the calendar year 2012, with a 53 percent dollar share of the market. According to NPD, Turtle Beach has introduced the top five best-selling third-party gaming headsets in the U.S. based on dollar sales since NPD began tracking gaming headset sales in 2012, and had nine of the top 10 best-selling third-party gaming headsets in the U.S. based on dollar sales in 2012. This market success has contributed to Turtle Beach's generation of over \$200 million in net revenues in 2012, approximately doubling its revenues from 2010. For a detailed discussion of Turtle Beach's historical financial performance, see "Turtle Beach's Management's Discussion and Analysis of Financial Condition and Results of Operations" on page 127.

As gaming consoles have evolved from dedicated video game platforms to home entertainment hubs, and mobile devices have become platforms for entertainment, Turtle Beach's headsets have evolved to reflect how

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content is consumed. Turtle Beach recently introduced media headsets that can bring sophisticated audio processing technology to consumers watching movies, listening to music, as well as playing video games. These new headsets will be carried in Apple stores. Media headsets represent an opportunity for Turtle Beach to introduce its brand, audio technology and products to a wider audience of consumers, and Turtle Beach intends to continue to develop new consumer audio products in anticipation of continued evolution of consumer preferences.

Turtle Beach has business offices in San Diego, California, San Jose, California and Valhalla, New York in the United States, and in Basingstoke and Darlington in the United Kingdom. Turtle Beach has warehouse facilities in Elmsford, New York and Darlington in the United Kingdom. In addition, it uses third-party warehouse facilities in City of Industry, California, Fairview, New Jersey and Grand Prairie, Texas.

Turtle Beach believes it has an experienced leadership team and employees that are committed to excellence. As of October 1, 2013, Turtle Beach had approximately 113 employees, including 88 based in the United States.

Turtle Beach considers the high-quality products that it brings to market to be the most visible manifestation of its skills and strengths. Behind those products is an organization that takes a disciplined and innovative approach to product design, a strong brand with a large installed base of consumers, a scalable, efficient supply chain, and a broad retail distribution network supported by a dynamic marketing function.

As a result of its robust infrastructure and history of successful commercialization of audio technologies, Turtle Beach believes it is well positioned to continue to grow its gaming headset business, expand retail distribution, launch new products and enter new markets, by broadening the Turtle Beach headset product line and commercializing the innovative audio technology from Parametric Sound into new consumer, commercial and healthcare products.

## **Gaming Headset Market**

According to a 2013 report entitled *Essential Facts about the Computer and Video Game Industry* by the Electronic Software Association, consumers spent an estimated \$20.77 billion in the United States on video game hardware, accessories and content in 2012. The console accessories market includes gaming headsets and other peripherals such as gamepads and specialty controllers, adapters, batteries and memory. Sales tracking data from NPD indicates U.S. consumers spent an estimated \$1.7 billion on console accessories in 2012. Console gaming headsets comprised approximately 21% of that total, or \$370 million. Sales of gaming headsets designed primarily for use with game consoles comprise the majority of Turtle Beach revenues.

Based on an August 2013 International Development Group (IDG) *Global Forecast Update* estimate that North America has approximately 54 percent of the installed base for seventh-generation gaming consoles, Turtle Beach believes the global console gaming headset market to be approximately \$650 million. These estimated market sizes are for gaming headsets used with Xbox 360, PlayStation 3, and Nintendo Wii gaming consoles and do not including gaming headsets used with PCs or gaming headsets and stereo headphones used with mobile devices.

Turtle Beach believes video game players use gaming headsets to experience high-quality, immersive game audio, communicate via chat audio with other online players, and take advantage of advanced capabilities such as audio processing that can provide a competitive advantage during gameplay. Headsets also allow players to experience game and chat audio without disturbing others in their household.

Turtle Beach believes that the primary growth drivers for its console gaming headset business are:

- A projected installed base of more than 130 million Xbox 360 and PlayStation 3 consoles as of year end 2013, as estimated in the August 2013 IDG *Global Forecast Update*;
- The increase in multiplayer online gaming, whether console-, mobile-, or PC-based, in which a gaming headset provides the additional benefit of being a communication device;

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- The launch of new console video game titles, which Turtle Beach believes increases foot traffic into retail stores and lifts console gaming headset sales; and
- The installed base of Turtle Beach headsets which drive upgrades and replacements.

While periods of increased or decreased sales can occur throughout the year based on the factors described above, sales of console gaming headsets is seasonal and is weighted towards the holiday period in the fourth quarter. In past years, more than 50 percent of Turtle Beach's revenues have been generated from September through December. For a detailed discussion of the seasonality of Turtle Beach's historical financial performance, see "Turtle Beach's Management's Discussion and Analysis of Financial Condition and Results of Operations" on page 127.

Turtle Beach believes that sales of console gaming headsets, like other console-related accessories and software, are significantly influenced by the launch of new consoles. The two largest console manufacturers, Microsoft and Sony, introduced next-generation consoles in November 2013. Sales of both the Xbox One and PlayStation 4 started off strong with sales of both exceeding one million units in the first 24 hours following introduction. Historical industry data shows that sales of gaming accessories have fallen in the 12 to 18 months immediately preceding a console transition and then have risen to higher levels spurred by the increased retail activity generated by the new console launch.

As with past transitions, industry analysts are predicting a drop in console sales in 2013 as compared with 2012, and then a period of growth in console sales after the new consoles come to market. The August 2013 IDG *Global Forecast Update* estimates a drop in Xbox 360 and PlayStation 3 global console unit sales of approximately 30 percent from 2012 to 2013 and a drop of 11 percent in total console unit sales even when estimated unit sales of the Xbox One and PlayStation 4 are included, followed by an increase in console sales in 2014 across the major gaming console markets in North America, Europe and Japan.

IDG estimates global hardware sales of Xbox and PlayStation consoles – including Xbox 360, Xbox One, PlayStation 3, and PlayStation 4 – to be 14.8 million units in 2013. In 2014, global console sales are expected to increase to 21.6 million units, representing an estimated 46 percent growth in unit sales.

In the fourth quarter of 2013, industry analysts expect a rebound in gaming accessory sales as consumers head into stores over the holidays for next generation consoles. According to a 2013 NPD survey of 505 Xbox and PlayStation console gamers that currently use headsets, 49% are either very likely (27%) or extremely likely (22%) to purchase a new headset if they receive or purchase a next generation console. This likelihood increases to 59% among those surveyed who indicated a desire to purchase a next-generation console. Turtle Beach expects that a slate of new game releases scheduled for the fourth quarter of 2013, including titles such as *LEGO®*, *Marvel Super Heroes*, *Batman™*, *Arkham Origins*, *Assassin's Creed® IV*, *Black Flag*, and *Battlefield 4™*, will also draw consumers into retail stores and increase sales of gaming headsets.

Industry analysts expect Microsoft and Sony to continue to support their current generation consoles for the next few years following the release of the Xbox One and PlayStation 4, which Turtle beach believes will sustain the market for current generation headsets. In May 2013 Microsoft predicted it would eventually sell 100 million Xbox 360 consoles, and in October 2013 Microsoft announced it had shipped 80 million Xbox 360 consoles to retailers worldwide since the console launch in November 2005.

### **Products**

Turtle Beach sales have grown significantly since 2006 in response to strong, global consumer demand for its gaming headsets. Turtle Beach believes this demand is the result of the quality, advanced technology, innovative features and value of its headsets.

### **Product Portfolio**

Turtle Beach produces a variety of gaming headsets, spanning multiple wired and wireless price tiers and covering every major gaming platform. Turtle Beach's strategy is to provide product variety, quality, innovation and value at in each price tier.



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Developers of major game franchises can spend millions of dollars on sound design, including casting voice actors, scoring music, and creating detailed and realistic soundscapes. Turtle Beach believes that using a quality headset allows the player to experience the game the way the developer intended, and that this is a key component in the player getting the full value of the investment they have made. For certain titles, Turtle Beach works with the game developer to ensure the audio experience delivered by a Turtle Beach headset is optimized for the player's game experience.

Turtle Beach offers a full line of products at multiple price points, from less feature-rich headsets targeting entry level players to more feature-rich headsets targeting hardcore gamers. Many of the headsets feature technology that processes the complex audio of the latest console and PC games. Turtle Beach feels that its headsets generally offer more features than similarly-priced competitive headsets, including surround sound, Dual-Band Wi-Fi and Dual Pairing Bluetooth connectivity, adjustable audio presets, digital signal processing, and advanced control over voice and game audio. Turtle Beach's premium headsets feature customizable audio processing, including desktop computer software that enables users to create their own audio presets and adjust surround sound speaker angles. Turtle Beach also strives to have the best audio quality and overall product quality in each of its price tiers.

Turtle Beach's price tiers correspond to its customer profiles, beginning with "Entry-Level" gamers and progressing through "Casual," "Enthusiast" and "Core." Each successive price tier incorporates a higher level of finishing, features and technology, progressing from passive stereo to amplified stereo, surround sound, and programmable surround sound. Premium headsets have padded leather headbands, accent stitching, and noise-isolating memory foam ear cups. Other features seen in premium headsets include removable microphones, breakaway cables and "charge-and-play" batteries that allow users to continue playing even as they recharge their batteries.

Each headset model is designed for a "primary" platform, such as a specific console or a PC, though many can be used with multiple platforms, and most are compatible with mobile devices. A primary platform and unique packaging often results in the products being represented in the applicable platform area by retailers, increasing the prominence of Turtle Beach products in physical retail locations and online catalogs.

Turtle Beach's core product catalog as of September 2013 included the following products:

<u>Customer Profile</u>	<u>Wired</u>	<u>Wireless</u>
Core	XP SEVEN, Z SEVEN	XP510, PX51, XP500
Enthusiast	XO SEVEN, DX12, DPX21, DP11, M SEVEN	XP400, PX5, Z300
Casual	XO FOUR, DXL1, PX22, Z22,	X42, X300, PX4, PX3
Entry-Level	X12, XL1, XLa XC1, P11, P4c, M1, M3, M5, N11, NLa, Z2, Z11, Z1	X32

### **Notes on the naming system:**

X/XP/XO/DX/DXP = Xbox 360 is the primary platform  
 P/PX/DP/DPX = PlayStation is the primary platform

N = Nintendo is the primary platform  
 M = Mobile is the primary platform  
 Z = PC is the primary platform

### **Limited Edition Headsets**

In addition to its standard portfolio of products, Turtle Beach makes limited edition headsets in connection with its licensing partnerships. These relationships create retail sales and marketing opportunities associated with

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the launch of major new gaming titles and entertainment properties. Some of these relationships also include exclusivity, where, for example, Turtle Beach is the only licensed gaming headset associated with a particular software title or entertainment brand.

In addition, Turtle Beach believes these headsets play an important role in raising general awareness of its brand, by associating it with popular gaming and entertainment franchises. Turtle Beach's first limited edition headsets were launched in July 2011 in an exclusive partnership with Activision for the game, *Call of Duty®: Modern Warfare® 3*.

### Call of Duty: Ghosts

In October 2013, Turtle Beach introduced a new line of limited edition *Call of Duty: Ghosts* gaming headsets. The headsets will feature *Call of Duty: Ghosts* branding, premium finishes and bonus content developed in collaboration with the game's developers, including voice prompts and audio presets. The limited edition headsets feature a black leather headband with blue stitching, bone-colored body and the *Call of Duty: Ghosts* mask graphic on the "speaker plates" on the face of each ear cup.

### Marvel SEVEN

In November 2013, Turtle Beach began selling the *Thor: The Dark World* edition of its Marvel SEVEN headset. This is the first product developed under Turtle Beach's partnership with Marvel Entertainment, which features premium finishes, and an interchangeable speaker, and it is compatible with several gaming consoles and handheld consoles, including the Nintendo DS and PS Vita, PC, Mac and mobile devices. The new headset includes a set of limited edition *Thor: The Dark World* speaker plates. The retail package features a dynamic image from the feature film.

### Tournament-Grade Headsets

Turtle Beach makes tournament-grade headsets under a license with Major League Gaming ("MLG"), the world's largest competitive gaming league and online multiplayer platform. MLG-licensed headsets currently include three models designed for professional players and gaming enthusiasts – the XP SEVEN console gaming headset, the Z SEVEN PC gaming headset, and the M SEVEN mobile gaming headset. In addition, Turtle Beach makes two MLG-licensed headsets for casual and entry-level gamers, the PX22 console gaming headset and Z22 PC gaming headset.

Turtle Beach's MLG-endorsed products offer a number of features designed for professional players that compete in tournaments. For example, to account for the high level of ambient noise during tournaments, the SEVEN Series headsets have a unidirectional microphone with lowered sensitivity to minimize interference from background noise when the player speaks into the microphone, as well as memory foam ear cups that provide noise-isolation. A programmable audio control unit has presets designed to give players an edge in changing game scenarios.

### Media Headsets

In October 2013, Turtle Beach launched a new line of media headsets. The iSeries headsets – initially including the wireless surround sound i60 headset and the wireless amplified stereo i30 headset – are "MFi-certified" by Apple, and enable the user to control applications such as iTunes® on Apple iOS mobile and OS X desktop devices. The MFi Program ("Made for iPhone/iPod/iPad") is a licensing program for developers of hardware and software peripherals that work with Apple's iPod®, iPad® and iPhone® devices. iSeries media headsets are carried at Apple retail stores, the Apple Online Store and the Turtle Beach Online Store.

The iSeries headsets include features that Turtle Beach first incorporated in its gaming headsets, including features that improve audio, chat and voice call quality and provide a broad level of control over audio. The iSeries media headsets feature premium finishes, including a leather headband and leather-covered, memory foam, noise-isolating ear cups. They also feature dual boom-less microphones that are designed to deliver clear, high-quality audio during chat and voice calling.

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The i30 is a wireless stereo Bluetooth 4.0 headset with features including voice morphing and active noise cancellation. The i30 headset can also be paired directly with Bluetooth devices and act as a stereo Bluetooth headset or as a wired stereo amplified headset using a standard 3.5mm cable.

The i60 features an audio control unit base for use with Mac desktops and laptops that provides fingertip audio and preset control. Turtle Beach believes the i60 will be the first wireless headset designed for Mac to provide 7.1 DTS surround sound with adjustable speaker angles and EQ presets, a fully programmable digital signal processor (DSP), dual-band Wi-Fi designed to deliver uncompressed, interference free wireless audio, and dual-pairing Bluetooth 4.0 connectivity. Turtle Beach also believes that the i60 will be the only headset that can connect simultaneously to a device with an OS X operating system and a device with an iOS operating system, allowing users to use the headset to answer an incoming call received on an iPhone while gaming or listening to music on a Mac desktop or laptop.

### **Core Strengths**

Turtle Beach feels that its 35-year legacy of audio innovation and strong, experienced leadership team form the core of its competitive advantage. Turtle Beach's other core strengths include:

- Innovative, high quality products that incorporate advanced audio and wireless technology;
- Strong brand and large, loyal installed base of consumers;
- Excellent retail relationships and distribution;
- Exceptional partnerships; and
- Economical and effective supply chain.

### **Product Design and Innovation**

Turtle Beach considers the rapid, cost-effective commercialization of its innovations in audio technology to be a key contributor to Turtle Beach's success. The Turtle Beach product management team takes a disciplined approach to product design that balances iteration, incremental improvement, and innovation to achieve a blend of differentiated technology designed to attract customers, maintain product design continuity, and exceed Turtle Beach's expectations as to quality, reliability and profitability. A wide array of consumer research informs product planning, design and pricing, which contributes to improvements in product engineering.

Turtle Beach's product management team introduced 17 new gaming and media headsets to the portfolio in 2013.

Turtle Beach also believes that advanced audio, digital signal processing, and wireless are differentiating factors for the Turtle Beach product portfolio. The ability to develop new features and incorporate them into products in a cost-effective manner has helped Turtle Beach expand and evolve its product portfolio and bring its products to market. As a result, Turtle Beach audio products have an array of features based on advanced technology that Turtle Beach believes provide a competitive advantage when its products are compared to those of competitors at similar price points.

**Audio Fidelity.** Gaming can be a very demanding environment for audio technology, where subtle audio cues can provide the player with important information about the in-game environment. Turtle Beach's philosophy is to deliver headsets with outstanding audio fidelity and performance at all of its price tiers. Turtle Beach headsets often utilize larger speaker drivers than competitive headsets at similar price points. Turtle Beach believes its larger drivers provide natural bass and treble and produce more accurate high- and low-range audio. Turtle Beach tunes the audio and surrounding chamber to improve audio performance.

**Digital Signal Processing.** Digital Signal Processors (DSPs) take audio signals that have been digitized, such as voice from a call or a soundtrack from a film, and manipulate them to improve their quality or characteristics. Digital signal processing can be used with audio to provide echo and noise cancellation, dynamic

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compression, audio effects such as voice morphing, volume changes, and multichannel surround sound. Fast processing speed can be employed to ensure that there is no perceptible audio latency and to rapidly process complex, multi-channel audio from games and films. Digital signal processing also plays a role in maximizing the performance and quality of voice audio, which can be important to multiplayer gaming, mobile and PC chat, and phone calls.

Turtle Beach began establishing expertise in digital signal processing as it developed increasingly complex PC sound cards in the 1990s. Over the past decade, that capability has been leveraged with gaming headsets, beginning in 2005 with the Turtle Beach HPA gaming headset, which was Turtle Beach's first multi-channel gaming headset. In 2008, Turtle Beach launched its first wireless Dolby® Surround Sound gaming headset, which represented the first in a line of Turtle Beach wireless surround sound headsets that used increasingly powerful digital signal processing. Many of Turtle Beach's mid-tier products and all higher-tier products utilize digital signal processing. Turtle Beach's premium products include desktop software that enables customization of a user's audio experience.

Parametric utilizes digital signal processing in its audio technology, and Turtle Beach plans to leverage its digital signal processing experience with Parametric's technology following the merger.

*Surround Sound.* Surround sound headsets can allow gamers to hear surround sound audio at a fraction of the cost of a traditional multi-speaker, surround sound stereo, with the additional benefit that the rest of the household does not have to listen to game play. The realism of surround sound audio and subtle, directional audio cues can provide players with an immersive gaming experience and a competitive advantage in multiplayer gameplay.

The addition of audio presets in high-end Turtle Beach surround sound headsets gives users the ability to alter their sound environment. A variety of gaming presets allow users to emphasize certain types of sound to gain an advantage. For example, some presets help to isolate the sound of footsteps so players can hear approaching threats over the sound of normal game play audio. Other presets optimize audio for watching films or listening to music. Turtle Beach's most advanced headsets even allow users to download game-specific presets, create their own presets, and adjust surround sound speaker angles.

*Wireless.* Wireless technology has played an important role in the evolution of Turtle Beach products, and Turtle Beach considers its ability to cost-effectively incorporate complex wireless features to be a competitive advantage. Wireless technology appeals to consumers who enjoy the freedom of movement and removes the need to stretch cables across living rooms.

In a common modern household – with mobile phones, tablets, wireless internet connections, microwaves, cordless phones, and other wireless appliances – wireless congestion is increased which can degrade performance. Turtle Beach uses Dual-Band WiFi, which searches for the least congested signal space, to maximize bandwidth and minimize interference. After introducing Dual-Band WiFi to its gaming headsets in 2011, Turtle Beach believes using Dual-Band WiFi for wireless headsets remains unique to Turtle Beach.

*Chat.* Chat is the audio communication between players in multi-player games as well as PC and mobile applications. Turtle Beach has developed a proprietary suite of technology to improve chat audio, which Turtle Beach considers an important attribute for multiplayer gaming and other communications scenarios involving one or more people. Chat Boost™ automatically increases the volume of chat audio as game volume increases so that loud noises within a game, like explosions, will not drown out the voices of a player's teammates. Noise Gate™ is a feature that restricts the transmission of audio through the microphone to minimize background noises transmitted through chat. Turtle Beach headsets also add the sound of users' own voices into the audio mix they hear so they don't have to yell to hear their own voice while wearing headsets. Variable Mic Monitor™ allows users to adjust the level at which players hear their own voice in the headset to achieve an optimum audio mix.

Some games require the player to use his or her voice to interact with the game, for example, by verbally communicating instructions to characters in the game. Turtle Beach expects voice to be relied upon by game



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developers similarly to the way motion-detection is currently being relied upon by game developers as form of game control and player recognition. For instance, in Grand Theft Auto Online, which launched on October 1, 2013, in-game characters react to the urgency in a player's voice, impacting the outcome of game scenarios. In addition, some missions within the game are very complex and require a smooth exchange of information, making the microphone a good option for controlling certain aspects of gameplay. A headset with a high-quality microphone can improve a player's ability to interact with a game when this kind of voice control is required.

**Bluetooth.** Turtle Beach incorporates dual-pairing Bluetooth in many of its wireless headsets. Bluetooth allows gaming headsets to connect directly to some consoles for wireless chat. In addition, Bluetooth allows consumers to take phone calls while they are gaming or watching a movie, and to stream music to their headphones. These headsets may also connect to Bluetooth-enabled tablets and televisions.

**Intellectual Property.** Turtle Beach has utility and design patents on a number of features and technologies used in its products, and has filed for additional utility and design patents. The expiration of any individual patent would not have a significant adverse effect on its business, nor would the failure of any existing patent applications to be issued.

Turtle Beach believes its combination of high-quality audio, product features and build quality differentiates its products and contributes to consumer preference of Turtle Beach headsets over those of competitors. Turtle Beach reviewed consumer ratings for its products on Amazon.com in October 2013 and found that Amazon users rated Turtle Beach products higher than those of competitors at each of its price tiers.

## **Brand and Installed Consumer Base**

Turtle Beach believes that its brand contributes value to its business and that the brand's image among consumers is a competitive advantage. In addition, the "installed base" of consumers – the number of units actually in use, which may be contrasted with market share, which reflects sales over a particular period – with Turtle Beach headsets, which Turtle Beach estimates to be more than 7 million users, plays a positive role in driving brand and product awareness, and makes Turtle Beach a more valuable partner.

**Brand Awareness and Sentiment.** Turtle Beach commissions periodic brand studies in key markets to measure consumer awareness and sentiment, and track changes in brand perceptions over time. The most recent study was conducted in July 2013 by NPD.

Turtle Beach's brand rating among Xbox 360 and PlayStation 3 console gamers who are familiar with the Turtle Beach brand – a measurement of positive brand perception – increased 7 points to 65 percent in 2013, and is 77 percent among 18-24 year-olds. Turtle Beach believes this strong brand perception relative to many of its competitors increases the likelihood of brand loyalty and brand recommendations.

**Installed Consumer Base.** Turtle Beach has a large installed base of consumers who own its gaming headsets, and Turtle Beach believes that individuals who play consumer games are a large and growing demographic. A recent study found that approximately 165 million Americans played videogames in 2012. A second study, entitled *2013 Electronic Software Association study: Essential facts about the computer and video game industry*, found that more than 51 percent of U.S. households own a dedicated game console, with each such household owning an average of two dedicated game consoles.

The July 2013 NPD study also found that ownership of Turtle Beach headsets among the survey group nearly doubled from 12 to 23 percent from the prior study in 2012.

According to a March 2012 study of approximately 2,500 gamers by Bowen Research that Turtle Beach commissioned, consumers who already own Turtle Beach headsets earn more and spend more on gaming than those that own other headset brands. The study revealed that Turtle Beach customers, on average, have a higher household income than owners of headsets made by competitors (34 percent earn more than \$75,000 annually vs. 27 percent of non-Turtle Beach headset buyers) and spend more on video gaming. They purchase more video

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games (79 percent purchase six or more games annually, vs. 68 percent of non-Turtle Beach headset buyers), are 26 percent more likely to have purchased a gaming peripheral (65 percent vs. 39 percent), and are 26 percent more likely to have an Xbox Live subscription (71 percent vs. 45 percent). Gamers who own Turtle Beach headsets play more frequently and are also more "social" when gaming, playing multiplayer games more often and more frequently.

Turtle Beach believes that this profile of Turtle Beach headset owners and Turtle Beach's large installed base of users comprised of gamers who, based on the Bowen Research study, play more, earn more, and spend more than gamers that did not own Turtle Beach headsets makes Turtle Beach the strongest potential audio partner for console, software and entertainment brands and has contributed to its success with partnerships and licensing.

### *Retail Distribution*

Turtle Beach has strong retail relationships and a large international distribution network.

Turtle Beach headsets are sold at more than 27,000 storefronts in 44 countries, including retailers such as Amazon, Argos, Best Buy, Carrefour, GameStop, HMV, Sainsbury, Target, Tesco and Walmart. Turtle Beach considers these relationships with major retailers to be a competitive advantage. Turtle Beach believes retailers value the brand as a leader because it drives sales across the gaming headset category. Turtle Beach believes prominent placement in video game and electronics retailers such as GameStop and Best Buy reinforces the brand's authenticity with gaming enthusiasts, and its presence in mass channel retailers such as Walmart and Target enables Turtle Beach to reach a wider audience of casual gamers. The established presence of Turtle Beach on Amazon.com and other online retail sites, and high consumer product ratings on those sites, increases the search visibility of Turtle Beach products and helps to influence both online and brick and mortar sales.

Based on the retail performance of Turtle Beach's products and strong retail relationships, Turtle Beach introduced a line of point-of-sale displays in 2010 and has worked to advance the capability of these displays as a selling tool. Turtle Beach expects to have over 15,000 of these displays deployed at retail storefronts globally by the 2013 holiday season, many of which are tablet-driven, interactive listening stations. Turtle Beach feels that these displays have proven to be a significant sales tool and a competitive advantage at retail stores.

Turtle Beach plans to rely on these retail relationships for the future anticipated commercialization of Parametric products after the merger.

The Turtle Beach website, <http://www.turtlebeach.com>, is an important hub for Turtle Beach's marketing efforts, serving as a destination for paid and earned media. Earned media is favorable publicity gained through promotional efforts other than advertising, as compared with paid media, which refers to publicity gained through advertising. The website acts as a hub for both online and offline activity, and provides a direct sales channel for new and refurbished products. Turtle Beach believes that the site, which has averaged over 500,000 unique visitors per month year-to-date through October 2013, plays an important role in the consumer decision journey as potential customers investigate planned purchases, and existing customers come to the site for assistance.

Turtle Beach informs its fan base through social media using a combination of paid and earned media, including posts, promotions, and keyword and sponsored contextual ads. Turtle Beach has significant fan and follower engagement across its primary social media channels, including Facebook, Twitter and YouTube.

Turtle Beach also maintains an actively managed database of current and prospective headset owners for email marketing, including monthly email newsletters and special one-time announcements. External vendors are used for database management and periodic acquisition of email addresses.

Broad distribution and retailer relationships have contributed to Turtle Beach's strong market share. According to data from NPD, Turtle Beach had a 53 percent dollar share of the U.S. console gaming headset market as of year-end 2012. Turtle Beach also had a significant share in the other major markets in which it operates, including a

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more than 50 percent share in the United Kingdom and approximately 40 percent of the market in Australia. International sales grew 47 percent year-over-year in 2012 due in part to expanded distribution capabilities.

Turtle Beach products are sold in more than 15,000 stores in the United States, Canada and Mexico, and nearly 12,000 stores in 44 countries across Europe, Asia-Pacific, Latin and South America, and the Middle East and Africa.

In October 2012, Turtle Beach acquired Lygo International Ltd, its primary distributor in the United Kingdom. This U.K. operation now serves as a hub and primary warehouse for Turtle Beach sales to the European market, and has strengthened Turtle Beach's European operations with support for sales, marketing, customer service and distribution. European distributor Bigben Interactive is also a key partner in Europe, managing distribution across ten countries.

In June 2013, Turtle Beach announced the appointment of Acton as the distributor of Turtle Beach gaming headsets in China. Turtle Beach expects Acton to provide Turtle Beach access to thousands of retail locations in China and to help Turtle Beach meet the growing demand for headsets and video game accessories from Chinese consumers.

According to TechWeb's 2012 *China Game Industry Report*, sales from online games, mobile games and console games was worth an estimated 60.3 billion Yuan (approximately \$10 billion) in 2012, and the market is expected to grow by double digits annually over the next five years. In September 2013, China's State Council lifted its ban on video game consoles in the country, allowing foreign companies to sell consoles throughout China for the first time since 2000, which will likely impact the projected growth of the Chinese market.

### **Partnerships**

Strategic partnerships, which can include licensing, sponsorship and promotional relationships, are an important part of Turtle Beach's growth strategy. Turtle Beach believes that its partnerships raise awareness for the brand, provide competitive advantages, create opportunities for retail promotions, appeal to retailers, and place the brand in front of consumers in fresh and exciting ways.

In 2013, Turtle Beach announced partnerships with Microsoft and Marvel and renewed a partnership with Activision that will make new Turtle Beach headsets available to consumers.

*Microsoft.* Through its partnership with Microsoft, Turtle Beach is developing audio solutions for the next-generation console, Xbox One, including the officially-licensed XO FOUR and XO SEVEN surround sound headsets. Turtle Beach is one of only two companies currently licensed and approved by Microsoft to produce Xbox One compatible audio products. As recently announced, headsets for Xbox One will be available in early 2014 pending Microsoft's release of software and hardware to support headset functionality. While Microsoft may license additional companies to produce Xbox One compatible headsets, Turtle Beach anticipates that it will enjoy a window of opportunity for its headsets in early 2014. The partnership also provides retail and marketing benefits, including integration into Microsoft marketing vehicles and preferred positioning at point-of-sale. In October 2013, Turtle Beach extended its partnership with Microsoft through 2015.

*Activision.* As part of a two-year exclusive agreement with Activision, Turtle Beach is launching a new line of limited edition headsets optimized for the new game title, Call of Duty: Ghosts. The new headsets will feature Call of Duty: Ghosts branding, premium finishes and bonus content developed in collaboration with the game's developers. The partnership provides a wide range of opportunities to increase exposure of the Turtle Beach brand to media and consumers.

In support of the partnership, Turtle Beach will promote across retail point-of-sale, media and marketing initiatives, including the Call of Duty Championship, in which professional gamers from around the world will compete using Turtle Beach headsets and tournament mixers in broadcast tournament events.

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The new agreement extends a relationship that began with 2011's *Call of Duty: Modern Warfare 3*, and continued last year with *Call of Duty: Black Ops II*. The launch of *Call of Duty: Black Ops II* was the biggest entertainment launch in 2012 □ more than any other game, film, or album □ with more than \$500 million in sales worldwide during its first 24 hours of release.

In connection with the launch of *Call of Duty: Black Ops II*, Turtle Beach and Activision worked together on consumer, trade and retailer events, as well as integrated marketing before, during and after the game launch, including social media, online and email marketing, media relations, promotional and advertising. The game and limited edition headsets shared retail displays, and *Call of Duty: Black Ops II* video content was integrated into Turtle Beach interactive retail displays in stores across North America and Europe.

The limited edition *Call of Duty: Black Ops II* Ear Force Tango headset was named a PlayStation Universe Best Accessory at the Electronic Entertainment Expo (E3) in 2012, *Examiner.com* Best Hardware of E3, and was honored with a 2013 CES Innovations award.

**Marvel Entertainment.** Under its partnership with Marvel Entertainment, Turtle Beach has developed the Marvel SEVEN, a premium entertainment headset that features interchangeable speaker plates. Consumers will be able to customize their headset with an assortment of collectible speaker plates featuring selections from Marvel's family of comic-based characters, including but not limited to Iron Man, Thor and The Hulk. The Turtle Beach partnership with Marvel creates opportunities to pair headsets with a broad array of Marvel properties, from feature films and TV shows to video games and comic books. The companies have already agreed to launch a *Marvel's Captain America: The Winter Soldier* edition of the Marvel SEVEN in Q1 2014.

Turtle Beach will coordinate with Marvel to deploy an extensive mix of marketing, media and retail initiatives to support the new headset. The first edition of the Marvel SEVEN at retail was the *Thor: The Dark World* edition which was in stores in time for the launch of the feature film in November 2013.

**eSports.** Turtle Beach has exclusive licensing and sponsorship relationships with some of the biggest players in competitive gaming, including Twitch and Major League Gaming. In the last three years, eSports have emerged as one of the fastest-growing segments of the digital games markets. Worldwide viewership has grown from 8.4 million in 2010 to a projected 50 million in 2013, according to Superdata Research Inc.

- **Twitch.** In 2013, Turtle Beach became the official audio partner of Twitch, known as the world's leading broadcast platform and community for video game enthusiasts. Twitch has an audience of more than 34 million unique viewers per month. Twitch users spend an average of 90 minutes a day interacting with other gamers, watching player video footage, and tuning into online gaming shows and live events. In February 2013, more than 600,000 gamers shared videos on Twitch, which were viewed over 28 million times. Turtle Beach believes that it is one of the first consumer brands to recognize the potential for growth in this area. Its partnership with Twitch pairs the brand with the company that is considered by many to be the leader in the space.
- **Major League Gaming.** Since 2012 Turtle Beach has been the official audio provider for Major League Gaming (MLG), the world's largest competitive gaming league and online multiplayer platform. MLG produces premium gaming broadcasts and holds video game tournaments online and in-person for competitive gamers from around the globe. MLG has also announced it intends to expanding programming to include original "ESPN-style" shows. MLG tournaments draw millions of online stream viewers, and average viewing times rise with each major event. MLG has played a central role in turning video games into an organized and highly lucrative form of sport. MLG reaches one of the most highly-engaged networks of 16 to 34 year olds with 8 million registered members online and millions watching competitive gaming programming every month. Turtle Beach co-sponsors tournaments, sells MLG licensed headsets and accessories, and has a significant on-air sponsorship presence that exposes the brand to millions of video game enthusiasts.



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Turtle Beach is also a part of several interrelated partnerships. Twitch and Turtle Beach both have relationships with Major League Gaming (MLG). Turtle Beach is the official audio partner for MLG, supplying headsets and tournament mixers for all MLG tournaments. Twitch features a MLG channel and hosts live broadcasts and replays of MLG tournaments. Through MLG, Twitch and Turtle Beach also share a connection with Activision and the Call of Duty franchise. Call of Duty is one of the games featured on the MLG Pro Circuit, and Turtle Beach creates exclusively licensed, limited edition Call of Duty headsets.

### **Supply Chain and Operations**

Turtle Beach has developed a global network of suppliers that manufacture products to meet Turtle Beach's time and cost objectives and meet the quality standards sought by Turtle Beach's customers. Turtle Beach has worked closely with component, manufacturing and global logistic partners to build a supply chain that Turtle Beach considers predictable, scalable and consistent. Turtle Beach is focused on long-standing working relationships with partners that have industry-leading technical capabilities. Turtle Beach believes this approach plays an important role in providing high-quality, reliable products and leading cost management practices.

In anticipation of new product development and incremental growth in existing business, Turtle Beach made additional resourcing investments to its team in 2013 and Turtle Beach plans to continue to make similar investments in 2014. In addition, Turtle Beach has focused on making advancements to its planning systems, sales and operations practices and design and procurement practices.

Turtle Beach plans to leverage its investments in its supply chain to provide leading planning, sourcing, manufacturing and delivery solutions to Parametric products in the event of commercialization after the merger.

### **Co petition**

Turtle Beach's console gaming headset competitors include both accessory manufactures and console manufacturers. Major console manufacturers such as Sony and Microsoft make chat communicators. These chat communicators are mono voice-only devices that do not transmit game audio, but do allow players to communicate with others. In addition, Sony makes two gaming headsets that compete against Turtle Beach PlayStation headsets.

Turtle Beach views chat communicators as a lead generator, drawing new customers to fully integrated gaming headsets. Turtle Beach believes that once new players experience the benefits of chat communicators, they often upgrade to a fully integrated gaming headset.

In the PC gaming segment Turtle Beach has more competitors than in the console gaming segment, and Turtle Beach has lower market share in the PC gaming segment. Unlike the console gaming market, there are dozens of brands offering PC gaming headsets. Many of the brands offering PC gaming headsets make an assortment of PC components and accessories, including cases, memory, keyboard, mice and controllers. Turtle Beach estimates that 65 percent of the PC gaming headsets on the market cost less than \$50 dollars, 25 percent cost between \$50 and \$100 dollars, and 10 percent cost more than \$100 dollars. Because a high percentage of the PC gaming headset market is comprised of less expensive, entry-level headsets Turtle Beach believes there is an opportunity for it to gain market share by offering higher priced, feature-rich gaming headsets targeted at gaming enthusiasts.

The iSeries media headsets that Turtle Beach launched in October 2013 face a highly competitive market. The consumer headphone market includes stereo headphones, where Bose® and Beats™ by Dre have established positions as market share leaders, as well as single-ear Bluetooth chat earpieces. Both types of products target the same smartphone and tablet owners that the new iSeries is targeting.

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Turtle Beach intends to build upon its brand awareness, sophisticated audio technology and high quality products to increase sales, profitability and brand awareness. Key elements of Turtle Beach's growth strategy include growing the core console and casual gaming business, expanding global distribution, broadening the product line, creating valuable partnerships, improving retail presence and identifying and exploring new audio products categories.

***Growing the Console Gaming Headset Business***

IDG estimates that more than 300 million current-generation gaming consoles have been sold worldwide, and millions play online using their consoles every day. Microsoft has estimated that its 46 million subscribers spend an average of 42 hours a month playing games on Xbox Live. Turtle Beach expects the introduction of next-generation consoles in November 2013 to add millions more to the installed base of consoles. The first priority in Turtle Beach's growth strategy is to continue to grow the core console gaming headset business, protecting share in established markets and increasing share in markets where Turtle Beach is less established.

A 2013 survey conducted by NPD found that only 22 percent of U.S.-based players of Xbox 360 and PlayStation 3 currently use a headset, suggesting to Turtle Beach that there is meaningful room for growth in this established market. In addition, more than half of headset owners are using their first headset. With its market share leadership and consumer base, Turtle Beach plans to capture a significant portion of sales from gamers upgrading to their second, more advanced headset and those buying new headsets for next-generation consoles.

In 2013, Turtle Beach announced a partnership with Microsoft that will enable Turtle Beach to produce officially-licensed headsets for the next-generation Xbox One console. At this time, Turtle Beach is one of only two announced audio companies licensed and approved by Microsoft to create Xbox One compatible audio products.

While industry analysts project that sales of next-generation consoles will be strong, the industry expects sales of current generation consoles to continue, albeit at a decreased rate. For example, Microsoft has publically announced that it expects to sell an additional 23 million Xbox 360s after the Xbox One is launched.

Worldwide sales of the title *Grand Theft Auto V* (GTAV) for current generation consoles reached \$800 million on the title's first day of sales on September 17, 2013, and reached \$1 billion after three days. NPD reported that Sony's PlayStation 3 was the highest selling game console in the U.S. overall in September 2013, largely driven by sales of the special PlayStation 3 500GB GTAV bundle. Turtle Beach views the sales of this magnitude less than two-months ahead of the launch of next-generation consoles as a willingness on the part of consumers to invest in their current generation platforms. As a result, Turtle Beach expects to continue to sell headsets for current-generation consoles through 2014 and beyond.

***Expanding Distribution and Improving Retail Presence***

Total points of distribution is a standard retail trade term used to summarize distribution breadth by multiplying the number of retail outlets selling a product by the number of those products in each location. It takes into account how widely products are available and how many items are available. Measured by points of distribution, Turtle Beach's footprint increased by more than 50 percent in 2012 to 200,000 points of distribution, and Turtle Beach branded headsets are now distributed in 44 countries across North America, South America, Europe, the Middle East, Africa and Asia. Turtle Beach expects to add 50,000 additional points of distribution in 2013.

Another important part of Turtle Beach's growth strategy is continually improving its retail presence. Over the last year, Turtle Beach has redesigned most of its product packaging and refreshed and modernized its branding and point-of-sale signage. Special interactive displays at key retailers, including Best Buy and Walmart, allow consumers to sample headsets at the point-of-purchase which Turtle Beach believes lifts sales. Turtle Beach believes that these displays have added additional appeal to both retailers and consumers and increased same store sales.

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### ***Broadening the Product Set***

Turtle Beach has been pursuing non-gaming applications for its headset technology, including entertainment in the home and mobility on the road, through the integration of new technology, the introduction of new products, and strategic marketing.

*Home Entertainment.* As the game console has evolved from a dedicated video game platform to a home entertainment hub, Turtle Beach headsets have evolved as well. With a combination of cross-platform versatility and audio presets for different listening scenarios, Turtle Beach's premium headsets transition from gaming, to movies, to music and to online chat and voice calls. Dual-Band Wi-Fi and dual-pairing Bluetooth are designed to provide both interference-free communication and the flexibility to use the headset with the growing number of smart wireless devices in the household. Turtle Beach's partnership to create audio solutions for the next-generation Xbox One console, and the upcoming release of the iSeries media headsets, pair Turtle Beach with two major brands in the home entertainment space – Microsoft and Apple. Turtle Beach expects these relationships to help it continue to expand its presence in the broader home entertainment market.

*Mobile.* The shift to touchscreen mobile handsets and growing adoption of touch-screen tablets that has occurred in recent years spurred significant growth in mobile gaming. Turtle Beach expects consumer spending on mobile gaming to increase, and the role of mobile devices to be central to consumer's lifestyles. In addition, Turtle Beach believes that gaming is both a driver and a beneficiary of the growth in the mobile device market. According to a study called "*Understanding Tablet Use: A Multi-Method Exploration*" compiled by Google, gaming currently represents the second most frequent use of a tablet (after checking email), and ranks ahead of making phone calls, emails and texting on smartphones.

Multiplayer games for mobile devices have increased in number and complexity, giving players more options to compete with others over local connections and online. Turtle Beach believes the increase in multiplayer-gaming on mobile devices will contribute to increased demand for headsets.

The majority of Turtle Beach wired headsets, and even some wireless headsets, include a standard 3.5 mm audio connection or an adaptor cord to make them compatible with many mobile devices. Turtle Beach wireless headsets use Bluetooth technology to allow the headsets to be used with mobile devices to take calls, video chat, watch video, game and stream music. Turtle Beach believes this emphasis on mobile compatibility will create a competitive advantage as consumers look for audio solutions.

Turtle Beach expects the upcoming launch of the iSeries platform to increase brand awareness outside of gaming and position Turtle Beach headsets as a multi-purpose audio solution for a broader set of media applications, including gaming, music, video, and communications.

*PC Gaming.* In 2013, Turtle Beach introduced a new line of PC products to grow its PC gaming headset market share. The tournament-grade, surround sound Z SEVEN and the stereo Z22 were introduced during the summer of 2013. Both headsets have received positive reviews from game and PC publications, including a category-leading 9.7 out of 10 score for the Z SEVEN from *Top Ten Reviews*. A wireless headset, the Z300, will be available at retail stores in November 2013.

Penetration of PC gaming varies by country, with PC gaming holding a majority share over consoles in some markets and holding a smaller share in others. According to the March 2013 *PCGA Pinnacle Report* issued by the PC Gaming Alliance, no geographical segments tracked in the study showed a decline in 2012 in overall PC game revenue, and some showed double-digit growth. In 2012 PC gaming generated \$6.8 billion in revenue in China, the fastest growing PC market tracked in the study, a 9 percent increase over 2011. Additionally, PC game markets in Korea, Japan, U.S., U.K. and Germany all showed growth in 2012. Together these markets also increased PC game revenue by 9 percent in 2012, to \$8.4 billion. Turtle Beach believes a strong PC gaming headset product offering is important for gaining market share in these countries.

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*New Audio Product Categories.* An element of Turtle Beach's growth strategy is to find complimentary categories of audio products that can leverage its core strengths and contribute to growth. Over the past 12 months, Turtle Beach has evaluated a number of additional audio technologies for potential acquisition. Turtle Beach believes that the merger with Parametric is the first step in its pursuit of multiple additional new product categories based on unique audio technology. Turtle Beach plans to rely on its core capabilities to develop, commercialize and sell audio technology products outside of the gaming headset category.

*Creating Valuable Partnerships*

Turtle Beach believes that its partnerships with console manufacturers, software developers, eSports leagues and gameplay and streaming communities will contribute to growth in 2014 and beyond. Turtle Beach actively negotiates with potential and existing partners regarding new licensing opportunities, products, and promotions and believes that it has a robust pipeline for 2014.

\* \* \*

Turtle Beach believes it has built a strong franchise in gaming headsets based on years of delivering innovative and high quality products through a large retail distribution network. Turtle Beach believes its capabilities in digital signal processing technology, its history of development and commercialization of innovative audio products, its partnerships and its supply chain enhance its reputation in the market and the strength of its business.

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### **TURTLE BEACH'S MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

*The following discussion and analysis of Turtle Beach's financial condition and results of operations was provided to Parametric by VTBH and should be read in conjunction with "Unaudited Pro Forma Condensed Combined Financial Information" and VTBH's historical audited financial statements as of and for the years ended December 31, 2012 and December 31, 2011 and its unaudited financial statements as of and for the nine months ended September 28, 2013 and September 29, 2012, included in Annex D hereto. This discussion and analysis contains forward-looking statements that are based on the beliefs of VTBH's management, as well as assumptions made by, and information currently available to, its management. Actual results could differ materially from those discussed in or implied by forward-looking statements for various reasons. See "Risk Factors—"Risks Related to Turtle Beach's Business" on page 24.*

#### **Business Overview**

Turtle Beach is a leading designer, developer and marketer of premium audio peripherals for video game, personal computer and mobile platforms. Audio technology and digital signal processing have been a core focus at Turtle Beach since the company was founded in 1977, and Turtle Beach management views continued innovation and state-of-the-art product development as critical factors in its continued success. Turtle Beach launched its first gaming headset in 2005, and played a significant role in developing the market for advanced gaming headsets. Many of Turtle Beach's headsets incorporate advanced technology and innovative features, and Turtle Beach has become the market share leader in console gaming headsets.

Turtle Beach believes that the primary growth drivers for its console gaming headset business are:

- A projected installed base of more than 130 million Xbox 360 and PlayStation 3 consoles as of year end 2013, as estimated in the August 2013 International Development Group ("IDG") Global Forecast Update;
- The increase in multiplayer online gaming, whether console-, mobile-, or PC-based, in which a gaming headset provides the additional benefit of being a communication device;
- The launch of new console video game titles, which Turtle Beach believes increases foot traffic into retail stores and lifts console gaming headset sales; and
- The installed base of Turtle Beach headsets which drive upgrades and replacements.

For a full description of Turtle Beach's business, see "Turtle Beach's Business" on page 112.

#### **Business Trends**

Turtle Beach's business is seasonal with a significant portion of sales and profits historically occurring around the holiday period. The business has also been affected by the introduction of the Xbox One and PlayStation 4 consoles in November 2013. As the business has grown, Turtle Beach has increased spending and investment in personnel and infrastructure and also invested to enter or strengthen its position in new geographic regions and expand the product line into areas outside of console gaming headsets.

#### **Seasonality**

Turtle Beach's revenues, operating profit and operating cash flows are affected by the seasonality of its business, with sales of console gaming headsets having historically been weighted towards the holiday period in the fourth quarter. In past years, more than 50 percent of Turtle Beach's revenues have been generated from September through December. Although Turtle Beach expects to experience a similar concentration of revenue in 2013, the percentage of annual sales concentrated in the equivalent period in 2014 may be reduced if the launch

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of gaming consoles in November 2013 drives demand for gaming headsets into the first half of 2014. Turtle Beach has historically experienced the most significant cash inflows in the first and fourth fiscal quarters as a result of the timing of customer purchases around the holiday seasons.

#### *New Xbox and PlayStation console launches*

In November 2013, Microsoft launched a new Xbox gaming console, the Xbox One, and Sony launched a new PlayStation gaming console, the PlayStation 4. Industry analysts have predicted a decline in console sales in 2013, the year in which the new consoles are announced, as compared with prior years and then a period of growth in console sales after the new consoles come to market, similar to what occurred in connection with past console introductions. The August 2013 IDG Global Forecast Update estimates a drop in Xbox 360 and PlayStation 3 global console unit sales of approximately 30 percent from 2012 to 2013, and a drop of 11 percent, including sales of the Xbox One and PlayStation 4, using an assumed November launch date for both consoles. The same report predicts this decline will be followed by an increase of 46% in console sales in 2014 across the major gaming console markets in North America, Europe and Japan. Turtle Beach's management believes that its revenue decline from 2012 to 2013 reflects this cyclical drop.

*Xbox One.* At this time, Turtle Beach is one of only two announced audio companies licensed and approved by Microsoft to develop and sell Xbox One compatible audio products. A proprietary hardware adapter, as well as related software is required for headsets to be fully functional with Xbox One. Due to the inclusion of this proprietary adapter, prior versions of Turtle Beach headsets, as well as headsets from all other competitors lacking a license from Microsoft, will not be compatible with the Xbox One without a separately purchased adapter. Turtle Beach believes the lack of interoperability, together with the inconvenience of using and the anticipated limited availability of the separate adapter, will drive significant sales of Xbox One headsets and believes it will have a market advantage as the strongest established player currently licensed to produce and sell Xbox One headsets after launch. In October 2013, Microsoft informed Turtle Beach that the adapter and software required to enable full headset functionality on the Xbox One will not be available until early 2014. As a result, Turtle Beach has deferred its XO Four and XO Seven headset launches, and believes that substantially all of the related revenues and profits previously anticipated for the fourth quarter of 2013 will instead be realized in early 2014. In its August 2013 report, IDG has forecasted Xbox One unit sales in North America and Europe of approximately 1.4 million units in the fourth quarter 2013. The same report forecasts 2014 sales of Xbox One consoles in North America and Europe of approximately 6.2 million units.

*PlayStation 4.* Turtle Beach currently sells several headsets that it believes will be compatible with PlayStation 4. Turtle Beach also has designed two new headsets, the P4C and PX4, specifically for the PlayStation 4, and expects strong demand for these products after the PlayStation 4 becomes available. In its August 2013 report, IDG has forecasted PlayStation 4 unit sales in North American and Europe of approximately 1.8 million units in the fourth quarter of 2013 and approximately 7.3 million units in 2014 in the same geographic areas. North American PlayStation 4 console sales exceeded one million units in the first 24 hours following its introduction, significantly exceeding the unit sales experienced during the same period for the PlayStation 3.

Industry analysts expect Microsoft and Sony to continue to support their current generation consoles over the next few years and, as a result, Turtle Beach anticipates that there will continue to be a significant market through 2013 and 2014 for its headsets that are compatible with Xbox 360 and PlayStation 3.

Prior console transitions preceded strong growth in the gaming industry and IDG estimates global hardware sales of Xbox and PlayStation consoles – including Xbox 360, Xbox One, PlayStation 3 and PlayStation 4 – will total 14.8 million units in 2013. IDG forecasts that global console sales will increase to 21.6 million units in 2014, representing an estimated 46 percent growth in unit sales from 2013. Global Xbox One console sales exceeded one million units in the first 24 hours following its introduction, significantly exceeding the unit sales experienced during the same period for the Xbox 360. Turtle Beach anticipates that this strong projected growth in sales of Xbox and PlayStation consoles in 2014 will fuel growth in sales of its gaming headsets.

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### *Investments in People and Infrastructure*

Turtle Beach's net revenues have more than doubled from 2010 to 2012 and it has invested to continue to build out its internal capabilities, including the hiring of new executives, significantly expanding the number of internal product development, product management, and operational personnel, and increasing marketing expenditures and investment in retail selling displays. In addition, Turtle Beach acquired a United Kingdom-based distributor, Lygo (now "TB Europe"), in October 2012, which added sales and marketing staff and expenses as well as warehouse and distribution facilities. Turtle Beach intends to continue to invest in its internal capabilities to support longer term growth.

### *Geographic Expansion*

Turtle Beach has a strong market position in North America, United Kingdom, and Australia with an estimated 50% dollar market share (or better) in North America and the United Kingdom, and an estimated 40% market share in Australia. Turtle Beach is also one of the top gaming headset providers in the rest of Europe but believes there is further opportunity for growth. Asia, in particular China, and Latin America are viewed by Turtle Beach as additional long-term growth opportunities. Turtle Beach intends to continue to make investments to establish stronger presence and growth in these regions.

### *Product Portfolio*

During 2011 and 2012, Turtle Beach significantly expanded its product portfolio to cover additional price tiers and to add products with different combinations of technology. Turtle Beach added ten new headsets in 2011, and 15 new headsets and three updated headsets in 2012. Four of the headsets added in 2011 and seven of the headsets added in 2012 had MSRPs below \$100. While overall unit sales of the company increased by 34% during 2012, the addition of these lower priced headsets resulted in a reduction of Turtle Beach's average wholesale selling price by 10%.

In late 2012, Turtle Beach management decided to reduce the number of product models. Given the expected launch of new consoles and the effect that management expected the launch to have on sales of Turtle Beach headsets, the management team also decided to reduce inventories of several models using price promotions and discounting to drive increased sales. The implementation of those reductions caused the gross profit of Turtle Beach to decline by approximately \$1.7 million during the nine months ended September 28, 2013 compared to the nine months ended September 29, 2012.

In October 2013, Turtle Beach launched a new line of media headsets, the iSeries, as part of its strategy to broaden its base of users from console gaming headsets to headsets for music, movies, and mobile gaming, which feature advanced technologies derived from its gaming headsets but designed for Apple desktop and mobile device users. The iSeries will be carried at Apple retail stores, the Apple Online Store and the Turtle Beach Online Store. While the stereo headphone category is large and very competitive, Turtle Beach management believes that their availability in Apple stores and the underlying technology innovation in the products will be an important catalyst for expanding its consumer base. This initiative represents an investment of over \$3 million in product development and marketing in 2013.

### *Cost of Goods*

During 2013, Turtle Beach implemented a more active program to refurbish and sell returned products, in which Turtle Beach seeks to sell products at a 0%-10% gross profit. Turtle Beach has also experienced a slightly higher cost charged by its contract manufacturing partners with respect to newer headset models as compared with older models, reflecting macro-level Chinese labor and material cost increases.

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Table of Contents**2013 Outlook**

Due to seasonality and the impact on the first half of 2013 of inventory management actions and the front-loading of marketing expenses, as described above, Turtle Beach anticipates significantly improved revenues, profit and cash flows in the second half of 2013. However, the delay of the Xbox One hardware and software discussed above is expected to result in a reduction of Turtle Beach's Xbox One headset-related revenues and profits previously anticipated for the fourth quarter of 2013, substantially all of which Turtle Beach believes will be realized in early 2014. This delay will result in a downward revision to the 2013 outlook for revenue and EBITDA provided by Turtle Beach's management on August 8, 2013. The level of such impact depends on several factors, including the projected launch date for the requisite hardware and software from Microsoft which is still being assessed. Turtle Beach plans to update its 2013 outlook for revenue and EBITDA following completion of this assessment.

**Basis of Presentation****Revenue**

Turtle Beach's revenues are derived primarily from the sale of gaming headsets with the remaining gross sales derived from accessories, including replacement parts for gaming headsets, audio cables, and sound cards. Turtle Beach currently derives the majority of its revenue from headsets designed primarily for use with the Xbox 360 and PlayStation 3. The majority of Turtle Beach's products are distributed domestically to specialty retailers of consumer electronics, superstores, online retailers and wholesalers, and internationally through TB Europe and to wholesalers. Products are also sold directly to consumers through Turtle Beach's website. International sales are generally shipped directly from Turtle Beach's suppliers in China to international wholesalers. Turtle Beach's distribution footprint increased by more than 50 percent in 2012 and Turtle Beach branded headsets are distributed in 44 countries across North America, South America, Europe, the Middle East, Africa, Australia and Asia. Turtle Beach's headsets are sold at more than 27,000 storefronts across 44 countries, including major retailers such as Amazon, Best Buy, and Wal-Mart.

Turtle Beach recognizes revenue when all of the following criteria are met: (1) persuasive evidence exists of an arrangement with the customer reflecting the terms and conditions under which the services will be provided; (2) services have been provided or delivery has occurred; (3) the fee is fixed or determinable; and (4) collection is reasonably assured. Collectability is assessed based on a number of factors, including the creditworthiness of a customer and transaction history.

Turtle Beach's net revenues are influenced by numerous factors such as product volume and mix, pricing, geographic mix, foreign currency exchange rates, the mix between sales to resellers and end users and adjustments for sales returns, price protection programs and co-op programs.

**Cost of Revenue and Gross Profit**

Turtle Beach's cost of revenue primarily consists of manufacturing costs associated with its headsets. Cost of revenue also includes charges for inventory obsolescence, freight and personnel costs including stock compensation expense.

Products gross profit percentage is influenced by numerous factors such as product volume and mix, pricing, geographic mix, the mix between sales to resellers and end-users, third-party costs (including both raw material and manufacturing costs), warranty costs and charges related to excess and obsolete inventory.

**Operating Expenses**

Turtle Beach's significant operating expenses are: (1) sales and marketing; (2) product development, and (3) general and administration. The components of sales and marketing expenses include trade shows and events, promotions, salaries and benefits, direct media advertising, in-store advertising and brand building displays.



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Personnel expenses are the largest category of expense in Turtle Beach and include salaries, benefits, bonuses, sales commissions and stock-based compensation expense. Turtle Beach expects personnel expenses to increase in absolute dollars as new employees are hired to support growing the business.

***Sales and Marketing Expenses*** Selling and marketing expenses are Turtle Beach's largest functional category of total operating expense. These expenses primarily consist of media and advertising, which include online search engine optimization, investment in retail sales displays and tradeshows. Expenses also include salaries and benefits related to Turtle Beach's worldwide direct sales force, sales commissions, travel and entertainment costs, sales support, sales development and outside sales consultants. Turtle Beach plans to continue to invest in sales and marketing efforts, including a plan to increase the number of sales personnel worldwide in order to expand reach in international markets. In addition, Turtle Beach intends to continue to grow its marketing and promotional expenditures to build brand awareness.

***Product Development Expenses*** Development expenses are costs related to the development and enhancement of Turtle Beach's products. These expenses consist of salaries and benefits, information technology, consulting, engineering samples and prototypes and allocation of facility-related costs. Turtle Beach expects its development costs to increase in absolute dollars as it continues to expand product offerings and global reach.

***General and Administrative Expenses*** General and administrative expenses consist primarily of salaries and benefits, professional fees, allocation of facility costs, bad debt and depreciation. General and administrative personnel costs include Turtle Beach's executive, finance, human resources, information technology and external legal functions. Turtle Beach's professional fees consist primarily of accounting, tax, legal, recruiting and other consulting costs. Turtle Beach expects an increase in general and administrative spending related to the costs associated with being a public company as Turtle Beach assumes the required reporting and compliance obligations.

## ***Other Expense, net***

Other Expense, net, is comprised of the following items:

Interest expense consists primarily of interest expense on Turtle Beach's revolving credit facility, term loan and Turtle Beach's Series B preferred stock. Turtle Beach expects its interest expense to increase on an absolute dollar basis in the near term due to the debt arrangements entered into during 2011 that were amended in 2012 and 2013.

Other expense consists primarily of foreign currency exchange gains and losses. Turtle Beach's foreign currency exchange gains and losses relate to transactions and asset and liability balances denominated in currencies other than the U.S. dollar. Turtle Beach expects its foreign currency gains and losses to continue to fluctuate in the future due to changes in foreign currency exchange rates. Other expenses also include derivatives to partially offset Turtle Beach's business exposure to foreign currency exchange risk.

The gain on bargain purchase from acquisition consists of the excess value of the net assets acquired over consideration paid when Turtle Beach acquired TB Europe.

## ***Provision for Income Taxes***

The provision for income taxes consists of federal and state income taxes in the United States, income taxes in certain foreign jurisdictions and deferred income taxes reflecting the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes and includes Turtle Beach's uncertain tax positions. Earnings from Turtle Beach's non-U.S. activities are subject to local country income taxes and may be subject to U.S. income taxes.

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### Restatements of Previously Issued Financial Statements

Turtle Beach has restated the financial statements of VTB as of December 31, 2010, to correct for the following errors:

- Turtle Beach determined that the reserve for sales returns and the allowance for doubtful accounts as of December 31, 2010, were overstated by \$1.4 million and \$0.6 million due to errors in the calculation of these estimates. The correction of these errors increased revenue by \$1.4 million and decreased operating expenses by \$0.6 million.
- Turtle Beach has recorded additional adjustments in the 2010 VTB financial statements in order to correct other errors which were determined not to be material individually or in the aggregate. The most significant of such adjustments was to increase income tax expense for reserves associated with uncertain tax positions, decrease business transactions expenses for amounts that should have been recorded to additional paid in capital and to increase interest expense related to Turtle Beach's Series B redeemable preferred stock.

The following table presents the impact of the restatement adjustments on VTB's statement of operations for the period ended December 31, 2010 (in thousands):

	Year Ended December 31, 2010		
	As Previously Reported	Effect of Restatement	As Restated
Net revenue	\$ 90,470	\$ 1,400	\$91,870
Cost of revenue	49,387	1,169	50,556
Operating expenses	25,217	(2,190)	23,027
Operating income	15,865	2,422	18,287
Other expense, net	340	241	581
Income before provision for income tax	15,525	2,181	17,706
Provision for income tax	6,255	1,329	7,584
Net income	9,270	852	10,122

In addition, Turtle Beach also recorded certain audit adjustments to the 2011 financial statements relating to VTB to correct the following errors:

- Turtle Beach determined that the stock-based compensation expense was understated by \$2.7 million because Turtle Beach, on a retrospective basis determined the fair value of the options granted during 2011 exceeded the exercise price.
- Turtle Beach determined inventory was understated by \$1.0 million due to a \$0.6 million error in the calculation of excess inventory reserves and to a \$0.4 million error in the calculation of capitalized freight.
- Turtle Beach has recorded additional adjustments in the 2011 VTB financial statements in order to correct other errors which were determined not to be material individually or in the aggregate. The most significant of such adjustments was to increase interest expense related to Turtle Beach's Series B redeemable preferred stock.

The impact of these adjustments on Turtle Beach's consolidated financial statements was \$1.7 million addition to total assets, \$0.2 million addition to stockholders' equity and \$3.3 million reduction to net income.

Table of Contents**Results of Operations**

The following table sets forth Turtle Beach's statement of operations in dollars (in thousands):

	Nine Months Ended		Years Ended December 31,		
	September 28, 2013	September 29, 2012	2012	2011	2010 As Restated
	(Unaudited)				
Net revenue	\$ 92,352	\$ 97,099	\$207,136	\$166,121	\$ 91,870
Cost of revenue	68,759	62,890	132,795	96,536	50,556
Gross profit	23,593	34,209	74,341	69,585	41,314
Operating expenses:					
Selling and marketing	21,783	12,193	22,837	13,009	5,641
Product development	3,239	1,538	2,099	1,839	825
General and administrative	5,678	3,359	6,153	7,094	2,128
Business transaction	2,287	—	342	9,375	14,433
Total operating expenses	32,987	17,090	31,431	31,317	23,027
Operating (loss) income	(9,394)	17,119	42,910	38,268	18,287
Other expense, net:					
Interest expense, net	4,580	2,873	4,738	2,932	581
Other expense, net	256	—	7	—	—
Gain on bargain purchase from acquisition	—	—	(2,303)	—	—
Total other expense, net	4,836	2,873	2,442	2,932	581
(Loss) income before (benefits) provision for income taxes	(14,230)	14,246	40,468	35,336	17,706
(Benefits) provision for income taxes	(7,186)	4,957	14,008	13,782	7,584
Net (loss) income	<u>\$ (7,044)</u>	<u>\$ 9,289</u>	<u>\$ 26,460</u>	<u>\$ 21,554</u>	<u>\$ 10,122</u>

**Period Ended September 28, 2013 Compared to Period Ended September 29, 2012****Revenue**

Revenue for the nine months ended September 28, 2013 totaled \$92.4 million representing a \$4.8 million or 4.9% decline over the same period in 2012. Total international net revenue decreased 2.1% year over year, driven by a 17.6% decrease in revenue outside the UK, but partially offset by a 22.3% increase in the UK relating to the acquisition of TB Europe in October 2012. North America net revenue declined 8.3% due to the impact of proactive inventory management, expected lower demand and shift in product mix due to the November 2013 next generation console roll-outs. This decline was partially offset by a 350% increase in refurbished product revenue as Turtle Beach accelerated efforts to reduce on-hand refurbished inventory. Turtle Beach increased its price protection awards in the first half of 2013 to reduce on hand inventories ahead of the Xbox One and PS 4 next generation console roll-out in November 2013. Turtle Beach believes that headset volume will increase over the next 18-24 months following the Xbox One and PlayStation 4 next generation console roll-outs. In addition, Turtle Beach believes the new consoles will rebalance the product mix back to more fully featured enhanced gaming experience headsets that are at higher price points.

**Cost of Revenue**

Cost of revenue increased to 74.4% of revenue for the nine months ended September 28, 2013 from 64.7% for the same period in 2012. The increase in cost of revenue is primarily driven by a number of non-recurring cost items and a change in the mix between North America and international business. The following non-recurring items resulted in a cumulative 6.4% increase in cost of revenue year over year: refurbished product revenue reduced gross profit by 2.4%; the deferral of inter-company profit capitalized in TB Europe inventory

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following its acquisition reduced gross profit by 0.9%, which is anticipated to be recovered over the next two quarters as products are sold out of TB Europe; higher freight in and product certification expenses decreased gross profit by 1.4%; and inventory reduction initiatives implemented in the first half of 2013 ahead of the next generation console release reduced gross profit by 1.7%. In 2013 international business increased as a percentage of total revenues and these revenues carry a higher cost. The 2013 change in mix between North America and international business increased costs approximately 4.4% of net revenue.

The highly seasonal nature of revenue causes certain cost items to appear inflated as a percentage of revenue for the first nine months of the year. The impact of these items on cost of revenue for the full year will be substantially less and analysis of cost of revenue should be done on an annual basis to properly understand performance. The gross profit percentage of revenue for the first half of 2013 is comparable to the same time period in 2012 excluding the non-recurring items and change in mix mentioned above.

### *Selling and Marketing*

Selling and marketing expenses increased \$9.6 million from the nine months ended September 29, 2012, as compared to September 28, 2013, primarily due to \$1.7 million of depreciation related to retail sales displays, \$0.7 million in amortization for intangibles related to the TB Europe acquisition (October 2012), a \$1.8 million increase in promotional expenses such as expenses for tradeshows, \$1.5 million of sales and marketing expenses at TB Europe and related exhibits, \$1.2 million for international marketing, an increase in salaries and benefits of \$0.5 million due to additional headcount and a \$0.2 million increase in sponsorship fees. Turtle Beach management made a strategic decision to invest more heavily in marketing during the first nine months of 2013 ahead of the new console roll-outs. This action was taken to position Turtle Beach for the industry projected demand increase and shift to full feature wireless headsets driven by the new gaming consoles. Overall marketing spending (excluding depreciation ) for 2013 is expected to increase approximately 15% as compared to 2012 with much of the increase going to support the introduction of the Turtle Beach's first media headsets (i30 and i60) in Apple stores in November 2013.

### *General and Administrative*

General and administrative expenses increased \$2.3 million from the nine months ended September 29, 2012, as compared to September 28, 2013, primarily due to \$1.3 million in stock-based compensation expense, \$0.5 million in separation related payments to two founders of Turtle Beach ("Founders"), \$0.2 million in higher accounting and legal compliance expense and \$0.1 million in increased depreciation.

### *Product Development*

Product development expenses increased \$1.7 million from the nine months ended September 29, 2012, as compared to September 28, 2013, primarily due to a \$0.9 million increase in salaries and benefits associated with increased headcount in engineering, a \$0.3 million increase in consulting fees for industrial design projects, a \$0.1 million increase for patent filing fees and a \$0.1 million increase in higher travel expenses associated with the increased headcount.

### *Business Transaction*

Business transaction expenses increased \$2.3 million from the nine months ended September 29, 2012, as compared to September 28, 2013, primarily due to the costs incurred in connection with the proposed merger with Parametric.

### *Interest Expense, net*

Interest expense, net, increased by \$1.7 million from the nine months ended September 29, 2012, as compared to September 28, 2013, primarily due to the higher average term and revolver loan balance outstanding during the period and additional financing costs.



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**Table of Contents*****Income Tax Expense***

Income tax expense decreased by \$12.1 million from the nine months ended September 29, 2012 as compared to September 28, 2013, due to the projected tax benefit relating to the loss incurred to date. The effective tax rate for the period was 49%.

**Year Ended December 31, 2012 Compared to Year Ended December 31, 2011*****Revenue***

Net revenue increased by \$41.0 million, or 24.7%, to \$207.1 million in 2012 from \$166.1 million in 2011.

North America revenue increased by \$15.3 million, or 11.9%, to \$146.4 million from 2011, as compared to 2012 primarily due to increased sales to existing retail customers, the addition of new retailers and the release of new products such as PLA, XP300 and XP400 series headphones.

International revenue, which consists of sales to distributors in Europe and sales by TB Europe, increased by \$25.8 million, or 73.7%, to \$60.8 million, from 2011 as compared to 2012, primarily due to the increase in distribution channels and revenue associated with new product releases.

***Cost of Revenue***

Cost of revenue increased to 64.1% of revenue from 58.1% in 2011 primarily due to the mix of product as the company broadened its product lines to expand overall market share and increased price protection and promotions in the fourth quarter of 2012 to reduce channel inventories. In addition, the company did see an increase in costs associated with products that were upgraded or enhanced to be competitive. The cost increases were partially offset by product cost improvements in our international operations.

***Selling and Marketing***

Selling and marketing expenses increased \$9.8 million, or 75.5%, in 2012 as compared to 2011, primarily due to a \$4.0 million increase direct media, trade shows and exhibitions to promote new product releases, an increase in depreciation on retail sales displays of \$2.3 million and a \$0.7 million increase in salaries and benefits related to increases in marketing headcount to support sales growth.

***General and Administrative***

General and administrative expenses decreased \$0.9 million, or 13.3%, in 2012 as compared to 2011, primarily due to \$3.4 million of restricted stock which was awarded and vested immediately to a Turtle Beach director in 2011. There were no restricted stock grants in 2012. This decrease was partially offset by an increase in salaries and benefits of \$1.3 million, which included \$0.5 million paid to two Founders as compensation to support the transition period. In addition, there was a \$750,000 increase in the allowance for doubtful accounts due to the 41% increase in accounts receivables.

***Product Development***

Product development expense increased \$0.3 million in 2012 as compared to 2011, primarily due to \$0.3 million increase in additional staffing and consultants. During 2012, the Turtle Beach's product development focused on new product development and technologies to enhance existing products and accessories.

***Business Transaction***

Business transaction expenses decreased \$9.0 million over 2011 primarily due to bonus payments accrued in 2011 that were not incurred in 2012. Costs in 2012 were composed of legal and outside consulting fees incurred with the acquisition of TB Europe in 2012 totaling \$0.3 million.

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Table of Contents*Interest Expense, net*

Interest expense for the year ended December 31, 2012 increased \$1.8 million over 2011 primarily due to higher average term loan balance outstanding throughout the year. Additional debt issuance costs of \$1.3 million that will be amortized over the contractual life of the credit facility related to the revolver amendment, \$0.3 recognized in conjunction with the August 2012 debt extinguishment.

*Gain on Bargain Purchase from Acquisition*

The gain on bargain purchase is related to the purchase of TB Europe. See Note 6, "Acquisition," to Turtle Beach's historical audited financial statements, which are included as Annex D to this proxy statement, for details related to the acquisition.

*Income Tax Expense*

Income tax expense increased by \$0.2 million from 2011 as compared to 2012, as a result of the increase in income. The effective tax rate in 2012 was unchanged at 37% in 2011. The difference between the effective tax rate and the statutory tax rates is primarily related to differences in book and tax treatment of stock based compensation and non-deductible expenses.

**Year Ended December 31, 2011 Compared to Year Ended December 31, 2010***Revenue*

Net revenue increased \$74.3 million, or 81.0%, to \$166.1 million in 2011 from \$91.9 million in 2010.

North America revenue increased \$52.2 million, or 66.2%, to \$131.1 million from 2010 as compared to 2011, primarily due to new product releases.

International revenue, which consists primarily of sales to distributors in Europe, increased by \$22.0 million, or 169%, to \$35.0 million, from 2010 as compared to 2011. The increase was primarily due to the increase in distribution channels.

*Cost of Revenue*

The cost of revenue increased 91% in 2011 from 2010 due to higher product related costs associated with more sophisticated headset products and partially offset by the mix of business. The company experienced strong business activity growth and the more sophisticated and expensive headsets represented a greater share of business as our customers looked for an enhanced gaming experience.

*Selling and Marketing*

Selling and marketing expenses increased by \$7.4 million from 2010 as compared to 2011, primarily due to increases of \$3.8 million for direct media and \$1.1 million for advertising and promotional materials to support new product releases and to build marketing infrastructure. In addition, there was an increase of \$1.3 million for salary and benefits due to an increase in marketing headcount to support planned growth.

*General and Administrative*

General and administrative expenses increased \$5.0 million from 2010 as compared to 2011, primarily due to the restricted stock units issued to the Turtle Beach's Chairman of the Board of Directors valued at approximately \$3.4 million which vested immediately. In addition, there were increases in consultant and legal fees of \$0.9 million.

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### ***Product Development***

Product development expense increased by \$1.0 million from 2010 as compared to 2011 primarily due to a \$0.7 million increase in salaries and benefits in an effort to formalize the product development infrastructure.

### ***Business Transaction***

Business transaction expenses decreased \$5.1 million from 2010 as compared to 2011, primarily due to fees incurred with the Stripes acquisition in October of 2010 that were not incurred in 2011.

### ***Interest Expense, net***

Interest expense increased by \$2.4 million from 2010 as compared to 2011, primarily due to a higher average term loan balance outstanding throughout the year and the accrual of interest on Turtle Beach's Series B Preferred Stock which was issued in October 2010.

### ***Income Tax Expense***

Income tax expense increased \$6.2 million from 2010 as compared to 2011, as a result of the increase in income. The effective tax rate in 2011 was approximately 37% compared to approximately 37% in 2010. There were no significant changes in effective tax rate. The difference between the effective tax rate and the statutory tax rates is primarily related to differences in book and tax treatment of stock based compensation and non-deductible expenses.

### ***Adjusted EBITDA***

"Adjusted EBITDA" is defined as net income before interest, taxes, stock-based compensation (non-cash), business transaction costs, gain on bargain purchase, depreciation and amortization. Turtle Beach's management believes Adjusted EBITDA is a useful measure to help evaluate its business, analyze trends, measure performance, prepare financial projections and make strategic decisions.

Turtle Beach's management adjusts net income (loss) for business transaction costs and gain on bargain purchase from its calculations of Adjusted EBITDA because it believes that such items are not representative of Turtle Beach's core operations. Business transaction costs and gain on bargain purchase are comprised of the following items for the periods presented:

- For the nine months ended September 28, 2013, business transaction costs consist of acquisition-related costs in the amount of \$2.3 million related to Turtle Beach's proposed merger with Parametric;
- For the year ended December 31, 2012, business transaction costs consist of \$0.3 million of acquisition-related costs and gain on bargain purchase is \$2.3 million, in each case, related to Turtle Beach's acquisition of TB Europe (see Note 6 (Acquisition) to the consolidated financial statements included as Annex D to this proxy statement for more information regarding the acquisition of TB Europe);
- For the year ended December 31, 2011, business transaction costs consist of \$9.4 million of performance bonuses related to the recapitalization (see Note 1 (Organization and Description of the Business – Recapitalization) to the consolidated financial statements included as Annex D to this proxy statement for more information regarding the recapitalization);
- For the year ended December 31, 2010, business transaction costs consist of \$4.0 million in legal and professional fees and \$10.4 million in performance bonuses related to the recapitalization.

Turtle Beach's management further believes that most investors would exclude business transaction costs, gain on bargain purchase and stock-based compensation from customary EBITDA calculations because those items are often viewed as either non-recurring and not reflective of ongoing financial performance or have no cash impact on operations.

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The material limitations of Adjusted EBITDA are as follows: Adjusted EBITDA is not a recognized term under GAAP and does not purport to be an alternative to net income as an indicator of operating performance or any other GAAP measure. Moreover, because not all companies use identical measures and calculations, the presentation of Adjusted EBITDA may not be comparable to other similarly titled measures of other companies. These limitations are compensated for by using Adjusted EBITDA in conjunction with traditional GAAP operating performance and cash-flow measures. Additionally, for the sake of clarity, "Adjusted EBITDA" as presented here is defined differently than "Adjusted EBITDA" as used in the section titled "Opinion of Craig Hallum Capital Group LLC, Financial Advisor to the Parametric Board."

Adjusted EBITDA (and a reconciliation to net income (loss), the nearest GAAP financial measure) for the nine months ended September 28, 2013 and September 29, 2012 and years ended December 31, 2012, 2011 and 2010 are as follows (in thousands):

	Nine Months Ended		Years Ended December 31,		
	September 28, 2013	September 29, 2012	2012	2011	2010
Net income (loss)	\$ (7,044)	\$ 9,289	\$26,460	\$21,554	\$10,122
Interest expense, net	4,580	2,873	4,738	2,932	581
Depreciation and amortization	3,763	1,127	2,606	700	240
Stock-based compensation	1,919	402	985	3,749	—
Provision (benefit) for income taxes	(7,186)	4,957	14,008	13,782	7,584
Business transaction costs	2,287	—	342	9,375	14,433
Gain on bargain purchase	—	—	(2,303)	—	—
Adjusted EBITDA	<u>\$ (1,681)</u>	<u>\$ 18,648</u>	<u>\$46,836</u>	<u>\$52,092</u>	<u>\$32,960</u>

Adjusted EBITDA decreased in the nine months ended September 28, 2013 as compared to the nine months ended September 29, 2012 primarily due to lower revenues and mix of business ahead of the Xbox One and PlayStation 4 console roll-outs, higher refurbished product revenues at negative contribution margin, proactive inventory reduction initiatives in first half of year to reduce channel inventory, and higher sales and marketing expenses due to the acquisition of TB Europe, investments to drive growth in international markets and accelerated marketing spend ahead of the November 2013 console roll-outs.

In 2012, Adjusted EBITDA decreased over 2011 primarily due to an increase in compensation expenses due to an increase in headcount to support planned growth of Turtle Beach, the increase in selling and marketing expenses related to tradeshows, direct media and freight expenses, an increase in general and administrative expenses and \$2.0 million of compensation to the two Founders to assist with transition.

In 2011, Adjusted EBITDA increased over 2010 primarily due to the increase in net sales from 2010 to 2011. In addition, business transaction expenses of approximately \$14.4 million were incurred in 2010 related to Turtle Beach's recapitalizations that were not incurred in 2011. This increase was offset by higher general and administrative expenses related to an increase in headcount, marketing expenses for tradeshows and direct media and development expenditures.



Table of Contents**Liquidity and Capital Resources**

	Nine Months Ended		Year Ended December 31,		
	September 28, 2013	September 29, 2012	2012	2011	2010 As Restated
	(In thousands)				
Cash and cash equivalents at beginning of year	\$ 5,219	\$ 15,942	\$ 15,942	\$ 7,990	\$ 4,893
Net cash provided by (used in) operating activities	15,259	(2,213)	5,000	2,401	1,106
Net cash used in investing activities	(4,109)	(5,305)	(11,280)	(1,634)	(822)
Net cash provided by (used in) financing activities	(11,335)	(6,614)	(4,364)	7,185	2,813
Effect of foreign exchange on cash	28	—	(79)	—	—
Cash and cash equivalents at end of year	<u>\$ 5,062</u>	<u>\$ 1,810</u>	<u>\$ 5,219</u>	<u>\$15,942</u>	<u>\$ 7,990</u>

**Management Assessment of Liquidity**

Turtle Beach has funded its operations and acquisitions in recent periods primarily with its operating cash flows and proceeds from the sale of Series A Preferred Stock and debt financings. Turtle Beach's principal sources of liquidity as of September 28, 2013 and December 31, 2012 consisted of cash and cash equivalents of \$5.1 and \$5.2 million, respectively. Turtle Beach continually projects anticipated cash requirements, which includes cash held outside the United States in its foreign subsidiary, for requirements which may include potential merger and acquisition activity, capital expenditures, principal and interest payments on Turtle Beach's outstanding indebtedness and working capital requirements. As of September 28, 2013 and December 31, 2012, Turtle Beach permanently reinvested approximately \$0.7 million and \$2.6 million of earnings from its foreign subsidiary and has not provided for U.S. federal income and foreign withholding taxes. If Turtle Beach were to distribute these earnings, such earnings could be subject to income tax upon repatriation. Determination of the amount of unrecognized deferred tax liability related to these earnings is not practicable.

**Debt Obligations****Term Loan**

In October 2010, Turtle Beach entered into a Loan and Security Agreement with various financial institutions. The Loan and Security Agreement provided for term loans aggregating to \$28.0 million. Turtle Beach's obligations under its credit facility are secured by a first priority lien against substantially all of Turtle Beach's assets. The term loans bear interest at the greater of (i) the minimum interest rate of 5.50% or (ii) LIBOR (London interbank offered rate) plus 4.0% per annum. Interest is due monthly. The term loans mature on October 12, 2015 and have combined scheduled quarterly principal repayments, due on the last day of each quarter.

In August 2012, the Loan and Security Agreement was amended and restated to increase the principal amount on the term loans to \$45.0 million and to amend the maturity date to August 22, 2015. Turtle Beach drew down \$45 million of the term loan in connection with the amendment, of which \$25.2 million went to pay off the outstanding balance. The term loans bear interest at Turtle Beach's option at (i) the Adjusted Base Rate plus the applicable margin ranging from 2.50% to 3.25% as determined by Turtle Beach's total leverage ratio, or (ii) LIBOR, plus the applicable margin ranging from 3.50% to 4.25%. The Applicable Base Rate is equal to the highest of (1) the Prime Rate as determined by the syndication agent, (b) Federal Funds Rate plus 0.5% and (c) the LIBOR rate plus 1%. As of September 28, 2013 the interest rates on the term loans was 5.75%. As of December 31, 2012, the interest rate on the term loan was 5.5%. Interest is due, at Turtle Beach's option, every 30, 60 or 90 days. The term loans have scheduled quarterly principal repayments of \$3.8 million, due on the last day of each quarter, commencing on December 29, 2012. Commencing in 2013, the term loans will be reduced by an amount equal to 50% of the excess cash flows, as defined in the Loan and Security Agreement, for the

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fiscal year ended December 31, 2012 and for each fiscal year thereafter; however, this payment was not required for the 2012 fiscal year.

For the nine month period ended September 28, 2013 and year ended December 31, 2012, Turtle Beach made principal payments of \$17.5 million and \$28.9 million, respectively.

A summary of the transaction and the amendments with financial institutions is as follows (in millions):

October 2010 Debt Outstanding: Loan and Security Agreement	
Proceeds	\$ 28.0
Principal payments 2011	(2.8)
Balance December 31, 2011	<u>\$ 25.2</u>
Principal payments	\$ (2.9)
August 2012 Loan and Security Agreement Amendment	
Proceeds	45.0
Payment of outstanding balance	(25.2)
Principal payments on amended term loan	(0.9)
Balance December 31, 2012	<u>\$ 41.2</u>
Principal payments	(7.5)
Proceeds from Subordinated Notes	(10.0)
Balance September 28, 2013	<u>\$ 23.7</u>

*Revolving Line of Credit*

In August 2011, the Loan and Security Agreement was amended and restated with various financial institutions to include a \$15.0 million revolving line of credit. In August 2012, the Loan and Security Agreement was amended and restated to increase the borrowing capacity on the revolving line of credit to \$55.0 million. As part of the amendment, the outstanding balance of \$10.0 million was paid off. During the year ended December 31, 2012, subsequent to the amendment Turtle Beach drew down \$38.0 million on the revolving line of credit. The maturity date on the revolving line of credit was amended to August 22, 2015. The revolving line of credit is subject to limitations based on specific percentages of eligible accounts receivables and inventory and bears interest at Turtle Beach's option at (i) the Adjusted Base Rate plus the applicable margin ranging from 2.50% to 3.25 % as determined by the Company's total leverage ratio, or (ii) LIBOR, plus the applicable margin ranging from 3.50% to 4.25 %. The Applicable Base Rate is equal to the highest of (1) the Prime Rate as determined by the syndication agent, (b) Federal Funds Rate plus 0.5% and (c) the LIBOR rate plus 1%. As of September 28, 2013, the interest rates on the revolving loans were 5.75% and 6.50%. As of December 31, 2012, the interest rates on the revolving loans were 5.5% to 6.25%. Interest is due, at Turtle Beach's option, every 30, 60 or 90 days. Turtle Beach is also required to pay a quarterly commitment fee of up to 0.50% per annum on the unused portion of the revolving line of credit.

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For the nine month period ended September 28, 2013 and year ended December 31, 2012, Turtle Beach made principal payments of \$33 million and \$27 million, respectively.

A summary of the transaction and the amendments is as follows (in millions):

#### Loan and Security Agreement: Revolving Line of Credit

2011 proceeds	\$ 12.0
Balance December 31, 2011	\$ 12.0
2012 Amendment	
2012 proceeds	\$ 48.0
2012 payoff of prior balance	(10.0)
Payments on amended revolver	(17.0)
Balance December 31, 2012	\$ 33.0
Payments	(33.1)
Proceeds	30.3
Balance September 28, 2013	<u>\$ 30.2</u>

#### Other Facilities

Under the terms of the Loan and Security Agreement (as amended and restated), Turtle Beach can also draw down on a swing loan commitment of up to \$5.0 million. In addition, Turtle Beach can arrange for certain letters of credit with a maximum amount of \$5.0 million. Any borrowings against these facilities reduce the amount available pursuant to the revolving line of credit. As of September 28, 2013 and December 31, 2012, Turtle Beach has not drawn any amounts on the swing loan. At September 28, 2013 and December 31, 2012 and 2011, Turtle Beach had drawn \$0.2 million, \$0.2 million and \$0.1 million under the letter of credit facility.

#### Covenants

Outstanding borrowings on the Loan and Security Agreement (as amended and restated) are secured by substantially all of the assets of Turtle Beach and pledges of certain shares in Turtle Beach's subsidiary. The Loan and Security Agreement (as amended and restated) contains certain affirmative and negative covenants to which Turtle Beach must comply. Turtle Beach is also required to comply with the minimum total fixed charge coverage ratio (defined as the ratio of EBITDA minus capital expenditures to the sum of income taxes paid or payable, interest paid, scheduled payments of principal on indebtedness, as well as Founder Earn-out payments made during the period); maximum total leverage ratio (defined as the ratio of total debt outstanding to EBITDA); and maximum amount of capital expenditures that can be incurred during a fiscal year.

Turtle Beach was not in compliance with the fixed charge coverage ratio as of June 30, 2013 and December 31, 2012 and obtained waivers of the compliance issues from its lenders. However, in July and August 2013, Turtle Beach entered into two amendments to the Loan and Security Agreement (collectively the "2013 Amendments") that waived the default of the fixed charge coverage ratio for those periods. In addition, the 2013 Amendments provided for (i) a minimum EBITDA financial covenant which required that EBITDA for the 12 month period ended June 30, 2013 not be less than \$37.0 million, (ii) modification of the total fixed charge coverage ratio for periods ending September 28, 2013 through maturity, (iii) modification of the maximum total leverage ratio for the periods ending September 28, 2013 through maturity, and (iv) modification of the annual clean-down requirements of the revolving line of credit to provide for an increase in the eligible amount outstanding.

In addition, the 2013 Amendments increased the interest rate on the outstanding term loan by 0.25% to 0.75% and also required Turtle Beach to issue at least \$10.0 million, but not more than \$15.0 million, in



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On August 2, 2013, a joint meeting of the Parametric Board and compensation committee was held, with the financial and legal advisors of the Parametric Board. At the meeting:

- the Parametric Board discussed the status of merger negotiations with Turtle Beach, including (i) the status of consents required under Turtle Beach's credit agreement for the merger and effect on timing of signing the merger agreement, and (ii) the closing condition requiring Parametric to raise capital in a "Qualified Equity Offering," including the risks associated with Turtle Beach or its lenders having the right to approve whether a Qualified Equity Offering satisfies the applicable closing condition under the merger agreement;
- representatives of Craig-Hallum reviewed and discussed with the Parametric Board Craig-Hallum's financial analysis and views regarding the merger with VTBH and the terms of the merger agreement with VTBH (including the "Per Share Exchange Ratio" as defined therein, with reference to a proposed fairness opinion and slide presentation distributed to the Parametric Board prior to the meeting; at the request of the Parametric Board, Craig-Hallum rendered its oral opinion to the effect that, as of August 2, 2013, subject to certain assumptions, qualifications and limitations, the "Per Share Exchange Ratio" contemplated by the merger agreement is fair, from a financial point of view, to Parametric;
- the Parametric Board unanimously approved the merger agreement and related transactions, under the condition that VTBH and/or its lenders did not have the right to approve whether a "Qualified Equity Offering" satisfies the applicable closing condition under the merger agreement.
- the Parametric Board amended Parametric's bylaws to render inapplicable certain portions of the Nevada Revised Statutes that could potentially, as a result of the acquisition of a controlling interest in Parametric by the former VTBH stockholders, subject to certain conditions, otherwise allow for Parametric's stockholders (other than the former VTBH stockholders) to dissent and obtain fair value in cash for their shares of Parametric stock; and
- the Parametric Board, upon recommendation of the compensation committee, (i) amended, contingent and effective upon the signing of the merger agreement, the stock options held by Messrs. Barnes and Norris such that they would vest in full upon a change of control of Parametric followed by such executive's departure from Parametric under certain circumstances thereafter ("double trigger" vesting), and (ii) amended Parametric's Cash Bonus Plan for the period January 1, 2013 to December 31, 2013 such that the target bonuses for each of Parametric's executive officers (Messrs. Potashner, Barnes and Norris) would be achieved in full upon the closing of the merger.

On August 3, 2013, two telephonic negotiating sessions regarding the merger agreement were held at which Messrs. Potashner, Barnes and Stark and representatives of Houlihan Lokey, SG VTB, Sheppard Mullin and Dechert were present. At these sessions, the parties discussed the definition of "Qualified Equity Offering" in the merger agreement and related closing condition, and the terms and conditions under which an equity offering by Parametric would qualify as a "Qualified Equity Offering" without the need to seek approval from either VTBH or its lenders.

On August 4, 2013, a meeting of the Parametric Board was held with its financial and legal advisors. At the meeting:

- Mr. Potashner and representatives from Sheppard Mullin and Houlihan Lokey reviewed and discussed with the Parametric Board the status of ongoing merger negotiations with Turtle Beach, including with respect to: (i) the status of consents required under Turtle Beach's credit agreement for the merger and effect on timing of signing the merger agreement; (ii) issues presented by the two founders of VTB, in their capacities as stockholders, potentially not voting in favor of the proposed merger (and related appraisal rights issues under Delaware law), including whether such founders may be forced to vote in favor of the merger pursuant to the terms of a contractual "drag-along" provision signed in favor of SG VTB; and (iii) the definition of "Qualified Equity Offering" in the merger agreement and issues and risks presented by Turtle Beach or its lenders having the right to approve whether Parametric has successfully completed a "Qualified Equity Offering" for purposes of satisfying the applicable closing condition under the merger agreement.



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- After completing its deliberations, the Parametric Board reiterated (i) that its approval of the merger agreement and related transactions is contingent upon Turtle Beach and/or its lender(s) not having the right to approve whether Parametric has completed a "Qualified Equity Offering" satisfying the applicable closing condition in the merger agreement, and (ii) that if Turtle Beach's lenders do not consent to the merger following Parametric's successful completion of a "Qualified Equity Offering," and all other pertinent closing conditions are otherwise satisfied, that Parametric should receive a termination fee from Turtle Beach in such instance.

On August 5, 2013, after confirming that all stockholders of VTBH had delivered written consents voting in favor of the merger, (i) Parametric and VTBH entered into the merger agreement, (ii) Parametric and the VTBH stockholders entered into the Stockholder Agreement, (iii) VTBH and the management stockholders entered into the voting agreements, (iv) HHI and Mr. Potashner entered into an amended stock option agreement for his HHI stock options, on the terms approved by the Parametric Board, and Mr. Potashner delivered to Parametric a release of claims regarding the stock option amendment and amended HHI license agreement, and (v) HHI and the aforementioned consultant entered into an amended stock option agreement for his HHI stock options, on the terms approved by the Parametric Board, and the consultant delivered to Parametric a release of claims regarding the stock option amendment and amended HHI license agreement. For a discussion of the merger agreement, the Stockholder Agreement and the voting agreements, see "The Merger – Restrictions on Sales of Parametric Common Stock Following the Merger," "Proposal One – The Merger Proposal" and "Management of Parametric Following the Merger."

On August 5, 2013, after the close of trading on NASDAQ, Parametric issued a press release announcing the execution of the merger agreement.

From August 5, 2013 to September 4, 2013, pursuant to the 30-day "go shop" period provided for in the merger agreement, representatives of Houlihan Lokey contacted 49 prospective buyers (many of which had been previously contacted earlier in the process, including Company A, Company B and Company C), in a variety of industries, to solicit acquisition proposals for Parametric. None of these prospective buyers, or any other parties, expressed interest in making an acquisition proposal for Parametric. However, the following parties did express interest in exploring a potential strategic transaction with Parametric:

- On August 6, 2013, a Parametric executive met at the headquarters of Company B (with other Parametric executives attending telephonically) to discuss the company's technology and more details regarding a co-development project which the parties had been discussing since March 2013; Company B provided sample technology for evaluation as part of the possible co-development project, and Parametric is currently evaluating such technology.
- On August 9, 2013, Company C indicated interest in pursuing a licensing transaction for a specific application of Parametric's technology.
- On August 15, 2013, a Parametric executive contacted Company D, with which Parametric had been in discussions in late 2012 and early 2013 regarding co-development and licensing of technology, but was unable to agree on terms, particularly with respect to the ownership of intellectual property developed by the parties; Company D indicated no interest in pursuing a licensing transaction or an acquisition proposal.
- In August 2013, Company E indicated it had performed patent diligence on Parametric and expressed an interest in exploring co-development and licensing, but not an acquisition proposal.

On August 26, 2013, Turtle Beach and Parametric made the required filings under applicable U.S. antitrust laws with respect to the merger with the Antitrust Division of the Department of Justice and the U.S. Federal Trade Commission. The U.S. Federal Trade Commission granted early termination of the applicable waiting period under the U.S. antitrust laws on September 5, 2013.

On September 5, 2013, the 30-day "go shop" period provided for in the merger agreement expired.

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### **Reasons for the Merger**

In evaluating the merger agreement and the transactions contemplated thereby, the Parametric Board consulted with Parametric's management and legal and financial advisors, reviewed a significant amount of information and considered a number of factors, including, among others, the following factors which the Parametric Board viewed as generally supporting its decision to approve the merger agreement and the transactions contemplated thereby:

- Parametric's estimated near- and long-term operations and performance on an independent, stand-alone basis;
- the substantial additional financing that would be needed to achieve such performance assuming Parametric continued its planned technology development activities and recognized revenue from its core consumer, commercial and health care markets, and the risk that such substantial additional financing may not be obtained on terms favorable to Parametric, or at all;
- the competitive industry in which Parametric competes, including that many competitors have greater resources, financial and otherwise, than Parametric, and the risks involved in maintaining and establishing business relationships with customers and suppliers;
- the belief that the combination of Parametric's and Turtle Beach's businesses would create more value for Parametric's stockholders in the long-term than Parametric could achieve as an independent, stand-alone company;
- historical and current information concerning Turtle Beach's business, financial performance, financial conditions, financial prospects, operations and management and the results of a due diligence investigation of Turtle Beach conducted by Parametric's management team and advisors;
- the belief that Turtle Beach's experience, financial resources, technical expertise, sales and marketing resources, scalable supply chain and global distribution network will help accelerate the design, development, commercialization and distribution of Parametric's products and technology, including its HyperSound-based products, in particular in Parametric's three targeted market segments;
- the belief that Turtle Beach's position as a leading and established consumer audio brand will support adoption of newly introduced HyperSound-based products;
- the process undertaken to explore strategic alternatives available to Parametric to maximize stockholder value and the review and assessment of the possible outcomes of such alternatives, including the possibility of remaining independent, combinations with other merger partners, the possibility of being acquired (including by Turtle Beach), licensing Parametric's intellectual property and the possibility of equity or debt public or private offerings;
- the number of shares of Parametric's common stock to be issued to VTBH's stockholders pursuant to the merger agreement, relative to current and historical trading prices of Parametric's common stock;
- the other economic terms of the merger agreement, including the termination fees that are payable to both parties under certain circumstances (including the existence, nature and effect of the license agreement to VTBH);
- the ability of Parametric to solicit alternative merger partners and furnish information to and engage in discussions or negotiations with a third party under certain circumstances described in the merger agreement, as well as the ability to withdraw or modify its recommendation regarding the merger under certain circumstances;
- certain other provisions in the merger agreement, including the right to specific performance and the termination provisions (in particular the reverse termination fee that may be payable by VTBH to Parametric in certain circumstances following a termination of the merger agreement);
- that the holders of VTBH common stock and Series A Preferred Stock have unanimously approved the merger agreement and the transactions contemplated thereby;

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- that certain VTBH stockholders have agreed to a lock-up whereby they will not sell or otherwise transfer the shares of Parametric common stock they will receive pursuant to the merger for a period of six months following the closing of the merger, subject to certain exceptions;
- the fact that two individuals designated by Parametric will be directors of Parametric after the merger; and
- the opinion of Craig-Hallum Capital Group LLC, dated August 2, 2013, to the Parametric Board as to the fairness to Parametric, from a financial point of view, as of the date of the opinion, of the “Per Share Exchange Ratio” contemplated by the merger agreement, as more fully described below in the section titled “—Opinion of Craig Hallum Capital Group LLC, Financial Advisor to the Parametric Board.”

The Parametric Board also carefully considered and discussed a number of risks, uncertainties and other countervailing factors in its deliberations relating to entering into the merger agreement and the merger, including, among others, the following factors:

- the fact that, following the completion of the merger, Parametric security holders (including option holders) as of immediately prior to the merger would only participate in approximately 20% of the future growth or earnings of the combined company in light of the issuance of new shares of Parametric common stock to the VTBH stockholders and the assumption of VTBH stock options pursuant to the merger;
- the interests of Parametric’s directors and executive officers in the merger, as more fully described below in the section titled “The Merger – Interests of Directors and Executive Officers in the Merger” on page 74;
- the risk that the conditions to the merger will not be satisfied, including the condition requiring Parametric to raise \$5,000,000 or more in capital pursuant to a “Qualified Offering” as defined in the merger agreement;
- the potential effect on the interest of new bidders of the license agreement required to be entered into upon the termination of the merger agreement under certain circumstances;
- the risks and costs, including public company costs, of Parametric remaining a standalone publicly traded company instead of agreeing to a transaction with VTBH;
- the uncertainty of the trading price of Parametric’s common stock after announcing the merger and after closing the merger transaction;
- the possibility that the anticipated benefits of the merger may not be realized or may be lower than expected;
- the potential limitations on Parametric’s operations due to pre-closing covenants in the merger agreement;
- the effect of the public announcement of the merger on Parametric’s operations, stock price, customers, suppliers and employees;
- the effect of disruption that may be caused by unexpected bidders or the failure to complete the merger;
- that Parametric’s remedy of specific performance may be difficult to enforce;
- the termination fee that may become payable by Parametric to VTBH if the merger agreement is terminated in certain circumstances;
- the possible delay in anticipated closing of the merger that may be required to ensure adequate internal controls over financial reporting of the combined companies when required;
- the substantial fees and expenses incurred by Parametric in connection with the merger, which will be incurred whether or not the merger is completed; and
- the other risks described in the “Risk Factors” and “Forward-Looking Statements” sections of this proxy statement.

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The Parametric Board believed that, overall, the potential benefits to Parametric stockholders of the merger agreement and the transactions contemplated thereby outweighed the risks and uncertainties.

Although this discussion of the information and factors considered by the Parametric Board is believed to include the material factors considered by the Parametric Board, it is not intended to be exhaustive and may not include all of the factors considered by the Parametric Board. In reaching its determination to approve the merger agreement and the transactions contemplated thereby, the Parametric Board did not find it useful and did not attempt to quantify or assign any relative or specific weights to the various factors that it considered in reaching its determination that the merger agreement and the transactions contemplated thereby are fair to, advisable and in the best interests of Parametric and its stockholders. Rather, the Parametric Board based its determination on the totality of the information presented to and factors considered by it. In addition, individual members of the Parametric Board may have given differing weights to different factors.

In considering the determination by the Parametric Board that the merger agreement and the transactions contemplated thereby, including the issuance of shares pursuant to the merger and corresponding change of control of Parametric, are fair to, advisable and in the best interests of Parametric and its stockholders, you should be aware that certain Parametric directors and officers have interests in the merger that are different from, in addition to, or may conflict with the interests of Parametric stockholders generally. See "The Merger – Interests of Parametric Executive Officers and Directors in the Merger" on page 74.

### **Opinion of Craig-Hallum Capital Group LLC, Financial Advisor to the Parametric Board**

Craig-Hallum rendered its opinion to the Parametric Board that, as of August 2, 2013, and based upon and subject to the factors and assumptions set forth therein, the "Per Share Exchange Ratio," as set forth in the merger agreement, was fair from a financial point of view to Parametric.

**The full text of the written opinion of Craig-Hallum, dated August 2, 2013, which sets forth assumptions made, procedures followed, matters considered and limitations on the review undertaken in connection with the opinion, is attached as Annex B to this proxy statement. Craig-Hallum provided its opinion for the information and assistance of the Parametric Board in connection with its consideration of the merger. The Craig-Hallum opinion was not intended to and does not constitute a recommendation as to how any holder of Parametric common stock should vote or make any election with respect to the merger or any other matter.**

In arriving at its opinion, Craig-Hallum, among other things:

- Reviewed a substantially final draft of the merger agreement;
- Reviewed certain publicly available financial and other information about Parametric and Turtle Beach;
- Reviewed Parametric's internal financial projections for the fiscal years ended September 30, 2013 through September 30, 2017, prepared by and furnished to Craig-Hallum by the management of Parametric;
- Reviewed publicly available audited financial statements of Parametric for the fiscal years ended September 30, 2009 through September 30, 2012;
- Reviewed publicly available unaudited financial statements of Parametric for the quarters ended December 31, 2012, and March 31, 2013;
- Reviewed a draft of the unaudited financial statements of Parametric for the quarter ending June 30, 2013;
- Reviewed Turtle Beach's internal financial projections for the fiscal years ended December 31, 2013 through December 31, 2016, prepared by and furnished to Craig-Hallum by the management of Turtle Beach;
- Reviewed audited financial statements of VTB for the fiscal years ended December 31, 2010 and December 31, 2011;



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- Reviewed a draft of the financial statements of VTB for the fiscal year ended December 31, 2012, along with drafts of consolidated Turtle Beach financial statements;
- Reviewed year-to-date internal financial statements of VTB through June 29, 2013;
- Held discussions with members of senior management of both Parametric and Turtle Beach concerning their evaluations of the merger and their businesses, operating environments, competitive landscape, financial conditions, industry conditions, prospects and strategic objectives, joint Parametric and Turtle Beach opportunities, and potential synergies, as well as such other matters as Craig-Hallum deemed necessary or appropriate for purposes of rendering its opinion;
- Reviewed historical market prices and trading activity for Parametric common stock;
- Compared certain publicly available financial and stock market data for Parametric and Turtle Beach with similar information for certain other publicly traded companies that Craig-Hallum deemed to be relevant;
- Reviewed the publicly available financial terms of certain business combination transactions that Craig-Hallum deemed to be relevant to Parametric and Turtle Beach;
- Performed a discounted cash flow analysis of Parametric and Turtle Beach on a stand-alone basis utilizing information prepared by and furnished to Craig-Hallum by their respective management teams;
- Performed a relative contribution analysis of Parametric and Turtle Beach; and
- Conducted such other analyses, examinations and inquiries and considered such other financial, economic and market criteria as Craig-Hallum deemed necessary and appropriate in arriving at its opinion.

In conducting its review and rendering its opinion, Craig-Hallum relied upon and assumed the accuracy, completeness and fairness of the financial, accounting and other information discussed with, reviewed by, provided to or otherwise made available to Craig-Hallum, and did not attempt to independently verify, and assumed no responsibility for the independent verification of, such information; relied upon the assurances of management of Parametric and Turtle Beach that the information provided was prepared on a reasonable basis in accordance with industry practice, and that management was not aware of any information or facts that made the information provided to Craig-Hallum incomplete or misleading; assumed that there were no material changes in assets, financial condition, results of operations, business or prospects since the date of the last financial statements made available to Craig-Hallum prior to the date of its opinion; assumed that neither Parametric nor Turtle Beach was party to any material pending transaction, including any external financing, recapitalization, acquisition or merger, other than the merger; assumed that there would be no "Qualified Offering" (as defined in the merger agreement) on or prior to the merger; assumed with respect to financial forecasts, estimates of net operating loss tax benefits and other estimates and forward-looking information relating to Parametric and Turtle Beach reviewed by Craig-Hallum, that such information reflected the best available estimates and judgments of management at that time; and expressed no opinion as to any financial forecasts, net operating loss or other estimates or forward-looking information of Parametric or Turtle Beach or the assumptions on which they were based.

The internal management projections provided by Parametric and Turtle Beach to Craig-Hallum in connection with Craig-Hallum's analysis of the merger were not prepared with a view toward public disclosure. These internal management projections were prepared by management and were based on numerous variables and assumptions that are inherently uncertain and may be beyond the control of management, including, without limitation, factors related to general economic and competitive conditions. Accordingly, actual results could vary significantly from those set forth in such internal management projections. See "— Certain Financial Information" on page 73.

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Craig-Hallum was not asked to undertake, and did not undertake, an independent verification of any information provided to or reviewed by Craig-Hallum, nor was Craig-Hallum furnished with any such verification and Craig-Hallum does not assume any responsibility or liability for the accuracy or completeness thereof. Craig-Hallum did not conduct a physical inspection of any of the properties or assets of Parametric or Turtle Beach. Craig-Hallum did not make an independent evaluation or appraisal of the assets or the liabilities (contingent or otherwise) of Parametric or Turtle Beach, nor was Craig-Hallum furnished with any such evaluations or appraisals, nor did Craig-Hallum evaluate the solvency of Parametric or Turtle Beach under any state or federal laws.

Craig-Hallum also assumed that the final executed form of the merger agreement did not differ in any material respects from the latest draft provided to Craig-Hallum, and that the merger will be consummated in accordance with the terms and conditions of the merger agreement, without waiver, modification or amendment of any material term, condition or agreement, and that, in the course of obtaining the necessary regulatory or third party consents and approvals (contractual or otherwise) for the merger, no delay, limitation, restriction or condition will be imposed that would have an adverse effect on Parametric or Turtle Beach or the contemplated benefits of the merger. Craig-Hallum is not a legal, tax or regulatory advisor and relied upon, without independent verification, the assessment of Parametric and its legal, tax and regulatory advisors with respect to such matters.

Craig-Hallum was not requested to, and did not, (i) participate in negotiations with respect to the merger agreement, (ii) solicit any expressions of interest from any other parties with respect to any business combination with Parametric or any other alternative transaction or (iii) advise the Parametric Board or any other party with respect to alternatives to the merger. In addition, Craig-Hallum was not requested to and did not provide advice regarding the structure, the Per Share Exchange Ratio, any other aspect of the merger, or provide services other than the delivery of its opinion. Craig-Hallum expressed no opinion as to the amount, nature or fairness of consideration or compensation to be received in or as a result of the proposed merger by preferred stock holders, warrant holders, option holders, officers, directors, employees or any other class of such persons or relative to or in comparison with the Per Share Exchange Ratio. Craig-Hallum's opinion did not address any other aspect or implication of the merger, the merger agreement or any other agreement or understanding entered into in connection with the merger or otherwise. Craig-Hallum was not requested to opine as to, and its opinion does not address, the decision to undertake or the terms of any qualified offering described in the merger agreement, the basic business decision to proceed with or effect the merger, or any solvency or fraudulent conveyance consideration relating to the merger.

Craig-Hallum's opinion was necessarily based upon economic, market, monetary, regulatory and other conditions as they existed and could be evaluated, and the information made available to Craig-Hallum, as of the date of its opinion. Craig-Hallum did not express any opinion as to the prices or trading ranges at which Parametric common stock will trade at any time. Furthermore, Craig-Hallum did not express any opinion as to the impact of the merger on the solvency or viability of the surviving corporation in the merger or the ability of the surviving corporation to pay its obligations when they become due.

Craig-Hallum assumed no responsibility for updating or revising its opinion based on circumstances or events occurring after the date thereof. Craig-Hallum's opinion was approved by Craig Hallum's fairness opinion committee in accordance with established procedures.

The Per Share Exchange Ratio was determined through arm's-length negotiations between Parametric Sound and Turtle Beach and was approved by the Parametric Board. Craig-Hallum did not provide advice to the Parametric Board during these negotiations nor recommend any specific consideration to Parametric or the Parametric Board or suggest that any specific consideration constituted the only appropriate consideration for the merger. In addition, Craig-Hallum's opinion and its presentation to the Parametric Board were one of many factors taken into consideration by the Parametric Board in deciding to approve the merger.

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### *Summary of Financial Analyses*

In accordance with customary investment banking practice, Craig-Hallum employed generally accepted valuation methods in reaching its fairness opinion. The following is a summary of the material financial analyses contained in the presentation that was made by Craig-Hallum to the Parametric Board on August 2, 2013, and that were utilized by Craig-Hallum in connection with providing its opinion. The following summary, however, does not purport to be a complete description of the financial analyses performed by Craig-Hallum, nor does the order of analyses described represent the relative importance or weight given to those analyses by Craig-Hallum. Some of the summaries in the financial analyses include information presented in tabular format. The tables must be read together with the full text of each summary and are alone not a complete description of Craig-Hallum's financial analyses. Some of the following quantitative information, was based on market data as it existed on or before August 2, 2013, and is not necessarily indicative of current or future market conditions.

For purposes of its stand-alone analyses performed on Parametric, Craig-Hallum utilized Parametric's internal financial projections for fiscal years ended September 30, 2013 through September 30, 2017, prepared by and furnished to Craig-Hallum by the management of Parametric. Information regarding the net cash, number of fully-diluted shares of common stock outstanding and net operating losses for Parametric was provided by management. For purposes of its stand-alone analyses performed on Turtle Beach, Craig-Hallum utilized Turtle Beach's internal financial projections for fiscal years ended December 31, 2013 through December 31, 2016 prepared by and furnished to Craig-Hallum by the management of Turtle Beach. Information regarding the net debt, number of fully-diluted shares of common stock outstanding and net operating losses for Turtle Beach was provided by management. For more information regarding these internal financial projections, see "—Certain Financial Information" on page 73.

### Parametric Historical Trading Analyses

Craig-Hallum reviewed the share price trading history of Parametric common stock for the one-year period ending August 2, 2013 on a stand-alone basis and also in relation to the NASDAQ Composite Index, the S&P 500 Index, an equal-weight consumer and audio technology composite index comprised of the companies listed below (the "Consumer and Audio Technology Index"), and an equal-weight hearing device composite index comprised of the companies listed below (the "Hearing Device Index")

#### *Composite Index Companies:*

##### Consumer and Audio Technology

- \* Audience, Inc.
- \* Dolby Laboratories, Inc.
- \* DTS, Inc.
- \* IMAX Corporation
- \* Immersion Corporation
- \* Neonode, Inc.
- \* Plantronics, Inc.
- \* RealD Inc.
- \* Synaptics Inc.
- \* TiVo Inc.
- \* Uni-Pixel, Inc.
- \* Universal Display Corp.

##### Hearing Device

- \* Cochlear Limited
- \* GN Store Nord A/S
- \* Sonova Holding AG
- \* William Demant Holding A/S

This analysis showed that during the one-year period ending August 2, 2013, the trading price of the shares of Parametric rose 60.2%, the NASDAQ Composite Index rose 24.2%, the S&P 500 Index rose 22.8%, the Consumer and Audio Technology Index rose 41.4%, and the Hearing Device Index rose 16.5%.

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Craig-Hallum also noted that shares of Parametric common stock have appreciated significantly since Parametric was spun out of LRAD Corporation on September 27, 2010. The per share price of Parametric common stock on August 2, 2013 was \$17.29 compared to a \$1.72 average share price during the three month period from September 27, 2010 to December 27, 2010 (the first three months of trading after the spin out).

### Comparable Public Company Analysis – Parametric Stand-Alone

Craig-Hallum reviewed and compared certain financial information for Parametric to corresponding financial information, ratios and public market multiples for the following publicly traded companies, which, in the exercise of its professional judgment, Craig-Hallum determined to be relevant to its analysis. In selecting comparable public companies, Craig-Hallum focused on businesses in the consumer and audio technology and hearing device industries.

#### *Selected Companies:*

##### Consumer and Audio Technology

- Audience, Inc.
- Dolby Laboratories, Inc.
- DTS, Inc.
- IMAX Corporation
- Immersion Corporation
- Neonode, Inc.
- Plantronics, Inc.
- RealD Inc.
- Synaptics Incorporated
- TiVo Inc.
- Uni-Pixel, Inc.
- Universal Display Corp.

##### Hearing Device

- Cochlear Limited
- GN Store Nord A/S
- Sonova Holding AG
- William Demant Holding A/S

Craig-Hallum obtained financial metrics and projections for the selected companies from documents filed by such companies with the SEC and S&P Capital IQ (“Capital IQ”). In its analysis, Craig-Hallum derived and compared multiples for Parametric and the selected companies (as a blended group), calculated as follows:

- the total enterprise value (“TEV”) as a multiple of revenue for calendar year 2014, which is referred to below as “TEV/2014E Revenue”;
- the TEV as a multiple of estimated adjusted EBITDA for calendar year 2014, which is referred to below as “TEV/2014E Adjusted EBITDA”;
- the market capitalization (“MC”) as a multiple of estimated net income for calendar year 2014, which is referred to below as “MC/2014E Net Income.”

MC is calculated utilizing the treasury stock method. TEV refers to MC plus all outstanding debt and capital lease obligations, plus preferred stock, plus minority interest, and less cash and cash equivalents (“Net Debt”). Adjusted EBITDA refers to earnings before interest, taxes, depreciation, amortization, stock-based compensation, non-cash impairment charges, transaction expenses, and restructuring charges and any other expenses deemed non-recurring in nature.

This analysis indicated the following:

<u>Financial Multiple</u>	<u>25<sup>th</sup> Percentile*</u>	<u>Median*</u>	<u>75<sup>th</sup> Percentile*</u>
TEV/2014E Revenue	2.2x	3.0x	4.3x
TEV/2014E Adjusted EBITDA	7.9x	11.5x	13.0x
MC/2014E Net Income	13.8x	17.7x	19.9x

\* Excludes Parametric.



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In reviewing this analysis, Craig-Hallum also considered, among other things, the relative comparability of the selected companies to Parametric. Based upon the foregoing and applying its professional judgment, Craig-Hallum selected the representative ranges of the 25<sup>th</sup> percentile to the 75<sup>th</sup> percentile for each metric. Craig-Hallum then applied the respective representative ranges to 2014 estimated revenue and 2014 estimated adjusted EBITDA for Parametric, resulting in ranges of implied total enterprise values. These total enterprise values were further adjusted for Parametric's Net Debt to calculate ranges of implied equity values. Craig-Hallum then applied the respective multiple ranges to 2014 estimated net income for Parametric to calculate ranges of implied equity values. A summary of the equity value ranges is shown in the table below.

<u>Financial Multiple</u>	<u>Representative Range</u>	<u>Implied Equity Value Reference Range*</u>
TEV/2014E Revenue	2.2x – 4.3x	\$ 71.0 – \$132.7
TEV/2014E Adjusted EBITDA	7.9x – 13.0x	\$ 77.0 – \$124.4
MC/2014E Net Income	13.8x – 19.9x	\$ 103.7 – \$149.4

\* Dollars in millions

Although Craig-Hallum selected the companies reviewed in the analysis because, among other things, their businesses are reasonably similar to that of Parametric, no selected company is identical to Parametric. In evaluating the financial multiples for the selected companies, Craig-Hallum made judgments and assumptions with regard to industry performance, general business, economic, market and financial conditions and other matters. Accordingly, Craig-Hallum's comparison of selected companies to Parametric and analysis of the results of such comparisons was not purely quantitative, but instead necessarily involved qualitative considerations and professional judgments concerning differences in financial and operating characteristics and other factors that could affect the relative value of Parametric.

Precedent Transaction Analysis – Parametric Stand-Alone

Craig-Hallum performed a selected precedent transactions analysis, which is designed to imply a value for a company based on publicly available financial terms of the selected transactions that share some characteristics with the merger. Craig-Hallum reviewed precedent transactions that, in the exercise of its professional judgment, Craig-Hallum selected as relevant to its analysis and that met the following criteria: (i) transactions where the target company operated in the consumer and audio technology and hearing device industries, (ii) transactions announced and closed since January 1, 2005 with publicly available financial terms, (iii) transactions where the target company's implied enterprise value was between \$25 million and \$1 billion, and (iv) the acquisition was not of a minority interest. In its analysis, Craig-Hallum reviewed the following precedent transactions as of the date of announcement:

<u>Acquirer</u>	<u>Target</u>	<u>Date Announced</u>
DTS, Inc.	SRS Labs, Inc.	April 2012
The Gores Group LLC	Elo TouchSystems, Inc.	April 2012
Milestone AV Technologies, Inc.	Da-Lite Screen Co. Inc.	March 2011
William Demant Holding A/S	Otix Global, Inc.	October 2010
Sonic Solutions LLC	DivX, Inc.	June 2010
Google Inc.	Global IP Solutions, Inc.	May 2010
Harmonic Inc.	Omneon, Inc.	May 2010
Sonova Holding AG	Advanced Bionics Corporation	November 2009
Kudelski SA	OpenTV Corp.	October 2009
Google Inc.	On2 Technologies Inc.	August 2009
Dolby Laboratories, Inc.	Coding Technologies AB	November 2007
Nuance Communications, Inc.	VoiceSignal Technologies, Inc.	May 2007
Intermap Network Services Corp.	VitalStream Holdings Inc.	October 2006
Corel Corporation	InterVideo, Inc.	August 2006
Dover Corporation	Knowles Electronics Holdings, Inc.	August 2005
Avid Technology, Inc.	Pinnacle Systems, Inc.	March 2005

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For each precedent transaction indicated above, using publicly available company filings, Capital IQ, and press releases, Craig-Hallum calculated multiples of TEV using the target company's latest twelve month ("LTM") revenue and adjusted EBITDA as of the announced date. Craig-Hallum chose LTM multiples because there was a lack of available forecast data for the precedent transactions at the announcement date. From this analysis, Craig-Hallum derived the 25<sup>th</sup> percentile and the 75<sup>th</sup> percentile for the selected precedent transactions set forth in the following table:

Financial Multiple	25 <sup>th</sup> Percentile	Median	75 <sup>th</sup> Percentile
TEV/LTM Revenue	1.0x	3.1x	5.6x
TEV/LTM Adjusted EBITDA	11.0x	23.6x	28.3x

In reviewing this analysis, Craig-Hallum also considered, among other things, the relative comparability of the precedent transactions and target companies to the merger and Parametric, respectively. Based on the foregoing and applying its professional judgment, Craig-Hallum selected the representative ranges of the 25<sup>th</sup> percentile to the 75<sup>th</sup> percentile for each metric. However, due to the early stage at which Parametric is at in product commercialization and technology licensing, Craig-Hallum did not believe it was prudent to apply the precedent transaction LTM multiples to Parametric's LTM financials, because in Craig-Hallum's judgment such figures would not be meaningful. As such, Craig-Hallum applied the respective LTM multiples from the precedent transactions to Parametric's calendar year 2014 estimated revenue and adjusted EBITDA and discounted each of those amounts to present value utilizing Parametric's weighted average cost of capital, or "WACC," of 20%, to determine the implied total enterprise value ranges. These total enterprise values were further adjusted for Parametric's Net Debt to calculate ranges of implied equity values.

Financial Multiple	Representative Range	Implied Equity Value Reference Range*
TEV/LTM Revenue	1.0x – 5.6x	\$ 28.2 – \$134.4
TEV/LTM Adjusted EBITDA	11.0x – 28.3x	\$ 83.1 – \$206.9

\* Dollars in millions. Representative LTM multiple ranges were applied to Parametric's calendar year 2014E revenue and adjusted EBITDA and discounted to present value utilizing its WACC

No target company or transaction utilized in the selected precedent transactions analysis is identical to Parametric or the merger. In evaluating the precedent transactions, Craig-Hallum made judgments and assumptions with regard to industry performance, general business, economic, market and financial conditions and other matters, many of which are beyond the control of Parametric, such as the impact of competition on the business of Parametric or the industry generally, industry growth and the absence of any adverse material change in the financial condition and prospects of Parametric or the industry or in the financial markets in general.

### Discounted Cash Flow Analysis – Parametric Stand-Alone

Craig-Hallum conducted an illustrative discounted cash flow analysis for Parametric on a stand-alone basis, which is designed to estimate the implied value of a company by calculating the present value of the estimated future unlevered free cash flows and terminal value of the company. Craig-Hallum calculated a range of implied equity values of Parametric based on forecasts of future unlevered free cash flows for the remainder of fiscal year 2013 as of August 1, 2013 through fiscal year 2017 provided by management of Parametric. See "– Certain Financial Information" on page 73. Craig-Hallum first calculated unlevered free cash flows (calculated as earnings before interest and taxes, less taxes, plus depreciation and amortization, plus stock-based compensation, less the amount of any increase or plus the amount of any decrease in net working capital, and less capital expenditures) of Parametric for fiscal years 2013 to 2017, using an assumed tax rate of 37.5%. Craig-Hallum then calculated terminal values for Parametric using the terminal value method based on revenue and adjusted EBITDA multiples. The terminal value based on revenue multiples was calculated by applying a range of terminal LTM revenue multiples of 2.0x to 4.0x (which range was selected based on Craig-Hallum's professional judgment after consideration of the precedent transaction multiples and comparable public company multiples referred to above) to Parametric's management forecast of revenue for fiscal year 2017. The terminal value based

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on adjusted EBITDA multiples was calculated by applying a range of terminal LTM adjusted EBITDA multiples of 10.0x to 14.0x (which range was selected based on Craig-Hallum's professional judgment after consideration of the precedent transaction multiples and comparable public company multiples referred to above) to Parametric's management forecast of adjusted EBITDA for fiscal year 2017. In addition, Craig-Hallum added Parametric's net operating loss carryforwards expected to be utilized by Parametric's management to reduce future federal and state taxes, in each case based on internal estimates of Parametric's management. These unlevered free cash flows, terminal values and net operating loss carryforwards were then discounted to present values as of August 1, 2013 using a range of discount rates of 18.0% to 22.0% (which range was selected based on Craig-Hallum's professional judgment and derived from an analysis of the estimated weighted average cost of capital using Parametric and the comparable company data) to calculate a range of implied total enterprise values for Parametric. These total enterprise values were further adjusted for Parametric's Net Debt to calculate ranges of implied equity values. From this analysis, Craig-Hallum derived the 25<sup>th</sup> percentile and the 75<sup>th</sup> percentile for the values produced from the discounted cash flow analysis set forth in the following table:

<u>Discounted Cash Flow Analysis</u>	<u>Implied Equity Value Reference Range*</u>
Terminal Revenue Method	\$ 70.6 – \$100.6
Terminal EBITDA Method	\$ 89.9 – \$105.6

\* Dollars in millions

Comparable Public Company Analysis – Turtle Beach Stand-Alone

Craig-Hallum reviewed and compared certain financial information for Turtle Beach to corresponding financial information, ratios and public market multiples for the following publicly traded companies, which, in the exercise of its professional judgment, Craig-Hallum determined to be relevant to its analysis. In selecting comparable public companies, Craig-Hallum focused on businesses in the consumer electronics and accessories industries.

Selected Companies:Consumer electronics and accessories

- Bang & Olufsen Holding A/S
- Bigben Interactive
- Harman International Industries, Incorporated
- Logitech International S.A.
- Mad Catz Interactive, Inc.
- Plantronics, Inc.
- Skullcandy, Inc.
- VOXX International Corporation

Craig-Hallum obtained financial metrics and projections for the selected companies from documents filed by such companies with the SEC and Capital IQ. In its analysis, Craig-Hallum derived and compared multiples for the selected companies, calculated as follows:

- the TEV as a multiple of adjusted LTM EBITDA, which is referred to below as "TEV/LTM Adjusted EBITDA";
- the TEV as a multiple of estimated adjusted EBITDA for calendar year 2013, which is referred to below as "TEV/2013E Adjusted EBITDA";
- the TEV as a multiple of estimated adjusted EBITDA for calendar year 2014, which is referred to below as "TEV/2014E Adjusted EBITDA";

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- the TEV as a multiple of adjusted LTM EBIT, which is referred to below as “TEV/LTM Adjusted EBIT”;
- the TEV as a multiple of estimated adjusted EBIT for calendar year 2013, which is referred to below as “TEV/2013E Adjusted EBIT”;
- the TEV as a multiple of estimated adjusted EBIT for calendar year 2014, which is referred to below as “TEV/2014E Adjusted EBIT”;

MC is calculated utilizing the treasury stock method. TEV refers to MC plus all outstanding debt and capital lease obligations, plus preferred stock, plus minority interest, and less cash and cash equivalents (“Net Debt”). Adjusted EBITDA refers to earnings before interest, taxes, depreciation, amortization, stock-based compensation, non-cash impairment charges, transaction expenses, and restructuring charges and any other expenses deemed non-recurring in nature. Adjusted EBIT refers to earnings before interest, taxes, stock-based compensation, non-cash impairment charges, transaction expenses, and restructuring charges and any other expenses deemed non-recurring in nature.

This analysis indicated the following:

Financial Multiple	25 <sup>th</sup> Percentile	Median	75 <sup>th</sup> Percentile
TEV/LTM Adjusted EBITDA	7.2x	8.5x	10.1x
TEV/2013E Adjusted EBITDA	8.3x	9.6x	9.8x
TEV/2014E Adjusted EBITDA	5.7x	6.5x	7.4x
TEV/LTM Adjusted EBIT	10.8x	13.5x	14.6x
TEV/2013E Adjusted EBIT	12.2x	12.8x	16.4x
TEV/2014E Adjusted EBIT	8.5x	9.9x	11.0x

In reviewing this analysis, Craig-Hallum also considered, among other things, the relative comparability of the selected companies to Turtle Beach. Based upon the foregoing and applying its professional judgment, Craig-Hallum selected the representative ranges of the 25<sup>th</sup> percentile to the 75<sup>th</sup> percentile for each metric. Craig-Hallum then applied the respective representative ranges to the actual and forecasted adjusted EBITDA and adjusted EBIT figures for Turtle Beach, resulting in ranges of implied total enterprise values. These total enterprise values were further adjusted for Turtle Beach’s Net Debt to calculate the ranges of implied equity values shown in the table below.

Financial Multiple	Representative Range	Implied Equity Value Reference Range*
TEV/LTM Adjusted EBITDA	7.2x – 10.1x	\$ 213.3 – \$325.8
TEV/2013E Adjusted EBITDA	8.3x – 9.8x	\$ 273.7 – \$335.1
TEV/2014E Adjusted EBITDA	5.7x – 7.4x	\$ 259.5 – \$356.4
TEV/LTM Adjusted EBIT	10.8x – 14.6x	\$ 285.8 – \$410.2
TEV/2013E Adjusted EBIT	12.2x – 16.4x	\$ 376.9 – \$529.6
TEV/2014E Adjusted EBIT	8.5x – 11.0x	\$ 376.5 – \$505.2

\* Dollars in millions

Although Craig-Hallum selected the companies reviewed in the analysis because, among other things, their businesses are reasonably similar to that of Turtle Beach, no selected company is identical to Turtle Beach. In evaluating the financial multiples for the selected companies, Craig-Hallum made judgments and assumptions with regard to industry performance, general business, economic, market and financial conditions and other matters. Accordingly, Craig-Hallum’s comparison of selected companies to Turtle Beach and analysis of the results of such comparisons was not purely quantitative, but instead necessarily involved qualitative considerations and professional judgments concerning differences in financial and operating characteristics and



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other factors that could affect the relative value of Turtle Beach. Craig-Hallum noted that Turtle Beach's 2013 – 2014 estimated revenue growth and actual and projected adjusted EBITDA and adjusted EBIT margins are considerably higher than the median of the comparable companies.

#### Precedent Transaction Analysis – Turtle Beach Stand-Alone

Craig-Hallum performed a selected precedent transactions analysis, which is designed to imply a value for a company based on publicly available financial terms of the selected transactions that share some characteristics with the merger. Craig-Hallum reviewed precedent transactions that, in the exercise of its professional judgment, Craig-Hallum selected as relevant to its analysis and that met the following criteria: (i) transactions where the target company operated in the consumer electronics and accessories industries, (ii) transactions announced and closed since January 1, 2005 with publicly available financial terms, (iii) transactions where the target company's implied enterprise value was between \$25 million and \$1 billion, and (iv) the acquisition was not of a minority interest. In its analysis, Craig-Hallum reviewed the following precedent transactions as of the date of announcement:

Acquirer	Target	Date Announced
Gibson Guitar Corp.	Teac Corporation	March 2013
Trilantic Capital Management LLC	Nixon Inc.	February 2012
ZAGG Inc.	iFrogz Inc.	June 2011
Audiovox Corporation	Klipsch Group, Inc.	January 2011
Bain Capital Private Equity	D&M Holdings Inc.	June 2008
JVC	Kenwood Corporation	July 2007
LOUD Technologies Inc.	Martin Audio Ltd.	March 2007
Hitachi Ltd.	Clarion Co., Ltd.	October 2006
Flextronics International Ltd.	International DisplayWorks, Inc.	August 2006
Directed Electronics, Inc.	Polk Audio, Inc.	July 2005
Plantronics, Inc.	Altec Lansing Technologies, Inc.	June 2005
D&M Holdings Inc.	Boston Acoustics, Inc.	June 2005

For each precedent transaction indicated above, using publicly available company filings, Capital IQ, and press releases, Craig-Hallum calculated multiples of TEV using the target company's LTM adjusted EBITDA and adjusted EBIT as of the announced date. From this analysis, Craig-Hallum derived the 25<sup>th</sup> percentile and the 75<sup>th</sup> percentile for the selected precedent transactions set forth in the following table:

Financial Multiple	25 <sup>th</sup> Percentile	Median	75 <sup>th</sup> Percentile
TEV/LTM Adjusted EBITDA	7.2x	9.2 x	9.9x
TEV/LTM Adjusted EBIT	8.7x	10.5x	13.2x

In reviewing this analysis, Craig-Hallum also considered, among other things, the relative comparability of the precedent transactions and target companies to the merger and Turtle Beach, respectively. Based upon the foregoing and applying its professional judgment, Craig-Hallum selected the representative ranges of the 25<sup>th</sup> percentile to the 75<sup>th</sup> percentile for each metric. Craig-Hallum then applied the respective representative ranges to the actual and forecasted adjusted EBITDA and adjusted EBIT figures for Turtle Beach, resulting in ranges of implied total enterprise values. These total enterprise values were further adjusted for Turtle Beach's Net Debt and to calculate ranges of implied equity values shown in the table below.

Financial Multiple	Representative Range	Implied Equity Value Reference Range*
TEV/LTM Adjusted EBITDA	7.2x – 9.9x	\$ 215.9 – \$318.5
TEV/LTM Adjusted EBIT	8.7x – 13.2x	\$ 220.2 – \$363.3

\* Dollars in millions.

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No target company or transaction utilized in the selected precedent transactions analysis is identical to Turtle Beach or the merger. In evaluating the precedent transactions, Craig-Hallum made judgments and assumptions with regard to industry performance, general business, economic, market and financial conditions and other matters, many of which are beyond the control of Turtle Beach, such as the impact of competition on the business of Turtle Beach or the industry generally, industry growth and the absence of any adverse material change in the financial condition and prospects of Turtle Beach or the industry or in the financial markets in general.

### Discounted Cash Flow Analysis – Turtle Beach Stand-Alone

Craig-Hallum conducted an illustrative discounted cash flow analysis for Turtle Beach on a stand-alone basis, which is designed to estimate the implied value of a company by calculating the present value of the estimated future unlevered free cash flows and terminal value of the company. Craig-Hallum calculated a range of implied equity values of Turtle Beach based on forecasts of future unlevered free cash flows for the remainder of calendar year 2013 as of August 1, 2013 through calendar year 2016 provided by management of Turtle Beach. See “– Certain Financial Information” on page 73. Craig-Hallum first calculated unlevered free cash flows (calculated as earnings before interest and taxes, less taxes, plus depreciation and amortization, plus stock-based compensation, less the amount of any increase or plus the amount of any decrease in net working capital, and less capital expenditures) of Turtle Beach for calendar years 2013 through 2016, using an assumed tax rate of 37.5%. Craig-Hallum then calculated terminal values for Turtle Beach using the terminal value method based on adjusted EBITDA and adjusted EBIT multiples. The terminal value based on adjusted EBITDA multiples was calculated by applying a range of terminal LTM adjusted EBITDA multiples of 6.0x to 8.0x (which range was selected based on Craig-Hallum’s professional judgment after consideration of the precedent transaction multiples and comparable public company multiples referred to above) to Turtle Beach’s management forecast of adjusted EBITDA for calendar year 2016. The terminal value based on adjusted EBIT multiples was calculated by applying a range of terminal LTM adjusted EBIT multiples of 7.0x to 9.0x (which range was selected based on Craig-Hallum’s professional judgment after consideration of the precedent transaction multiples and comparable public company multiples referred to above) to Turtle Beach’s management forecast of adjusted EBIT for calendar year 2016. These unlevered free cash flows and terminal values were then discounted to present values as of August 1, 2013 using a range of discount rates of 13.0% to 17.0% (which range was selected based on Craig-Hallum’s professional judgment and derived from an analysis of the estimated weighted average cost of capital using the comparable company data) to calculate a range of implied total enterprise values for Turtle Beach. These total enterprise values were further adjusted for Turtle Beach’s Net Debt to calculate ranges of implied equity values shown in the table below. From this analysis, Craig-Hallum derived the 25<sup>th</sup> percentile and the 75<sup>th</sup> percentile for the values produced from the discounted cash flow analysis set forth in the following table:

<u>Discounted Cash Flow Analysis</u>	<u>Implied Equity Value Reference Range*</u>
Terminal adjusted EBITDA	
Method	\$ 384.2 – \$451.8
Terminal adjusted EBIT Method	\$ 410.7 – \$471.2

\* Dollars in millions

### Relative Contribution Analysis

Craig-Hallum performed a relative contribution analysis for Parametric and VTBH based on the valuation methodologies described above. In performing the relative contribution analysis, Craig-Hallum compared the range of stand-alone implied equity values for each company derived from the range of median values calculated for each of the comparable public companies, selected precedent transactions, and discounted cash flow analyses. Craig-Hallum then compared these ranges to generate the implied relative contribution for each company for each analysis. Craig-Hallum then compared the implied relative contribution ranges to the Per Share Exchange Ratio.

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Methodology/Analysis	Implied Equity Value*		Implied Relative Contribution*	
	Parametric	VTBH	Parametric	VTBH
	Range of Medians (1)	Range of Medians (1)	Range of Medians (1)	Range of Medians (1)
Comparable Public Company	\$93.6 – \$132.6	\$263.7 – \$448.1	17.3% – 33.5%	66.5% – 82.7%
Precedent Transactions (2)	\$75.6 – \$173.1	\$278.9 – \$291.6	20.6% – 38.3%	61.7% – 79.4%
Discounted Cash Flow	\$85.1 – \$ 98.4	\$420.7 – \$440.3	16.2% – 19.0%	81.0% – 83.8%
	Merger Exchange Ratio		19.1%	80.9%

\* Dollars in millions

Note:

- (1) Based on the lowest and highest median multiples from the financial multiples calculated for the comparable public company and precedent transactions analyses, and the range of the median values produced by the discount cash flow analysis using the terminal revenue and adjusted EBITDA exit multiple methods, in the case of Parametric, and the terminal adjusted EBITDA and adjusted EBIT exit multiple methods, in the case of VTBH.
- (2) Due to lack of available forward multiples for the precedent transactions and Parametric's current LTM financial profile, Craig-Hallum used LTM multiples from the comparable transactions to calculate an implied equity value for Parametric using Parametric management's CY 2014 estimates, discounted to present value utilizing Parametric's weighted average cost of capital (20%).

Miscellaneous

The foregoing summary of material financial analyses does not purport to be a complete description of the analyses or data presented by Craig-Hallum. The preparation of a fairness opinion is a complex process and is not necessarily susceptible to partial analysis or summary description. Craig-Hallum believes that the foregoing summary set forth above and its analyses must be considered as a whole and that selecting portions of it, without considering all of its analyses, could create an incomplete view of the processes underlying the analyses and its opinion. No single factor or analysis was determinative of Craig-Hallum's fairness determination. Rather, Craig-Hallum considered the totality of the factors and analyses performed in arriving at its opinion. Craig-Hallum based its analyses on assumptions that it deemed reasonable, including those concerning general business and economic conditions and industry-specific factors. The other principal assumptions upon which Craig-Hallum based its analysis have been described under the description of each analysis in the foregoing summary. Analyses based upon forecasts of future results are inherently uncertain, as they are subject to numerous factors or events beyond the control of the parties and their advisors. Accordingly, forecasts and analyses used or made by Craig-Hallum are not necessarily indicative of actual future results, which may be significantly more or less favorable than suggested by those analyses. Moreover, Craig-Hallum's analyses are not and do not purport to be appraisals or otherwise reflective of the prices at which securities may trade at the present time or at any time in the future or at which businesses actually could be bought or sold.

As part of its investment banking business, Craig-Hallum and its affiliates are continually engaged in the valuation of businesses and their securities in connection with mergers and acquisitions. Craig-Hallum was selected as financial advisor to the Parametric Board on the basis of Craig-Hallum's experience and its familiarity with Parametric and the industry in which it operates.

Under the terms of the engagement letter dated April 24, 2013, Parametric has paid Craig-Hallum a fee of \$200,000 for rendering its opinion whether or not the transaction is consummated. In addition, Parametric has agreed to reimburse Craig-Hallum for reasonable expenses incurred in connection with the engagement and to indemnify Craig-Hallum against certain liabilities that may arise out of its engagement by Parametric and the rendering of the opinion. In the ordinary course of business, Craig-Hallum and its affiliates may actively trade or hold the securities of Parametric or any of their affiliates for Craig-Hallum's account or for others and, accordingly, may at any time hold a long or short position in such securities.

Craig-Hallum's analyses were prepared solely as part of Craig-Hallum's analysis of the fairness, from a financial point of view, to Parametric of the Per Share Exchange Ratio and were provided to the Parametric Board in that connection. The opinion of Craig-Hallum was only one of the factors taken into consideration by the Parametric Board in making its determination to approve the merger agreement and the merger.

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### **Certain Financial Information**

In the course of the discussions described under “– Background of the Merger,” the management of Parametric prepared and provided to Turtle Beach internal financial projections for the fiscal years ending September 30, 2013 through September 30, 2017, and the management of Turtle Beach prepared and provided to Parametric internal financial projections for the fiscal years ending December 31, 2013 through December 31, 2016. Such projections were also furnished to the Parametric Board, Houlihan Lokey and Craig-Hallum, in connection with the Parametric Board’s consideration of the merger and Craig-Hallum’s fairness opinion analysis.

Parametric and Turtle Beach do not usually publicly disclose internal financial projections of the type referenced above, and even though such internal financial projections are being disclosed in this section, they were not prepared with a view toward public disclosure. Such internal financial projections were based on numerous variables and assumptions that are inherently uncertain and may be beyond the control of management, including, without limitation, factors related to general economic and competitive conditions. Accordingly, actual results could vary significantly from those set forth in the internal financial projections reproduced in this section below. See “Forward-Looking Statements” on page 19.

The internal financial projections were prepared by the management of Parametric and Turtle Beach in good faith and on a reasonable basis based on the best information available to them at the time of their preparation. The internal financial projections, however, are not actual results and should not be relied upon as being necessarily indicative of actual future results, and readers of this proxy statement are cautioned not to place undue reliance on this information. Neither Parametric’s nor Turtle Beach’s independent auditors, nor any other independent accountants, have compiled, examined or performed any procedures with respect to the financial projections set forth below, nor have they expressed any opinion or any other form of assurance with respect thereto. The internal financial projections were not prepared in compliance with generally accepted accounting principles in the United States (“GAAP”), the published guidelines of the SEC regarding projections or the guidelines established by the American Institute of Certified Public Accountants for preparation and presentation of prospective financial information. Except as required by law, neither Parametric nor Turtle Beach intends to update these financial projections or to make other projections public in the future.

In addition, because the internal financial projections cover multiple years, they will necessarily become less predictive with each successive year and become subject to increasing uncertainty in the years beyond 2013. Though the internal financial projections are being presented with numeric specificity, the assumptions upon which the internal financial projections were based necessarily involve judgments with respect to, among other things, future economic and competitive conditions, many of which are difficult to predict accurately and are beyond the control of Parametric’s and Turtle Beach’s management. Also, the economic and business environments can and do change quickly, which add a significant level of unpredictability and execution risk. It is expected that differences between actual and projected results will occur, and actual results may be materially greater or less than those contained in the internal financial projections. There can be no assurance that the internal financial projections, or the assumptions underlying the internal financial projections, will be realized. Accordingly, readers of this proxy statement are cautioned not to place undue reliance on the internal financial projections included in this section.

Parametric’s internal financial projections included the following:

- Total revenues of \$1.0 million, \$23.1 million, \$33.5 million, \$40.2 million and \$51.8 million for fiscal years 2013, 2014, 2015, 2016 and 2017, respectively;
- Gross profit of \$0.5 million, \$12.4 million, \$17.2 million, \$20.1 million and \$24.3 million for fiscal years 2013, 2014, 2015, 2016 and 2017, respectively;
- Adjusted operating income (loss) of \$(5.5) million, \$5.3 million, \$10.2 million, \$11.8 million and \$15.1 million for fiscal years 2013, 2014, 2015, 2016 and 2017, respectively;
- Adjusted EBITDA of \$(5.2 million), \$5.6 million, \$10.4 million, \$12.1 million and \$15.3 million for fiscal years 2013, 2014, 2015, 2016 and 2017, respectively;

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- Capital expenditures of \$0.4 million, \$0.4 million, \$0.4 million, \$0.4 million, \$0.4 million for fiscal years 2013, 2014, 2015, 2016 and 2017, respectively; and
- Net working capital increases of \$0.1 million, \$6.9 million, \$(2.2) million, \$1.1 million and \$2.0 million for fiscal years 2013, 2014, 2015, 2016 and 2017, respectively.

Turtle Beach's internal financial projections included the following:

- Net sales of \$218.0 million, \$268.6 million, \$335.1 million and \$402.2 million for fiscal years 2013, 2014, 2015 and 2016, respectively;
- Gross profit of \$78.5 million, \$95.4 million, \$133.0 million and \$158.9 million for fiscal years 2013, 2014, 2015 and 2016, respectively;
- Adjusted operating income of \$36.1 million, \$51.5 million, \$75.6 million and \$91.8 million for fiscal years 2013, 2014, 2015 and 2016, respectively;
- Adjusted EBITDA of \$40.6 million, \$56.7 million, \$82.8 million and \$100.4 million for fiscal years 2013, 2014, 2015 and 2016, respectively;
- Capital expenditures of \$6.5 million, \$8.5 million, \$10.0 million, and \$11.1 million for fiscal years 2013, 2014, 2015 and 2016, respectively; and
- Net working capital increases of \$(4.3) million, \$17.8 million, \$12.9 million and \$11.6 million for fiscal years 2013, 2014, 2015 and 2016, respectively.

Adjusted operating income and adjusted EBITDA are considered non-GAAP financial measures. Parametric and Turtle Beach provided this information to each other because they believed it could be useful in evaluating, on a prospective basis, the respective companies' operating performances. Non-GAAP financial measures should not be considered in isolation from, or as a substitute for, financial information presented in compliance with GAAP, and non-GAAP financial measures as used in the projections may not be comparable to similarly titled amounts used by other companies.

Adjusted operating income adds back certain additional items, and was calculated differently for Parametric and Turtle Beach. For Parametric, adjusted operating income included add backs of amounts for stock-based compensation and impairment of patents and inventory. For Turtle Beach, adjusted operating income included add backs of amounts for stock-based compensation and business transaction expenses.

EBITDA is calculated as net income (earnings), plus interest, taxes, depreciation and amortization. Adjusted EBITDA adds back certain additional items, and was calculated differently for Parametric and Turtle Beach. For Parametric, Adjusted EBITDA included addbacks of amounts for stock-based compensation and impairment of patents and inventory. For Turtle Beach, Adjusted EBITDA included addbacks of amounts for stock-based compensation and business transaction expenses.

**You should not regard the inclusion of these projections in this proxy statement as an indication that Parametric, Turtle Beach or any of their respective affiliates, advisors or other representatives considered or consider the projections to be necessarily predictive of actual future events. None of Parametric, Turtle Beach or any of their respective affiliates, advisors or other representatives has made or makes any representations regarding the ultimate performance of Parametric or Turtle Beach compared to the information contained in the projections. Parametric and Turtle Beach made no representations in the merger agreement or otherwise concerning such financial projections.**

### **Interests of Parametric Executive Officers and Directors in the Merger**

In considering the recommendation of the Parametric Board that our stockholders vote "FOR" the merger proposal, our stockholders should be aware that certain of our directors and executive officers have interests in

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the merger that may be different from, or in addition to, the interests of our stockholders generally. These interests may present our directors and executive officers with actual or potential conflicts of interest, and these interests, to the extent material, are described below. The Parametric Board was aware of these potential conflicts of interest and considered them, among other matters, in reaching its decision to recommend approval of, or to approve, the merger agreement and the merger and to recommend that our stockholders vote in favor of the merger proposal.

### *Employment Agreements and other Compensation Arrangements for Our Named Executive Officers*

We have an employment agreement with Mr. Potashner which provides Mr. Potashner with certain severance benefits upon termination of employment or following a change of control of Parametric. The merger contemplated by the merger agreement will result in a change of control of Parametric for these purposes. Pursuant to the terms of his employment agreement, Mr. Potashner is entitled to full vesting of any unvested Parametric stock options upon the occurrence of a change of control. In addition, pursuant to the terms of his employment agreement, if Mr. Potashner's employment with Parametric is terminated either without "cause" or for "good reason" (each, as such terms are defined in Mr. Potashner's employment agreement), Mr. Potashner is entitled to continued payment of his base salary for 12 months as well as a pro rata portion of any accrued but unpaid bonus.

In addition, in connection with the negotiation and execution of the merger agreement, on August 2, 2013, Parametric amended Messrs. Barnes and Norris' stock option agreements so that the stock options held by Messrs. Barnes and Norris will become accelerated in full upon a change of control of Parametric pursuant to the proposed merger with VTBH (including any alternative transaction) followed by such executive's departure from Parametric under certain circumstances thereafter. The merger will qualify as a change of control of Parametric for these purposes. Also on August 2, 2013, the Parametric Board amended the 2013 Cash Bonus Plan to adjust the performance targets such that the target bonuses for each of the executive officers eligible for a bonus under such plan (\$210,000, \$162,000 and \$81,000 for Messrs. Potashner, Barnes and Norris, respectively) would be achieved in full upon the closing of the proposed merger with VTBH (or any alternative transaction), whether or not the executive officers are still employed by Parametric. Finally, in connection with the negotiation and execution of the merger agreement, Parametric may elect to pay a fee to each of the non-employee members of the Parametric Board, commensurate to the incremental time devoted by them apart from normal board of director service in 2013, related to review and analysis of strategic transactions and related matters.

As described elsewhere in this proxy statement, pursuant to the voting agreements entered into by Messrs. Potashner, Norris and Barnes, such executive officers may be partially released from the lock-up restrictions of such agreement and may sell additional shares of Parametric common stock in order to cover any tax liability that may become payable by them in connection with the merger agreement under certain circumstances.

### *Outstanding Parametric Warrants*

On February 22, 2011, we entered into a Securities Purchase Agreement with selected institutional investors and entities affiliated with two of our officers (Messrs. Norris and Barnes) pursuant to which we issued and sold for cash 400,000 shares of our common stock at a purchase price of \$2.50 per share. In connection with the financing, we issued warrants to the investors exercisable for an aggregate of 400,000 shares of common stock at an exercise price of \$3.75 per share. The warrants are exercisable until February 22, 2016. The institutional investors were considered related parties, due to greater than 10% ownership, and they purchased 300,000 shares and were issued 300,000 warrants (all of which have been exercised). Mr. Norris purchased through a controlled entity 60,000 shares and was issued 60,000 warrants, and Mr. Barnes purchased through controlled entities 40,000 shares and was issued 40,000 warrants, all on the same terms as the institutional investors. On September 30, 2011, entities affiliated with Mr. Norris exercised 60,000 of the warrants for cash of \$225,000, and an entity affiliated with Mr. Barnes exercised 20,000 of the warrants for cash of \$75,000. As of the date of this proxy statement, the only such outstanding warrants consist of 20,000 warrants issued to an entity affiliated

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with Mr. Barnes; pursuant to the terms of such warrants, a cash payment obligation from Parametric to such investor may be required upon the consummation of the merger.

### *Board Matters*

As described elsewhere in this proxy statement, Parametric is entitled to designate two members of the nine member reconstituted Parametric board of directors to be in place as of the closing of the merger, and has so designated Messrs. Potashner and Wolfe. In addition, any new or continuing members of the Parametric Board will be entitled to certain indemnification benefits pursuant to indemnification agreements and our articles of incorporation. Furthermore, such new or continuing members of the Parametric Board will benefit from Parametric's "director and officer" liability insurance.

### *HyperSound Health, Inc. Option*

As described more fully in "Compensation of Parametric Executive Officers and Directors" on page 167, on August 5, 2013, HyperSound Health, Inc., a subsidiary of Parametric ("HHI"), and Mr. Potashner agreed to certain amendments to the option to acquire HHI common stock held by Mr. Potashner. Pursuant to such amendments to the HHI stock option, in the event the merger or any alternative transaction closes, the HHI stock option held by Mr. Potashner would terminate in full and no vesting under such option would occur prior to such closing. In addition, the financing vesting condition of such option was made more restrictive.

### *Continued Employee Benefits*

All new and continuing executive officers of Parametric will be entitled to certain health and welfare benefits which are currently made available by Parametric to all of its employees.

### *New Employment Arrangements*

As of the date of this proxy statement, none of our executive officers nor any member of our board of directors has entered into or is in negotiations to enter into any amendments or modifications to existing employment agreements with us or our subsidiaries in anticipation of the merger, nor has any executive officer who has plans or is expected to remain with the surviving corporation of the merger entered into or is in negotiations to enter into any agreement, arrangement or understanding with Parametric, VTBH, the surviving corporation of the merger or any of their respective affiliates regarding employment with Parametric or the surviving corporation or any such affiliates. Although no such agreement, arrangement or understanding currently exists for any executive officer at this time, Parametric or VTBH may request some of our executive officers to remain after the merger is completed, and such executive officers may, prior to the closing of the merger, enter into new arrangements with Parametric or its affiliates regarding employment with Parametric or the surviving corporation.

### *Golden Parachute Compensation Arrangements*

We have previously entered into an employment agreement with one of our named executive officers, Kenneth Potashner (as discussed in more detail in the section of this proxy statement entitled "— Employment Agreements and Other Compensation Arrangements for Our Named Executive Officers"). The employment agreement specifies certain payments and benefits to be provided by Parametric upon various circumstances, including, among other things, upon a qualifying involuntary termination of employment or a change in control of Parametric. Our other named executive officers do not have employment agreements with us. In accordance with the SEC's regulations regarding golden parachute compensation, the Golden Parachute Compensation table below sets forth the estimated amounts of compensation that each named executive officer could receive as a result of the proposed merger transaction. The estimates below are based in part on the following assumptions:

- Before taking into account any acceleration of vesting provided at the closing of the merger, whether or not an equity compensation award is vested is determined as of the day before the closing of the merger;

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- the merger, which will constitute a change in control of Parametric, hypothetically closed on October 25, 2013, the latest practicable date prior to the filing of this proxy statement;
- the price per share of Parametric common stock paid in the merger was \$14.92, which is the average trading price of Parametric's common stock over the five business days following the first public announcement of the transaction; and
- where applicable, each named executive officer hypothetically experienced a qualifying involuntary termination of employment (as discussed in more detail in the section of this proxy statement entitled "Employment Agreements and Other Compensation Arrangements for Our Named Executive Officers") as of the day after the merger.

Certain of the amounts payable may vary depending on the actual date of completion of the merger and any qualifying involuntary termination of employment. No named executive officer is entitled to any tax reimbursement payments from our company.

### **Golden Parachute Compensation**

<u>Named Executive Officer</u>	<u>Cash(1)(2)</u>	<u>Equity(3)</u>	<u>Perquisites / Benefits(4)</u>	<u>Total(5)</u>
Kenneth F. Potashner, Executive Chairman (PEO)	\$560,000	\$2,247,738	—	\$2,807,738
Elwood G. Norris, President (former Chief Executive Officer)	\$ 81,000	\$ 86,844	—	\$ 167,844
James A. Barnes, CFO, Treasurer and Secretary (PFO)	\$162,000	\$ 85,422	—	\$ 247,422

- (1) *Target Bonus.* The named executive officers are eligible to earn bonuses under our Cash Bonus Plan for the period of January 1, 2013 to December 31, 2013 (the "2013 Cash Bonus Plan"), subject to the achievement of certain performance objectives by Parametric. The closing of the merger is a performance objective eligible for the maximum bonus payout under the 2013 Cash Bonus Plan. Thus, the target bonuses for fiscal 2013 for each of Parametric's named executive officers under the 2013 Cash Bonus Plan will be achieved in full upon the closing of the merger.

These target amounts represent 60% of Mr. Potashner's annual base compensation, 50% of Mr. Norris' annual base compensation, and 100% of Mr. Barnes' annual base compensation. The named executive officers would receive the following bonuses under the 2013 Cash Bonus Plan by March 15, 2014 upon completion of the merger: Mr. Potashner will receive \$210,000, Mr. Norris will receive \$81,000 and Mr. Barnes will receive \$162,000.

Amounts included in this column for Messrs. Barnes and Norris are "single-trigger" in nature; namely, eligibility to receive the payment is conditioned solely on the occurrence, and being employed as, of the closing of the merger.

- (2) *Cash Payments to Mr. Potashner.* Mr. Potashner is a party to an employment agreement with Parametric that provides that upon a Discharge Without Cause (as defined in the Employment Agreement) or a Termination for Good Reason (as defined in the Employment Agreement), Parametric will, among other things, pay Mr. Potashner an amount equal to his base salary at the annual rate in effect at the time of termination for a period of 12 months and any prorated bonus amount payable under the Cash Bonus Plan. However, Mr. Potashner will receive the full target bonus for fiscal 2013 in connection with the merger in lieu of the prorated amount provided for in the employment agreement.



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The figure in this column for Mr. Potashner includes the amount of the potential base salary continuation amounts payable to Mr. Potashner upon a qualifying involuntary termination of employment and represents the estimated value of payment(s) by our company to Mr. Potashner of his then-existing base salary of \$350,000 in regular installments for a period of 12 months from the date of his termination of employment. The figure also includes a bonus payment of \$210,000, which represents Mr. Potashner's full target annual bonus amount under the 2013 Cash Bonus Plan, as described in footnote 1, and which Mr. Potashner will receive regardless of whether a termination occurs.

The amount included in this column for Mr. Potashner representing his base salary continuation amounts is "double trigger" in nature; namely, eligibility to receive the payment is conditioned on a qualifying involuntary termination of employment. The amount included in this column for Mr. Potashner representing his target bonus amount is "single-trigger" in nature; namely, eligibility to receive the payment is conditioned solely on the occurrence, and being employed as, of the closing of the merger. Our payment of the base salary continuation amounts to Mr. Potashner described in this column is conditioned on the execution by Mr. Potashner of a release of claims in the form specified in his employment agreement.

- (3) *Equity.* Mr. Potashner's employment agreement provides, among other things, that all of his outstanding unvested Parametric stock options shall automatically vest upon a change of control.

In connection with the merger, the stock options held by Messrs. Barnes and Norris will also vest in full upon a qualifying involuntary termination of employment.

The figures in this column represent the aggregate intrinsic value of the stock options whose vesting will be fully accelerated in connection with the merger, as described in greater detail above in the section of this proxy statement entitled "Employment Agreements and Other Compensation Arrangements for Our Named Executive Officers." This amount is computed pursuant to instruction 1 of Item 402(t)(2) of Regulation S-K based upon a \$14.92 per share value of Parametric's common stock, which is the average trading price of Parametric's common stock over the five business days following the first public announcement of the transaction, which was made on August 5, 2013, rounded up to the nearest whole cent. The five business days following the first public announcement were August 6, 7, 8, 9, and 12, 2013. The figures in this column represent the difference between the \$14.92 per share value of Parametric's common stock as calculated above and the per share exercise price of each stock option, multiplied by the number of shares subject to stock options whose vesting will be accelerated.

The amount included in this column for Mr. Potashner is "single-trigger" in nature; namely, eligibility to receive the payment is conditioned solely on the occurrence, and being employed as, of a change in control.

The amounts included in this column for Messrs. Barnes and Norris are "double trigger" in nature; namely, eligibility to receive the payment is conditioned on a qualifying involuntary termination of employment after a change of control.

- (4) *Perquisites/benefits.* None of our named executive officers will receive any perquisites or benefits in connection with the merger.
- (5) *Total.* The following table shows, for each named executive officer, the amounts which are single trigger or double trigger in nature.

<u>Named Executive Officer</u>	<u>Single Trigger</u>	<u>Double Trigger</u>
Kenneth F. Potashner, Executive Chairman (PEO)	\$ 2,457,738	\$ 350,000
Elwood G. Norris, President (former Chief Executive Officer)	\$ 81,000	\$ 86,844
James A. Barnes, CFO, Treasurer and Secretary (PFO)	\$ 162,000	\$ 85,422

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### **Listing of Parametric Common Stock on NASDAQ**

Parametric common stock is currently listed on the NASDAQ Capital Market under the symbol "PAMT." NASDAQ considers the merger proposed in this proxy statement to be a business combination with a non-NASDAQ entity resulting in a change in control of Parametric, and has required that Parametric on behalf of the combined company submit a new initial listing application in connection with the merger. Although we believe that NASDAQ will approve the new initial listing application, it is possible that NASDAQ will deny our application and issue the combined company a delisting letter immediately after completion of the merger. If this occurs, the combined company intends to take all reasonable action in order to maintain the listing of its common stock on NASDAQ. However, there can be no assurance that the combined company will be successful, and if the combined company's common stock is delisted from NASDAQ, stockholders may have difficulty converting their investments into cash effectively. As a result, the relative price of the combined company's stock may decline and/or fluctuate more than in the past.

### **Restrictions on Sales of Parametric Common Stock Following the Merger**

*Stockholder Agreement.* Under the Stockholder Agreement entered into among VTBH and the holders of all of the shares of common stock and Series A Preferred Stock of VTBH (referred to as the "VTBH stockholders"), the VTBH stockholders have agreed to a lock-up whereby they will not sell or otherwise transfer the shares of Parametric common stock issued to them pursuant to the merger agreement or subsequently acquired by them (such shares referred to as the "merger shares") for a period of six months following the closing of the merger, subject to certain exceptions, including:

- any VTBH stockholder that is an individual may transfer his or her merger shares to any member of such stockholder's immediate family, or to a trust for the benefit of such stockholder or any member of such stockholder's immediate family for estate planning purposes;
- any VTBH stockholder that is a private equity fund may distribute its shares to its partners, members and equity holders or transfer its merger shares to any affiliate of such stockholder or any investment fund or other entity controlled by such stockholder in a transaction not involving a disposition for value, subject to the transferee agreeing to be bound by the Stockholder Agreement; and
- any VTBH stockholder that suffers an actual out-of-pocket tax liability as a result of the U.S. Internal Revenue Service (referred to as the "IRS") or other applicable tax authority successfully challenging the treatment of the merger as a tax-free "reorganization" within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (referred to as the "Code"), and the regulations promulgated thereunder, shall be released from the transfer restrictions imposed on such stockholder's merger shares pursuant to the Stockholder Agreement only to the extent reasonably necessary to cover the resulting actual out-of-pocket tax liability to such stockholder by virtue of the merger and the merger consideration received by such stockholder pursuant to the merger agreement not qualifying for such tax-free treatment.

*Voting Agreements.* Additionally, under the voting agreements entered into by Messrs. Potashner, Barnes and Norris, as well as certain entities over which they exercise voting and/or investment control (such stockholders and entities collectively referred to as the "management stockholders"), the management stockholders are subject to a lock-up restriction whereby they have agreed not to sell or otherwise transfer the shares of Parametric common stock beneficially owned by them or subsequently acquired by them until six months following the closing of the merger, subject to certain exceptions, including:

- any management stockholder may transfer such stockholder's shares to any member of such stockholder's immediate family, or to a trust for the benefit of such stockholder or any member of such stockholder's immediate family for estate planning purposes, subject to any such transferee or distributee agreeing to be bound by the terms and conditions of the applicable voting agreement; and

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- if any management stockholder suffers an actual out-of-pocket tax liability as a result of (i) the IRS or other applicable tax authority successfully challenging the treatment of the merger as a tax-free "reorganization" within the meaning of Section 368(a) of the Code, and the regulations promulgated thereunder, or (ii) receiving or being deemed to have received "excess parachute payments" for purposes of Code Sections 280G or 4999, or being deemed to have received any other payments in connection with the merger which results in any penalty, tax (including excise tax) or similar payment obligation to any governmental agency, in each case other than capital gains tax resulting from the sale of Parametric equity securities which applies to all Parametric stockholders in a similar manner, such stockholder shall be released from the transfer restrictions imposed on the shares pursuant to the voting agreement only to the extent reasonably necessary to cover such tax liabilities.

The shares subject to the voting agreements represented approximately 19.2% of the outstanding shares of Parametric common stock as of the date of the merger agreement.

### **Anticipated Accounting Treatment**

Under GAAP, the merger will be accounted for as a "reverse acquisition" pursuant to which VTBH will be considered the acquiring entity for accounting purposes. As such, VTBH will allocate the total purchase consideration to Parametric's tangible and identifiable intangible assets and liabilities based on their respective fair values at the date of the completion of the merger. Turtle Beach's historical results of operations will replace Parametric's historical results of operations for all periods prior to the merger; after completion of the merger, the results of operations of both companies will be included in Parametric's financial statements.

Parametric will account for the merger using the acquisition method of accounting under U.S. GAAP. Accounting Standards Codification 805 "*Business Combinations*," referred to as "ASC 805," provides guidance for determining the accounting acquiror in a business combination when equity interests are exchanged between two entities. ASC 805 provides that in a business combination effected through an exchange of equity interests, such as the merger, the entity that issues the equity interests is generally the acquiring entity. Commonly, the acquiring entity is the larger entity. However, the facts and circumstances surrounding a business combination sometimes indicate that a smaller entity acquires a larger one. ASC 805 further provides that in identifying the acquiring entity in a combination effected through an exchange of equity interests, all pertinent facts and circumstances must be considered, including the relative voting rights of the stockholders of the constituent companies in the combined entity, the composition of the board of directors and senior management of the combined company and the terms of the exchange of equity securities in the business combination, including payment of any premium.

Based on the relative voting interests of Parametric and VTBH in the combined company whereby the VTBH stockholders will have a majority voting interest, that the board of directors of the combined entity will be composed of five board members designated by former VTBH stockholders and two directors designated by Parametric stockholders and that the chief executive officer of the combined entity will be the former chief executive officer of VTBH, VTBH is considered to be the acquiror of Parametric for accounting purposes. This means that the total purchase price will be allocated to Parametric's tangible and identifiable intangible assets and liabilities based on their estimated relative fair market values at the date of the completion of the merger. Final valuations of property, plant and equipment, and intangible and other assets have not yet been completed as management is still reviewing the existence, characteristics and useful lives of Parametric's intangible assets. The completion of the valuation work could result in significantly different amortization expenses and balance sheet classifications. After completion of the merger, the results of operations of both companies will be included in the financial statements of Parametric. For further discussion of the accounting treatment, see "Unaudited Pro Forma Combined Consolidated Financial Information" on page 104.

### **Material U.S. Federal Income Tax Consequences of the Merger**

The merger agreement and transactions contemplated thereby, including the merger and issuance of shares pursuant to the merger agreement, is intended to be tax free to holders of Parametric common stock. The merger

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agreement provides that Parametric, Merger Sub and VTBH intend that for U.S. federal income tax purposes, the merger will constitute a tax free reorganization with the meaning of Internal Revenue Code Section 368(a)(1)(B). None of the parties to the merger agreement is seeking tax or legal or accounting opinions or rulings on whether the merger agreement qualifies for tax-free treatment and tax-free treatment is not a condition precedent to the obligations of the parties to the merger agreement. See "The Merger – Restrictions on Sales of Parametric Common Stock Following the Merger" on page 79 for a discussion of exceptions to lock-up restrictions for VTBH stockholders in the event that the IRS or another applicable tax authority successfully challenges the treatment of the merger as a tax free reorganization.

## **Regulatory Approvals**

Except for the filing of the certificate of merger with the Secretary of State of the State of Delaware at or before the effective time and the notification provided to the U.S. Federal Trade Commission and the Antitrust Division of the Department of Justice under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (referred to as the "HSR Act"), Parametric is unaware of any material federal, state or foreign regulatory requirements or approvals that would be necessary for the consummation of the transaction. The certificate of merger will not be filed until immediately prior to the effective time. Parametric and Turtle Beach have made all required filings under applicable U.S. antitrust laws with the Antitrust Division of the Department of Justice and the U.S. Federal Trade Commission. Parametric received confirmation that early termination of the statutory waiting period initiated by these filings was granted on September 5, 2013.

## **Dissenters' Rights**

Under Section 92A.380 of the Nevada Revised Statutes, referred to as the "NRS," Parametric stockholders are not entitled to dissenters' rights in connection with the merger because approval by Parametric's stockholders of the merger agreement and the transactions contemplated thereby, including the merger, is not required under the NRS because Parametric is not a "constituent entity" to the merger (the "constituent entities" to the merger being Merger Sub and VTBH) and there are no other provisions of the NRS or Parametric's charter documents that would provide dissenters' rights to Parametric's stockholders in this context. Further, Parametric's bylaws expressly provide that the provisions of NRS 78.378 to 78.3793, inclusive, relating to the accordance of voting rights to control shares (and related dissenters' rights), do not apply to Parametric or to the acquisition of a controlling interest by existing or future stockholders.

## **Litigation Relating to the Merger**

On August 8, 2013, James Harrison, Jr., a purported shareholder of Parametric, filed a class action lawsuit in the Superior Court California, County of San Diego, under the caption *Harrison v. Parametric Sound Corp.*, naming Parametric, Parametric's directors, Paris Acquisition Corp. (a wholly-owned subsidiary of Parametric) and Turtle Beach as defendants. Several other substantially similar shareholder class action complaints were filed in the same court in August 2013. In August and September 2013, several substantially similar shareholder class action complaints were filed in the Eighth Judicial District Court, Clark County, Nevada. All complaints related to the same events and transactions regarding the merger, allege breaches of fiduciary duty and aiding and abetting breaches of fiduciary duty in connection therewith, sought class action status, and demanded an order enjoining the proposed merger and unspecified reforms, actions and disclosures. On September 10, 2013, the California Superior Court consolidated all related cases before it under the caption *In re Parametric Sound Corp. Shareholder Litigation*, Case No. 37-2013-00061953-CU-BT-CTL. On September 23, 2013, the Nevada District Court consolidated all related cases before it under the caption *In re Parametric Sound Corp. Shareholders' Litigation*, Lead Case No. A-13-686890-B, Dep't XI. Following Parametric's filing of a preliminary proxy statement with the SEC on November 4, 2013, amended consolidated complaints were filed on November 14, 2013 in the consolidated action pending in Nevada and on November 19, 2013 in the consolidated action pending in California. These amended complaints reiterate the same claims and seek the same relief as asserted and sought in the original complaints. On November 20, 2013, Shana Vasek, a purported shareholder of Parametric,



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filed a class action lawsuit in the United States District Court for the District of Nevada, under the caption *Vasek v. Parametric Sound Corp.*, Case No. 2:13-cv-02148-JAD-GWF, naming the same defendants, asserting the substantially the same allegations and seeking substantially the same relief as asserted and sought the above-referenced consolidated action pending in Nevada state court. In addition to asserting substantially the same claims for breach of fiduciary duty and aiding and abetting as asserted in the above-referenced consolidated action pending in Nevada state court, the plaintiff in the federal court action asserts a claim for violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 and SEC Rule 14a-9.

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Table of Contents**PROPOSAL 1 – THE MERGER PROPOSAL**

The Parametric Board is asking Parametric's stockholders to consider and vote upon a proposal to approve the issuance of Parametric common stock pursuant to the merger contemplated by the merger agreement, and the corresponding change of control of Parametric, which proposal we refer to as the "merger proposal."

The following summary describes certain material provisions of the merger agreement. This summary is not complete and is qualified in its entirety by reference to the merger agreement, which is attached to this proxy statement as Annex A and incorporated into this proxy statement by reference. We encourage you to read carefully the merger agreement (including the form of "break-up fee license agreement" (defined below) and other exhibits thereto) in its entirety because this summary may not contain all the information about the merger agreement that is important to you. The rights and obligations of the parties are governed by the express terms of the merger agreement and not by this summary or any other information contained in this proxy statement.

**Explanatory Note Regarding the Merger Agreement**

The merger agreement is included to provide you with information regarding its terms. Factual disclosures about Parametric contained in this proxy statement or in Parametric's public reports filed with the SEC may supplement, update or modify the representations and warranties made by Parametric contained in the merger agreement. The representations, warranties and covenants made in the merger agreement by Parametric, Merger Sub and VTBH were also qualified and subject to important limitations agreed to by Parametric, Merger Sub and VTBH in negotiating the terms of the merger agreement and the disclosure schedules thereto. In particular, in your review of the representations and warranties contained in the merger agreement and described in this summary, it is important to bear in mind that the representations and warranties were negotiated with the principal purposes of establishing the circumstances in which a party to the merger agreement may have the right not to consummate the merger if the representations and warranties of the other party prove to be untrue due to a change in circumstance or otherwise, and allocating risk between the parties to the merger agreement, rather than establishing matters as facts. The representations and warranties may also be subject to a contractual standard of materiality different from those generally applicable to reports and documents filed with the SEC and in some cases were qualified by the matters disclosed to VTBH, Parametric and Merger Sub in connection with the merger agreement. Moreover, information concerning the subject matter of the representations and warranties, which do not purport to be accurate as of the date of this proxy statement, may have changed since the date of the merger agreement, and subsequent developments or new information qualifying a representation or warranty may have been included in this proxy statement. Accordingly, the representations, warranties, covenants and other agreements in the merger agreement should not be read alone, and you should read the information provided elsewhere in this proxy statement and in Parametric's filings with the SEC. See "Where You Can Find More Information" on page 173.

**Effects of the Merger; Directors and Officers; Certificate of Incorporation; Bylaws**

The merger agreement provides that, subject to the terms and conditions of the merger agreement, and in accordance with Delaware law, at the effective time of the merger, Merger Sub will merge with and into VTBH, with VTBH surviving the merger and continuing as a subsidiary of Parametric, wholly-owned except for the VTBH Series B Preferred Stock which will remain outstanding after the merger. VTBH, as a subsidiary of Parametric, is sometimes referred to in this proxy statement as the "surviving corporation."

The officers and directors of VTBH immediately prior to the effective time of the merger will be the initial officers and directors of the surviving corporation, to hold office until their respective successors are duly appointed or qualified or upon their earlier death, resignation or removal in accordance with the certificate of incorporation and bylaws of the surviving corporation. At the effective time of the merger, the certificate of incorporation of VTBH, as the surviving corporation, will be amended and restated to read in the form of the certificate set forth in Exhibit B to the merger agreement, and the bylaws of VTBH, as the surviving corporation, will be amended and restated in the form of the bylaws set forth in Exhibit C to the merger agreement, in each case until changed or amended as provided in accordance with their terms or by applicable law.

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### **Closing and Effective Time of the Merger**

The closing of the merger will take place no later than the third business day after the satisfaction or waiver of all the closing conditions set forth in the merger agreement (as more fully described below under “– Conditions to the Merger”) (other than those conditions that by their nature are to be satisfied at the closing), or at such other date as Parametric and VTBH may agree to in writing. The merger will become effective at the time that the certificate of merger is duly filed with the Secretary of State of the State of Delaware (or at such later time as the parties may specify in the certificate of merger).

### **Treatment of VTBH Capital Stock in the Merger**

*Common Stock and Series A Preferred Stock.* At the effective time of the merger, each share of VTBH common stock and Series A Preferred Stock will be cancelled and converted into the right to receive a number of shares of Parametric common stock equal to the “Per Share Number,” plus any cash paid in lieu of fractional shares.

The “Per Share Number” is computed in accordance with the following formula:

$$A = [(B / C) - B] / D$$

where:

A = the Per Share Number;

B = the “Parent Fully Diluted Share Amount,” which is equal to the sum of:

- the number of outstanding shares of Parametric common stock as of the date of the merger agreement (6,769,051), plus
- the number of shares of Parametric common stock subject to Parametric stock options as of the date of the merger agreement (1,365,354), plus
- the number of shares of Parametric common stock subject to Parametric warrants as of the date of the merger agreement (186,864), plus
- the “Qualified Offering Share Amount” (defined below), plus
- without duplication of the foregoing, the number of shares of Parametric common stock subject to any new issuances of Parametric common stock, stock options, warrants or other securities convertible into or exercisable for Parametric common stock, less
- the number of shares of Parametric common stock subject to Parametric stock options, warrants or other securities convertible into or exercisable for Parametric common stock that expire or are forfeited after the date of the merger agreement, if any;

C = the “Parent Percentage,” which means a percentage equal to 0.19 plus (i) 0.01 if a “Qualified Equity Offering” (defined below) is completed, plus (ii) the product of (A) the “Excess Offering Multiplier” (defined below) multiplied by (B) 0.0015; and

D = the “VTBH Fully Diluted Share Amount,” which is equal to the sum of:

- 554,000 (representing approximately half the number of VTBH phantom stock units), plus
- the number of outstanding shares of VTBH common stock as of the date of the merger agreement (35,282,286), plus
- the number of outstanding shares of VTBH Series A Preferred Stock as of the date of the merger agreement (48,689,555), plus
- the number of shares of VTBH common stock subject to VTBH stock options as of the date of the merger agreement (11,490,597), plus

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- without duplication of the foregoing, the number of shares of VTBH subject to any new issuances after the date of the merger agreement of VTBH common stock, Series A Preferred Stock, stock options or other securities convertible into or exercisable for VTBH common stock (other than VTBH phantom stock units), less
- the number of shares of VTBH common stock subject to VTBH stock options or other securities convertible into or exercisable for VTBH common stock that expire or are forfeited after the date of the merger agreement, if any.

In connection with the foregoing calculation:

- “Qualified Equity Offering” means a sale of Parametric common stock and/or warrants to purchase Parametric common stock, in one or more transactions, under specified terms and conditions, on or before the closing date under the merger agreement, resulting in net proceeds to Parametric of at least \$5,000,000 but not more than \$15,000,000. See “Qualified Offering; Financing Assistance” for more information regarding the terms and conditions required for an offering to qualify as a “Qualified Equity Offering.”
- “Qualified Offering Share Amount” means, with respect to a Qualified Equity Offering, the sum of the number of shares of Parametric common stock plus the number of shares of Parametric common stock subject to warrants issued in the Qualified Equity Offering.
- “Excess Offering Multiplier” means, with respect to a Qualified Equity Offering, the quotient of (i) the net proceeds received by Parametric in a Qualified Equity Offering in excess of \$5,000,000 divided by (ii) \$1,000,000.

On November 15, 2013, Parametric completed a Qualified Equity Offering under which it offered and sold 364,286 shares of Parametric common stock at a purchase price of \$14.00 per share for net proceeds to Parametric of \$5.08 million. As a result, the Parent Percentage increased from 19.0% to 20.01%. Based upon a Parent Fully Diluted Share Amount of 8,294,064 and a VTBH Fully Diluted Share Amount of 97,028,855, which numbers are current as of the date of this proxy statement (but may change prior to the effective time of the merger), the Per Share Number would be 0.3567, resulting in an aggregate of 29,950,374 shares of Parametric common stock being issued to the former holders of VTBH common stock and Series A Preferred Stock at the effective time of the merger.

*Series B Preferred Stock.* Each share of VTBH Series B Preferred Stock that is issued and outstanding immediately prior to the effective time of the merger shall remain issued and outstanding after the effective time of the merger. For more information regarding the VTBH Series B Preferred Stock, see Note 9 to VTBH’s consolidated financial statements which are attached as Annex D to this proxy statement.

## **Treatment of VTBH Equity-Based Awards in the Merger**

*Stock Options.* At the effective time of the merger, each option to purchase a share of VTBH common stock, whether vested or unvested, will be deemed to constitute an option to purchase, on the same terms and conditions, a number of shares of Parametric common stock equal to the product of (i) the number of shares of VTBH common stock subject to such option, multiplied by (ii) the “Per Share Exchange Ratio” (defined below), at an exercise price per share of Parametric common stock equal to the quotient of (i) the exercise price per share of VTBH common stock subject to such option divided by (ii) the “Per Share Exchange Ratio.” The “Per Share Exchange Ratio” means the ratio of the Per Share Number to one. See “— Treatment of VTBH Capital Stock in the Merger” above.

Parametric is required to take all corporate action necessary to reserve for issuance a sufficient number of Parametric common stock for delivery upon exercise of the options being assumed in connection with the merger. After the effective time of the merger, Parametric is required (i) to file with the SEC a registration



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statement on Form S-8 with respect to the shares of Parametric common stock that are subject to these options and (ii) to use commercially reasonable efforts to maintain the effectiveness of such registration statement for so long as Parametric is subject to the reporting requirements pursuant to Section 13 or 15(d) of the Exchange Act and such options remain outstanding.

*Phantom Stock Units.* The merger agreement does not provide for any cancellation, conversion or other impact to the outstanding phantom stock units of VTBH. As such, each phantom stock unit of VTBH that is outstanding immediately prior to the effective time of the merger will remain outstanding after the effective time of the merger.

### **Representations and Warranties**

Many of the representations and warranties made by Parametric and VTBH in the merger agreement are qualified by the absence of a material adverse effect on Parametric or VTBH, as applicable. Under the merger agreement, a "material adverse effect" means any change, state of facts, circumstance, event or effect that, individually or in the aggregate, is materially adverse to (i) the financial condition, properties, assets, liabilities, obligations, businesses or results of operations of Parametric and its subsidiaries, taken as a whole, or VTBH and its subsidiaries, taken as a whole, as the case may be, and/or (ii) the ability of either Parametric or Merger Sub, on the one hand, or VTBH, on the other hand, to perform their respective obligations under the merger agreement, subject to certain exceptions.

The representations and warranties of Parametric and VTBH contained in the merger agreement terminate at the effective time of the merger.

### *Representations and Warranties of Parametric and Merger Sub*

In the merger agreement, Parametric made a number of representations and warranties to VTBH relating to, among other things:

- corporate organization;
- capitalization;
- corporate authorization;
- governmental authorization;
- absence of conflicts;
- compliance with SEC rules and regulations;
- presentation of financial statements;
- accuracy of information contained in the proxy statement, other than any information supplied by or on behalf of VTBH for inclusion therein;
- absence of certain changes or events since September 30, 2012;
- absence of undisclosed liabilities;
- compliance with laws;
- litigation;
- title to properties and absence of liens;
- opinion of financial advisor;
- taxes;
- employee benefit plans;

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- employees and labor matters;
- environmental matters;
- intellectual property;
- material contracts;
- broker's and finder's fees;
- product liability;
- anti-takeover and similar laws;
- related party transactions;
- insurance matters; and
- top customers and suppliers.

***Representations and Warranties of VTBH***

In the merger agreement, VTBH made a number of representations and warranties to Parametric relating to, among other things:

- corporate organization;
- capitalization;
- corporate authorization;
- governmental authorization;
- absence of conflicts;
- presentation of financial statements;
- accuracy of information provided to Parametric for inclusion in the proxy statement;
- absence of certain changes or events since December 31, 2012;
- absence of undisclosed liabilities;
- compliance with laws;
- litigation;
- title to properties and absence of liens;
- taxes;
- employee benefit plans;
- employees and labor matters;
- environmental matters;
- intellectual property;
- broker's and finder's fees;
- material contracts;
- product liability;
- anti-takeover and similar laws;
- related party transactions;
- insurance matters; and

◦ top customers and suppliers.

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**Conduct of Business Pending the Merger**

Except as expressly contemplated or permitted by the merger agreement, Parametric and VTBH have agreed that, prior to the effective time of the merger, subject to certain exceptions, unless the applicable party obtains the prior written consent of the other party (which will not be unreasonably withheld, conditioned or delayed), each of Parametric and VTBH will, and will cause their respective subsidiaries to:

- conduct its business in the ordinary course consistent with past practice in all material respects;
- use reasonable best efforts to maintain and preserve intact its business organization and advantageous business relationships and retain the services of its officers and key employees; and
- take no action that would prohibit or materially impair or delay the ability of either party to obtain any necessary approvals of any regulatory agency or other governmental entity required to consummate the merger.

Parametric has further agreed that, until the effective time of the merger, subject to certain exceptions for actions taken in the ordinary course of business consistent with past practice or below certain dollar or amount thresholds, unless Parametric obtains the prior written consent of VTBH (which will not be unreasonably withheld, conditioned or delayed), and except as may be required by law or any rule or regulation of the SEC or NASDAQ or as permitted by the merger agreement, Parametric will not, and will not permit any of its subsidiaries to, among other things:

- amend any of its organizational documents;
- split, combine or reclassify any of shares of Parametric capital stock or propose to do any of the foregoing, or otherwise amend the terms of any capital stock or equity equivalents;
- declare, set aside or pay any dividend or other distribution in respect of its capital stock;
- redeem, repurchase or otherwise acquire any shares of Parametric capital stock, or offer to do any of the foregoing;
- issue, deliver, pledge or sell, any Parametric common stock, equity equivalents or capital stock of any subsidiary, or authorize any of the foregoing, subject to certain exceptions, including the issuance of shares or pursuant to a Qualified Equity Offering;
- incur any capital expenditure or any obligations or liabilities in respect thereof;
- acquire, directly or indirectly, any assets, securities, properties, interests or businesses;
- sell, lease, sublease, exchange or otherwise transfer, or create or incur any lien, subject to certain exceptions, on, any of Parametric's or its subsidiaries' assets, securities, properties, interests or businesses, or grant any option with respect to any of the foregoing;
- make any loans, advances or capital contributions to, or investments in, any other person;
- create, incur, assume, suffer to exist or otherwise be liable with respect to any indebtedness for borrowed money or guarantees thereof (including reimbursement obligations with respect to letters of credit), other than (i) in replacement of existing or maturing debt, and (ii) draw downs pursuant to existing credit facilities and letters of credit in support of Parametric's and its subsidiaries' business consistent with past practice;
- with respect to any director, officer or employee of Parametric or any of its subsidiaries whose annual base salary exceeds \$100,000, grant or increase any severance or termination pay to (or amend any existing severance pay or termination arrangement) or enter into any employment, deferred compensation or other similar agreement (or amend any such existing agreement);
- increase benefits payable under any existing severance or termination pay policies;
- establish, adopt or amend any collective bargaining, bonus, profit-sharing, thrift, pension, retirement, deferred compensation, stock option, restricted stock or other benefit plan or arrangement;



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- increase compensation, bonus or other benefits payable to any employee of Parametric or any of its subsidiaries;
- change methods of accounting in any material respect, except as required by concurrent changes in GAAP, as agreed to by its independent public accountants;
- settle, or offer or propose to settle, any material litigation, investigation, arbitration, proceeding or other claim involving or against Parametric or any of its subsidiaries;
- make, change or rescind (or file a request to make, change or rescind) any material tax election, change any annual tax accounting period, adopt or change any method of tax accounting (or file a request to make any such change), materially amend any tax returns, enter into any material closing agreement, settle or compromise any material tax claim, audit or assessment, surrender any right to claim a material tax refund, offset or other reduction in tax liability or consent to any extension or waiver of the statute of limitations applicable to any claim or assessment in respect of taxes, except, in each case, as required by applicable law;
- amend or modify in any material respect or terminate (excluding terminations upon expiration of the term thereof in accordance with their terms) any material contract or waive, release or assign any material rights, claims or benefits of Parametric or its subsidiaries under any material contract, or enter into any contract or agreement that would have been a material contract had it been entered into prior the execution of the merger agreement;
- adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization of Parametric or any of its subsidiaries;
- grant any license or sublicense to any third party, or otherwise enter into any agreement, with respect to any intellectual property rights of Parametric or its subsidiaries;
- retain any investment banker, broker or finder to consummate a "Qualified Offering" (defined below), except for any retention pursuant to which compensation will be paid by Parametric or its subsidiaries out of the proceeds of such offering (and which has no continuing obligations following the termination of such retention); or
- agree, resolve or commit to do any action otherwise restricted by the merger agreement or accept any restriction that would prevent Parametric or any of its subsidiaries from taking any action required by the merger agreement.

VTBH has further agreed that, until the effective time of the merger, subject to certain exceptions for actions taken in the ordinary course of business consistent with past practice or below certain dollar or amount thresholds, unless VTBH obtains the prior written consent of Parametric (which will not be unreasonably withheld, conditioned or delayed), and except as may be required by law or as permitted by the merger agreement, VTBH will not, and will not permit any of its subsidiaries to, among other things:

- amend its organizational documents;
- split, combine or reclassify any of shares of the capital stock of VTBH or propose to do any of the foregoing, or otherwise amend the terms of any capital stock or equity equivalents;
- declare, set aside or pay any dividend or other distribution in respect of its capital stock;
- redeem, repurchase or otherwise acquire any shares of its capital stock, or offer to do any of the foregoing;
- issue, deliver, pledge or sell, any VTBH capital stock, equity equivalents or capital stock of any subsidiary, or authorize any of the foregoing;
- incur any capital expenditure or any obligations or liabilities in respect thereof;
- acquire, directly or indirectly, any assets, securities, properties, interests or businesses;

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- sell, lease, sublease, exchange or otherwise transfer, or create or incur any lien, subject to certain exceptions, on, any of VTBH's or its subsidiaries' assets, securities, properties, interests or businesses, or grant any option with respect to any of the foregoing;
- make any loans, advances or capital contributions to, or investments in, any other person;
- create, incur, assume, suffer to exist or otherwise be liable with respect to any indebtedness for borrowed money or guarantees thereof (including reimbursement obligations with respect to letters of credit), other than (i) in replacement of existing or maturing debt, and (ii) draw downs pursuant to existing credit facilities and letters of credit in support of VTBH's and its subsidiaries' business consistent with past practice;
- with respect to any director, officer or employee of VTBH or any of its subsidiaries whose annual base salary exceeds \$100,000, grant or increase any severance or termination pay to (or amend any existing severance pay or termination arrangement) or enter into any employment, deferred compensation or other similar agreement (or amend any such existing agreement);
- increase benefits payable under any existing severance or termination pay policies;
- establish, adopt or amend any collective bargaining, bonus, profit-sharing, thrift, pension, retirement, deferred compensation, stock option, restricted stock or other benefit plan or arrangement;
- increase compensation, bonus or other benefits payable to any employee of VTBH or any of its subsidiaries;
- change methods of accounting in any material respect, except as required by concurrent changes in GAAP, as agreed to by its independent public accountants;
- settle, or offer or propose to settle, any material litigation, investigation, arbitration, proceeding or other claim involving or against VTBH or any of its subsidiaries;
- make or change any material tax election, change any annual tax accounting period, adopt or change any method of tax accounting, materially amend any tax returns, enter into any material closing agreement, settle or compromise any material tax claim, audit or assessment or surrender any right to claim a material tax refund, offset or other reduction in tax liability;
- amend or modify in any material respect or terminate (excluding terminations upon expiration of the term thereof in accordance with their terms) any material contract or waive, release or assign any material rights, claims or benefits of VTBH or its subsidiaries under any material contract, or enter into any contract or agreement that would have been a material contract had it been entered into prior the execution of the merger agreement;
- adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization of VTBH or any of its subsidiaries; or
- agree, resolve or commit to do any action otherwise restricted by the merger agreement or accept any restriction that would prevent VTBH or any of its subsidiaries from taking any action required by the merger agreement.

Parametric and VTBH have also agreed to certain other customary covenants, including, but not limited to, using reasonable best efforts to obtain all permits, waivers, consents or approvals from governmental authorities or third parties as may be necessary to consummate the merger and the transactions contemplated by the merger agreement, cooperating in connection with the refinancing of VTBH's existing credit facility, providing reasonable access to their respective personnel, properties and information, and making all filings or executing any further documentation necessary to consummate the merger.

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### **Limitations on Considering Other Acquisition Proposals**

#### *Definitions of Acquisition Proposal, Superior Proposal and Intervening Event*

An "acquisition proposal" means any bona fide inquiry, proposal or offer made by any person for, in a single transaction or a series of transactions:

- a merger, reorganization, share exchange, consolidation, business combination, recapitalization, extra-ordinary dividend or share repurchase, dissolution, liquidation or similar transaction involving Parametric;
- the direct or indirect acquisition by any person or group of 20% or more of the assets of Parametric and its subsidiaries, on a consolidated basis, or assets of Parametric and its subsidiaries representing 20% or more of the consolidated revenues or net income (including, in each case, securities of Parametric's subsidiaries) of Parametric or
- the direct or indirect acquisition by any person or group of 20% or more of the voting power of the outstanding shares of Parametric common stock, including any tender offer or exchange offer that if consummated would result in any person beneficially owning shares of Parametric with 20% or more of the voting power of the outstanding shares of Parametric common stock.

A "superior proposal" means a bona fide written acquisition proposal (substituting 50% for 20% in the definition of acquisition proposal in the last two bullet points above) that the Parametric Board has determined in its good faith judgment (after consultation with outside legal counsel and its financial advisor) is more favorable to Parametric stockholders than the merger, taking into account all of the terms and conditions of such acquisition proposal (including the financing, likelihood and timing of consummation thereof) and the merger agreement (including any changes to the terms of the merger agreement committed to by VTBH to Parametric in writing in response to such acquisition proposal).

An "intervening event" means an event, fact, circumstance, development or occurrence that is material to Parametric and its subsidiaries, taken as a whole (other than any event or circumstance resulting from a breach of the merger agreement by Parent or Merger Sub), that was not known to the Parametric Board as of or prior to the date of the merger agreement, which event, fact, circumstance, development or occurrence becomes known to the Parametric Board prior to Parametric stockholders approving the merger proposal, except that "intervening event" will not include any event, fact, circumstance, development or occurrence arising from or relating to an acquisition proposal, the public announcement of the merger agreement and related transactions (including the impact on customers, suppliers, employees and any legal proceedings arising therefrom) and certain other items specified in the merger agreement.

#### *30-Day Go-Shop Provision*

For 30 days following the execution of the merger agreement, Parametric was permitted (i) to initiate, solicit and encourage any inquiry or the making of any proposal or offer that constitutes an acquisition proposal and (ii) to engage in, enter into, continue or otherwise participate in discussions or negotiations with any persons or group of persons with respect to any acquisition proposals. The 30-day "go-shop" period expired on September 5, 2013. Parametric did not receive any acquisition proposals during such period and, as of the date of this proxy statement, Parametric has not received any acquisition proposals after such period.

#### *Restrictions on Solicitation; Evaluation of Unsolicited Acquisition Proposals*

Commencing upon the expiration of the 30-day "go shop" period and continuing until the earlier of the consummation of the merger or the termination of the merger agreement, Parametric and its subsidiaries will not, and Parametric will instruct, and use its reasonable best efforts to cause, its and its subsidiaries' representatives not to:

- initiate, solicit or knowingly encourage any inquiry or the making of any proposal or offer that constitutes, or would reasonably be expected to result in, an acquisition proposal;

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- engage in, enter into, continue or otherwise participate in any discussions or negotiations with any person with respect to, or provide any non-public information or data concerning Parametric or its subsidiaries to any person relating to, any proposal or offer that constitutes, or could reasonably be expected to result in, an acquisition proposal, or
- enter into any acquisition agreement, merger agreement or similar definitive agreement, or any letter of intent, memorandum of understanding or agreement in principle or any other agreement relating to an acquisition proposal (any such agreement, other than a confidentiality agreement permitted under the merger agreement, referred to as an "alternative acquisition agreement").

Notwithstanding the foregoing, if Parametric receives an acquisition proposal from any person, Parametric and its representatives may contact such person to clarify the terms and conditions thereof and may provide to such person information and access regarding Parametric pursuant to an executed confidentiality agreement, so long as Parametric also promptly makes available to VTBH any non-public information concerning Parametric that is provided to any such person to the extent not previously made available to VTBH.

Additionally, if (i) the Parametric Board determines in good faith and after consultation with its financial advisor and outside legal counsel that such acquisition proposal either constitutes a superior proposal or could reasonably be expected to result in a superior proposal, (ii) the Parametric Board determines in good faith and after consultation with its outside legal counsel that it is necessary to take such actions in order to comply with its fiduciary duties to Parametric stockholders under applicable law and (iii) the Parametric Board has given VTBH prior written notice of such determinations, then Parametric and its representatives may engage in, enter into, continue or otherwise participate in any discussions or negotiations with such person with respect to such acquisition proposal.

Parametric is required to promptly notify VTBH of the receipt of any acquisition proposal, any inquiries that would reasonably be expected to result in an acquisition proposal, or any request for information from, or any negotiations sought to be initiated or resumed with, Parametric or any of its representatives concerning an acquisition proposal. Parametric is also required (i) to provide certain information to VTBH with respect to any such acquisition proposal, inquiry or request, (ii) to keep VTBH reasonably informed on a prompt basis of any material developments, material discussions or material negotiations regarding any such acquisition proposal, inquiry or request and (iii) upon reasonable request, to apprise VTBH of the status of any discussions or negotiations with respect to any of the foregoing.

### *Change in Recommendation; Termination for Superior Proposal*

Except as specified below, neither the Parametric Board nor any committee thereof may (i) effect a "change in recommendation" (defined below) or (ii) authorize, adopt or approve or propose to authorize, adopt or approve, an acquisition proposal, or cause or permit Parametric or any of its subsidiaries to enter into any alternative acquisition agreement. A "change of recommendation" would occur if the Parametric Board or a committee thereof:

- changes, withholds, withdraws, qualifies or modifies, in a manner adverse to VTBH (or publicly proposes or resolves to change, withhold, withdraw, qualify or modify), the recommendation of the Parametric Board that Parametric stockholders vote in favor of the merger proposal (referred to as the "Parametric Board recommendation");
- fails to include the Parent Board Recommendation in the proxy statement for the Special Meeting;
- approves or recommends, or publicly proposes to approve or recommend to Parametric stockholders, an acquisition proposal; or
- if a tender offer or exchange offer for shares of capital stock of Parametric that constitutes an acquisition proposal is commenced, fails to recommend against acceptance of such tender offer or exchange offer by Parametric stockholders (including, for these purposes, by disclosing that it is taking



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no position with respect to the acceptance of such tender offer or exchange offer by its stockholders, which will constitute a failure to recommend against acceptance of such tender offer or exchange offer; provided that a customary "stop, look and listen" communication by the Parametric Board pursuant to Rule 14d-9(f) of the Exchange Act shall not be prohibited), within 10 business days after commencement of the tender offer or exchange offer.

Notwithstanding the foregoing, before Parametric stockholders approve the merger proposal, the Parametric Board is permitted:

- to cause Parametric to terminate the merger agreement and enter into an alternative acquisition agreement with respect to a superior proposal, subject to compliance with the termination provisions described in "Termination of the Merger Agreement" below, if and only if: (i) the Parametric Board has received an acquisition proposal that, in the good faith determination of the Parametric Board, after consultation with its financial advisor and outside legal counsel, constitutes a superior proposal, after having complied with, and giving effect to all of the adjustments which may be offered by VTBH in response thereto; and (ii) the Parametric Board determines in good faith, after consultation with outside legal counsel, that it is necessary to take such action in order to comply with the directors' fiduciary duties to Parametric stockholders under applicable law; or
- to effect a change of recommendation, if and only if: (i) the Parametric Board has received an acquisition proposal that, in the good faith determination of the Parametric Board, after consultation with its financial advisor and outside legal counsel, constitutes a superior proposal, after having complied with, and giving effect to all of the adjustments which may be offered by VTBH in response thereto, or an "intervening event" (defined below) occurs and is continuing; and (ii) the Parametric Board determines in good faith, after consultation with outside legal counsel, it is necessary to take such action in order to comply with the directors' fiduciary duties to Parametric's stockholders under applicable Law.

However, before the Parametric Board may effect any such termination or change of recommendation:

- Parametric shall provide a written notice to VTBH that the Parametric Board intends to take such action and describing (i) the facts underlying the Parametric Board's determination that an intervening event has occurred and the rationale and basis for such change of recommendation; or (ii) the terms and conditions of the superior proposal that is the basis of such action (including the identity of the party making the superior proposal and any financing commitments related thereto (referred to as a "change of recommendation notice");
- during the five business day period following VTBH's receipt of any change of recommendation notice, Parametric will, and will cause Parametric's representatives to, negotiate with VTBH in good faith (to the extent VTBH desires to negotiate) to make adjustments in the terms and conditions of the merger agreement (i) with respect to an intervening event, so as to obviate the need for a change of recommendation as a result of the intervening event or (ii) with respect to a superior proposal, so that such superior proposal ceases to constitute a superior proposal, as applicable;
- following the end of the five business day period described in the previous bullet point, the Parametric Board must have determined in good faith, after consultation with its financial advisor and outside legal counsel and taking into account any changes to the merger agreement proposed in writing by VTBH in response to the change of recommendation notice or otherwise, that (i) such change of recommendation in light of such intervening event is necessary to comply with the Parametric Board's fiduciary duties to the stockholders of Parametric under applicable law or (ii) such superior proposal continues to constitute a superior proposal, and after consultation with its outside legal counsel, that it is necessary to take such action in order to comply with the directors' fiduciary duties to Parametric stockholders under applicable law; and

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Further, if (i) there is any material change in the circumstances of such intervening event or another intervening event occurs, or (ii) any amendment to the financial terms or any other amendment of such superior proposal is made, Parametric will deliver a new change of recommendation notice to VTBH, and Parametric will be required to comply again with the foregoing procedures, except that references to the five business day period above will be deemed to be references to a three business day period.

### **Post-Merger Board of Directors**

Parametric will take all necessary action to cause, effective at the effective time, the size of the Parametric Board to consist of nine members and the Parametric Board to be comprised of:

- five individuals identified by VTBH, one of whom will be Parametric's chief executive officer post-closing and two of whom will be "independent directors" (and eligible to serve on Parametric's audit committee) and "financially sophisticated" (including one "audit committee financial expert" as defined in Item 407(d)(5) of Regulation S-K) under NASDAQ rules;
- two individuals identified by Parametric, one of whom will be an "independent director" (and eligible to serve on Parametric's audit committee) and "financially sophisticated" under NASDAQ rules; and
- two vacancies.

### **Fees and Expenses**

All fees and expenses incurred in connection with the transactions contemplated by the merger agreement will be the obligation of the party incurring such fees and expenses, except that:

- VTBH will bear and pay the filing fees associated with required filings under applicable U.S. antitrust laws with the Antitrust Division of the Department of Justice and the U.S. Federal Trade Commission;
- Parametric will pay the filing fee for the proxy statement for the Special Meeting and the costs of printing and mailing such proxy statement;
- Parametric and VTBH will each bear and pay one-half of any applicable transfer taxes; and
- VTBH will pay all fees related to the listing application required by NASDAQ rules as a result of the transactions contemplated by the merger agreement.

### **Internal Control over Financial Reporting**

VTBH will, and will cause each of its subsidiaries to, use commercially reasonable efforts to establish and maintain a system of "internal control over financial reporting" (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) that, as of the closing of the merger agreement, is reasonably likely to be considered effective at the reasonable assurance level.

### **Conditions to the Merger**

The merger is subject to the satisfaction or waiver of various conditions, at or prior to the effective time, which include the following with respect to each party:

- Parametric stockholders will have approved the merger proposal;
- the approval of the continued listing application by NASDAQ of Parametric's common stock to be issued in connection with the merger and in connection with the exercise of the VTBH stock options to be assumed by Parametric;
- any applicable waiting period (and any extension thereof) under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, referred to as the "HSR Act," shall have expired or been terminated (this condition was satisfied on September, 5, 2013);
- the absence of any law, order or legal other restraint or prohibition that prevents the consummation of the merger and the transactions contemplated by the merger agreement; and

-94-

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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

IN RE PARAMETRIC SOUND  
CORPORATION SHAREHOLDERS'  
LITIGATION

CONSOLIDATED  
CASE NO.: A-13-686890-B

DEPT NO.: XI

Date: 8/28/2014  
Time: 8:30 a.m.

**APPENDIX OF EXHIBITS  
REFERENCED IN THE DIRECTOR  
DEFENDANTS' MOTION TO DISMISS  
THE FIRST CAUSE OF ACTION IN  
PLAINTIFFS' CLASS ACTION  
COMPLAINT IN INTERVENTION**

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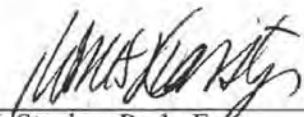
-1-



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Tab	Description	Page Number
A	Turtle Beach Corporation Form 8-K filed with the SEC on May 27, 2014	1 - 5
B	Turtle Beach Corporation Form 8-K filed with the SEC on December 24, 2013	6 - 10
C	Turtle Beach Corporation Form 8-K filed with the SEC on April 11, 2014	11 - 15
D	Turtle Beach Corporation Definitive Proxy filed with SEC on December 3, 2013	16 - 364
E	Email from K. Potashner dated Mar. 29, 2013	365 - 368
F	Email K. Potashner dated Apr. 12, 2013	369 - 371
G	Email K. Potashner dated June 2, 2013	372 - 383
H	Email from J. Stark dated Aug. 3, 2013	374 - 386
I	Turtle Beach Form 10-Q, filed with the SEC on February 10, 2014	387 - 419

DATED this 20th day of June, 2014.

  
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*Attorneys for Defendants Kenneth Potashner,  
Elwood Norris, Seth Putterman, Robert Kaplan,  
Andrew Wolfe and James Honoré*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 20th day of June, 2014, a true and correct copy of the foregoing **APPENDIX OF EXHIBITS REFERENCED IN THE DIRECTOR DEFENDANTS' MOTION TO DISMISS THE FIRST CAUSE OF ACTION IN PLAINTIFFS' CLASS ACTION COMPLAINT IN INTERVENTION** was served by the following method(s):

☒ **Electronic:** by submitting electronically for filing and/or service with the Eighth Judicial District Court's e-filing system and served on counsel electronically in accordance with the E-service list to the following email addresses:

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Voyetra Turtle Beach, Inc., and Turtle  
Beach Corporation*

☒ **U.S. Mail:** by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

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22 OF COUNSEL:

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☐ Facsimile: by faxing a copy to the following numbers referenced below:

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*Attorneys for George Prieston*

  
An Employee of Holland & Hart LLP

# EXHIBIT A

# EXHIBIT A



8-K 1 d733664d8k.htm FORM 8-K

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

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**FORM 8-K**

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

**Date of Report: May 27, 2014**  
**(Date of earliest event reported)**

---

**Turtle Beach Corporation**  
**(Exact name of registrant as specified in its charter)**

---

**Nevada**  
**(State or other jurisdiction**  
**of incorporation)**

**001-35465**  
**(Commission**  
**File Number)**

**27-2767540**  
**(IRS Employer**  
**Identification Number)**

**100 Summit Lake Drive, Suite 100**  
**Valhalla, New York 10595**  
**(Address of principal executive offices)**

**914-345-2255**  
**(Registrant's telephone number, including area code)**

**Parametric Sound Corporation**  
**(Registrant's former name)**

---

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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

Exhibit Page Number 2

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**Item 5.03 – Amendment to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

On May 20, 2014, Turtle Beach Corporation (formerly known as Parametric Sound Corporation) (the “Company”) filed a Certificate of Amendment to its Articles of Incorporation (the “Charter Amendment”) with the Secretary of State of the State of Nevada, a copy of which is attached hereto as Exhibit 3.1 and is incorporated herein by reference. The Charter Amendment amended the Company’s Articles of Incorporation to effect a change of the Company’s corporate name from “Parametric Sound Corporation” to “Turtle Beach Corporation” (the “Name Change”). The Name Change was approved by the Company’s board of directors on January 30, 2014 and a majority of the Company’s stockholders by written consent on February 26, 2014, and became effective on May 28, 2014.

In connection with the Name Change, the Company also amended its bylaws (the “Bylaws Amendment”) to reflect the new corporate name. A copy of the Bylaws Amendment is attached hereto as Exhibit 3.2 and is incorporated herein by reference.

**Item 8.01 – Other Events**

In connection with the Name Change, the new CUSIP number for the Company’s common stock is 900450107. The Company’s common stock will continue to trade under the ticker symbol “HEAR” on the NASDAQ Global Market.

On May 27, 2014, the Company issued a press release announcing the Name Change, a copy of which is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

**Item 9.01 — Financial Statements and Exhibits****(d) Exhibits**

- 3.1 Certificate of Amendment to Articles of Incorporation of Turtle Beach Corporation (f/k/a Parametric Sound Corporation), as filed with the Secretary of State of the State of Nevada on May 20, 2014.
- 3.2 Certificate of Amendment to Bylaws of Turtle Beach Corporation (f/k/a Parametric Sound Corporation), dated May 28, 2014.
- 99.1 Press release dated May 27, 2014.

---

**SIGNATURE**

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

Dated: May 28, 2014

**TURTLE BEACH CORPORATION**

By: /s/ Juergen Stark  
Juergen Stark  
Chief Executive Officer and President

Exhibit Page Number 4

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**Exhibit Index**

<u>Exhibit No.</u>	<u>Description</u>
3.1	Certificate of Amendment to Articles of Incorporation of Turtle Beach Corporation (f/k/a Parametric Sound Corporation), as filed with the Secretary of State of the State of Nevada on May 20, 2014.
3.2	Certificate of Amendment to Bylaws of Turtle Beach Corporation (f/k/a Parametric Sound Corporation), dated May 28, 2014.
99.1	Press release dated May 27, 2014.



EXHIBIT B

EXHIBIT B

8-K 1 parametric\_8k.htm CURRENT REPORT

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

---

FORM 8-K

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

Date of Report (Date of earliest event reported): December 24, 2013

**Parametric Sound Corporation**  
(Exact name of registrant as specified in its charter)

Nevada  
(State or Other Jurisdiction of  
Incorporation)

000-54020  
(Commission File Number)

27-2767540  
(I.R.S. Employer Identification No.)

**13771 Danielson Street, Suite L**  
**Poway, California 92064**  
(Address of Principal Executive Offices)

---

**888-477-2150**  
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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

Exhibit Page Number 7

**Item 3.01 Transfer of Listing.**

(d) On October 22, 2013, Parametric Sound Corporation ("Parametric") submitted to The NASDAQ Stock Market LLC ("NASDAQ") an initial listing application with respect to the continued listing of Parametric common stock on The NASDAQ Capital Market, as required by NASDAQ Stock Market Rule 5110(a) as a result of the transactions contemplated by the Agreement and Plan of Merger dated August 5, 2013 among Parametric, VTB Holdings, Inc. and Paris Acquisition Corp. (the "merger agreement"), which provide for a business combination with a non-NASDAQ entity that will result in a change in control of Parametric.

On December 24, 2013, Parametric notified NASDAQ that it wished for its common stock to be listed on The NASDAQ Global Market instead of The NASDAQ Capital Market following the closing under the merger agreement. On that same day, NASDAQ's Staff informed Parametric that its application to list its common stock on The NASDAQ Global Market was approved.

**Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

As contemplated by the merger agreement and the proxy statement filed with the SEC on December 3, 2013 (the "proxy statement"), on December 27, 2013, following the Special Meeting (defined below):

- Messrs. Honore, Kaplan and Norris delivered to the Secretary of Parametric written resignations from Parametric's board of directors, which resignations are in each case contingent and effective upon the completion of the merger contemplated by the merger agreement (the "merger");
- Mr. Potashner delivered to the Secretary of Parametric a written resignation from the position of Executive Chairman, contingent and effective upon the completion of the merger;
- Mr. Norris delivered to the Secretary of Parametric a written resignation from the position of President contingent and effective upon the completion of the merger; and
- Mr. Barnes delivered to the Secretary of Parametric a written resignation from the positions of Chief Financial Officer, Treasurer and Secretary, contingent and effective upon the completion of the merger.

Messrs. Potashner and Wolfe have been designated by Parametric to continue to serve on Parametric's board of directors following the merger, and will comprise two of the seven initial post-merger directors on a nine-person board of directors; Turtle Beach has the right to designate the other five directors.

Messrs. Norris and Barnes are also anticipated to remain employed by Parametric following the merger, at least for a transition period, in roles and on terms yet to be determined.

**Forward-Looking Statements:**

This Current Report on Form 8-K contains forward-looking statements, such as references to completion of the merger, the composition of the Parametric board of directors following the merger and the continuation of service by certain individuals to Parametric following the merger. These statements, including their underlying assumptions, are subject to risk and uncertainties and are not guarantees of future performance. Results may differ due to various factors. For further details of these risks, you should read our filings with the SEC, including the proxy statement and the "Risk Factors" section therein and our most recent Form 10-K for the fiscal year ended September 30, 2013.

**Item 5.07 Submission of Matters to a Vote of Security Holders.**

On December 27, 2013, at a special meeting (the "Special Meeting") of stockholders of Parametric, Parametric's stockholders approved the issuance of Parametric common stock, par value \$0.001 per share, in connection with the merger agreement and the corresponding change of control of Parametric (referred to as the "merger proposal"). At the Special Meeting, Parametric's stockholders also approved (i) on an advisory (non-binding) basis, specified compensation that may become payable to the named executive officers of Parametric in connection with the merger, (ii) the Parametric Sound Corporation 2013 Stock-Based Incentive Compensation Plan and (iii) the Parametric Sound Corporation Annual Incentive Bonus Plan. Finally, the proposal to adjourn the Special Meeting to a later date, if necessary or appropriate, to solicit additional proxies if there were insufficient votes at the time of the Special Meeting to approve the merger proposal was not submitted for a vote. Each proposal submitted for a vote at the Special Meeting was approved by the affirmative vote of the holders of a majority of the votes cast on such proposal, excluding abstentions.

6,837,321 shares of Parametric common stock were entitled to be voted at the Special Meeting, of which 4,012,274 shares, or approximately 59 % of the issued and outstanding shares, were represented either in person or by proxy. The final voting results with respect to each proposal are set forth below.

Proposal 1: Parametric's stockholders approved the merger proposal. Votes cast were as follows:

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Votes</u>
3,801,508	198,488	12,278	-0-

Proposal 2: Parametric's stockholders approved, on an advisory (non-binding) basis, specified compensation that may become payable to the named executive officers of Parametric in connection with the merger. Votes cast were as follows:

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Votes</u>
3,281,735	692,539	38,000	-0-

Proposal 4: Parametric's stockholders approved the Parametric Sound Corporation 2013 Stock-Based Incentive Compensation Plan. Votes cast were as follows:

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Votes</u>
3,342,049	636,507	33,718	-0-

Proposal 5: Parametric's stockholders approved the Parametric Sound Corporation Annual Incentive Bonus Plan. Votes cast were as follows:

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Votes</u>
3,824,468	145,598	42,208	-0-

**Item 8.01 Other Events.**

On December 27, 2013, Parametric issued a press release announcing the approval of the merger proposal by its stockholders and the approval by The NASDAQ Stock Market for the listing of its shares of common stock on The NASDAQ Global Market post-merger. A copy of the press release is attached as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

**Item 9.01 Financial Statements and Exhibits.****(d) Exhibits**

<b>Exhibit No.</b>	<b>Description</b>
99.1	Press Release dated December 27, 2013

**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.

**PARAMETRIC SOUND CORPORATION**

Dated: December 30, 2013

By: /s/ James A. Barnes  
 James A. Barnes  
 Chief Financial Officer, Treasurer and Secretary



# EXHIBIT C

# EXHIBIT C

8-K 1 d708847d8k.htm 8-K

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

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**FORM 8-K**

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

**Date of Report (Date of earliest event reported): April 11, 2014**

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**Parametric Sound Corporation**  
(Exact name of registrant as specified in its charter)

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**Nevada**  
(State or other jurisdiction  
of incorporation)

**001-35465**  
(Commission  
File Number)

**27-2767540**  
(IRS Employer  
Identification Number)

**13771 Danielson Street,  
Suite L Poway, CA 92064**  
(Address of principal executive offices)

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**888-477-2150**  
(Registrant's telephone number, including area code)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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

Exhibit Page Number 12

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**Item 8.01. Other Events**

On April 11, 2014, Parametric Sound Corporation announced that its ticker symbol on the NASDAQ Global Market will change from "PAMT" to "HEAR." The new symbol will become effective as of the opening of trading on Monday, April 14, 2014. A copy of the press release announcing this change is attached hereto as Exhibit 99.1.

**Item 9.01. Financial Statements and Exhibits****(d) Exhibits**

99.1 Press Release, dated April 11, 2014.

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**SIGNATURE**

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

Dated: April 11, 2014

**PARAMETRIC SOUND CORPORATION**

By: /s/ Juergen Stark

Juergen Stark

Chief Executive Officer and President

Exhibit Page Number 14

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**Exhibit Index**

<u>Exhibit No.</u>	<u>Description</u>
99.1	Press Release, dated April 11, 2014.



# EXHIBIT D

# EXHIBIT D

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

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**SCHEDULE 14A**  
(Rule 14a-101)

**INFORMATION REQUIRED IN PROXY STATEMENT**

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**SCHEDULE 14A INFORMATION**

Proxy Statement Pursuant to Section 14(a) of the  
Securities Exchange Act of 1934  
(Amendment No. )

---

Filed by Registrant: ☒Filed by a Party other than the Registrant: ☐

Check the appropriate box:

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

**Parametric Sound Corporation**

(Name of Registrant as Specified in Its Charter)

(Name of Person(s) Filing Proxy Statement if Other Than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- ☐ No fee required.  
☐ Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

Exhibit Page Number 17

<http://www.sec.gov/Archives/edgar/data/1493761/000119312513459818/d621612ddefm1...> 12/11/2013

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☒ Fee paid previously by written preliminary materials.

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

(1) Amount Previously Paid: \_\_\_\_\_

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

(3) Filing Party: \_\_\_\_\_

(4) Date Filed: \_\_\_\_\_

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**PROPOSED MERGER – YOUR VOTE IS IMPORTANT**



You are cordially invited to attend a Special Meeting of the stockholders of Parametric Sound Corporation, a Nevada corporation (referred to as "Parametric," "we," "our" or "us"), which we will hold on December 27, 2013, at Hampton Inn & Suites, 14068 Stowe Drive, Poway CA 92064 at 1:00 p.m., local time.

At the Special Meeting, you will be asked to consider and vote upon a proposal to approve the issuance of Parametric common stock, par value \$0.001 per share, in connection with the merger contemplated by the Agreement and Plan of Merger (referred to as the "merger agreement") dated August 5, 2013, among Parametric, VTB Holdings, Inc., a Delaware corporation (referred to as "VTBH"), and Paris Acquisition Corp., a Delaware corporation (referred to as "Merger Sub"), and the change of control of Parametric which will result from the merger. We refer to this proposal as the "merger proposal." Under the merger agreement, Merger Sub will be merged with and into VTBH, with VTBH surviving the merger as a subsidiary of Parametric. At the effective time of the merger, the former stockholders of VTBH will receive shares of Parametric common stock which, together with options to purchase shares of VTBH common stock that will be converted into options to purchase shares of Parametric common stock (and will be assumed by Parametric at the effective time of the merger pursuant to the merger agreement), will represent approximately 80% of the shares of Parametric common stock on a fully-diluted basis after the merger, subject to adjustment as provided in the merger agreement.

The Parametric board of directors, referred to as the "Parametric Board," has determined that the merger agreement and the transactions contemplated thereby, including the issuance of shares pursuant to the merger and the corresponding change of control of Parametric, are fair to, advisable and in the best interests of Parametric and its stockholders. The Parametric Board recommends that Parametric stockholders vote "FOR" the merger proposal. Additionally, the Parametric Board unanimously recommends that Parametric stockholders vote "FOR" the advisory (non-binding) proposal to approve specified compensation that may become payable to the named executive officers of Parametric in connection with the merger, "FOR" the proposal to adjourn the Special Meeting to solicit additional proxies, if necessary or appropriate, "FOR" the approval of the Parametric Sound Corporation 2013 Stock-Based Incentive Compensation Plan and "FOR" the approval of the Parametric Sound Corporation Annual Incentive Bonus Plan.

The enclosed proxy statement describes the merger agreement, the merger and related agreements and provides specific information concerning the Special Meeting. In addition, you may obtain information about us from documents we file with the Securities and Exchange Commission (the "SEC"). You should read the entire proxy statement carefully, including the appendices, because it sets forth the details of the merger agreement and other important information related to the merger.

**Your vote is important.** The affirmative vote of the holders of a majority of the votes cast on the merger proposal at the Special Meeting (assuming a quorum is present in person or by proxy), excluding abstentions, is required for approval of the merger proposal. Whether or not you plan to attend the Special Meeting, please complete, sign, date and return the enclosed proxy card or submit your proxy by telephone or on the Internet as soon as possible. If you hold your shares in "street name," you should instruct your broker how to vote in accordance with your voting instruction card.

If you have any questions or need assistance in voting your shares, please contact our proxy solicitor, Morrow & Co. LLC, by mail at 470 West Ave., Stamford CT 06902 or by phone as follows: stockholders, please call (800) 279-6413 (toll free); banks and brokerage firms, please call (203) 658-9400.

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On behalf of the Parametric Board, I thank you for your support and appreciate your consideration of this matter.

Sincerely,  
/s/ Kenneth Potashner  
Kenneth Potashner  
Executive Chairman

Neither the Securities and Exchange Commission nor any state securities regulatory agency has approved or disapproved the merger, passed upon the merits or fairness of the merger or passed upon the adequacy or accuracy of the disclosure in this document. Any representation to the contrary is a criminal offense.

This proxy statement and the form of the proxy are first being sent to Parametric stockholders on or about December 3, 2013.



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Table of Contents**PROPOSED MERGER – YOUR VOTE IS IMPORTANT****NOTICE OF SPECIAL MEETING OF STOCKHOLDERS**

NOTICE IS HEREBY GIVEN that a Special Meeting of the stockholders of Parametric Sound Corporation, a Nevada corporation ("Parametric," the "Company," "we," "our" or "us"), will be held on December 27, 2013, at Hampton Inn & Suites, 14068 Stowe Drive, Poway CA 92064, at 1:00 p.m. local time for the following purposes:

1. To consider and vote upon a proposal to approve the issuance of Parametric common stock, par value \$0.001 per share, in connection with the merger contemplated by the Agreement and Plan of Merger (referred to as the "merger" and the "merger agreement") dated as of August 5, 2013, among Parametric, VTB Holdings, Inc., a Delaware corporation, and Paris Acquisition Corp., a Delaware corporation and wholly-owned subsidiary of Parametric, and the corresponding change of control of Parametric, which proposal we refer to as the "merger proposal";

2. To consider and vote, on an advisory (non-binding) basis, upon specified compensation that may become payable to the named executive officers of Parametric in connection with the merger;

3. To consider and vote upon a proposal to adjourn the Special Meeting to a later date, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the Special Meeting to approve the merger proposal;

4. To consider and vote upon a proposal to approve the Parametric Sound Corporation 2013 Stock-Based Incentive Compensation Plan (the "Stock Plan");

5. To consider and vote upon a proposal to approve the Parametric Sound Corporation Annual Incentive Bonus Plan (the "Bonus Plan"); and

6. To transact such other business as may properly come before the Special Meeting or any adjournment of the Special Meeting.

The holders of record of Parametric common stock at the close of business on November 11, 2013, are entitled to notice of and to vote at the Special Meeting or at any adjournment thereof. The affirmative vote of the holders of a majority of the votes cast on the merger proposal at the Special Meeting (assuming a quorum is present in person or by proxy), excluding abstentions, is required for approval of the merger proposal.

The Parametric board of directors has determined that the merger agreement and the transactions contemplated thereby, including the issuance of shares pursuant to the merger agreement and the corresponding change of control of Parametric, are fair to, advisable and in the best interests of Parametric and its stockholders. The Parametric board of directors recommends that Parametric stockholders vote "FOR" the merger proposal, "FOR" the advisory (non-binding) proposal to approve specified compensation that may become payable to the named executive officers of Parametric in connection with the merger, "FOR" the proposal to adjourn the Special Meeting to solicit additional proxies, if necessary or appropriate, "FOR" the approval of the Stock Plan and "FOR" the approval of the Bonus Plan.

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**Your vote is important.** Whether or not you expect to attend the Special Meeting, please sign and return the enclosed proxy card promptly in the envelope provided or promptly submit your proxy by telephone or over the Internet following the instructions on the proxy card. You may revoke your proxy and vote in person at the Special Meeting if you desire. All stockholders are cordially invited to attend the Special Meeting.

By Order of the Board of Directors,  
/s/ James A. Barnes  
James A. Barnes  
Chief Financial Officer, Secretary and Treasurer

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All trade names, trademarks and service marks appearing in this proxy statement are the property of their respective owners. We have assumed that the reader understands that all such terms are source-indicating. Accordingly, such terms, when first mentioned in this proxy statement, appear with the trade name, trademark or service mark notice and then throughout the remainder of this proxy statement without the trade name, trademark or service mark notices for convenience only and should not be construed as being used in a descriptive or generic sense.

Table of Contents**SUMMARY**

This summary discusses the material information contained in this proxy statement, including with respect to the merger agreement, the merger and the other transactions and agreements contemplated in connection with the merger. You should carefully read this entire proxy statement, its annexes and the documents referred to or incorporated by reference in this proxy statement, as this summary may not contain all of the information that may be important to you. The items in this summary include page references directing you to a more complete description of that topic in this proxy statement.

**Parties to the Merger (Page 45)**

*Parametric Sound Corporation.* Parametric Sound Corporation, referred to as “Parametric,” “we,” “our” or “us,” is a Nevada corporation. Parametric is a technology company focused on delivering novel audio solutions through its HyperSound® or “HSS®” technology platform, which pioneered the practical application of parametric acoustic technology for generating audible sound along a directional ultrasonic column. The creation of sound using Parametric’s technology creates a unique sound image distinct from traditional audio systems. In addition to its commercial digital signage and kiosk product business, Parametric is targeting its technology for new uses in consumer markets, including computers, video gaming, televisions and home audio along with other commercial markets including casino gaming and cinema. Parametric is also focusing development on health applications for persons with hearing loss. See “Parties to the Merger – Parametric Sound Corporation” on page 45. Additional information about Parametric is contained in its public filings, some of which are incorporated by reference herein as described in “Where You Can Find Additional Information” beginning on page 173.

*VTB Holdings, Inc.* VTB Holdings, Inc., referred to as “VTBH,” is a privately held Delaware corporation. Voyetra Turtle Beach, Inc., a Delaware corporation (“VTB”), is a wholly-owned subsidiary of VTBH. VTBH and its subsidiaries, including VTB, are collectively referred to as “Turtle Beach.” Turtle Beach designs, develops and markets premium audio peripherals for video game, personal computer and mobile platforms, including its acclaimed line of Ear Force gaming headphones and headsets crafted for Microsoft Xbox®, Sony PlayStation®, Nintendo Wii® and PC-based gaming. Turtle Beach’s advanced products allow video game players to experience high-quality, immersive sound and communicate with others while playing video games. Unlike most traditional stereo headphones, the more advanced headsets from Turtle Beach incorporate sophisticated technology for processing audio and multi-band wires transmission capabilities. Turtle Beach has strong market share in established gaming markets, including a 53% dollar share of the U.S. console gaming headset market as of year-end 2012 according to The NPD Group, Inc. Turtle Beach has a presence in 40 countries and has partnered with major retailers, including Wal-Mart, Carrefour, Tesco, Best Buy, GameStop, Target and Amazon. See “Parties to the Merger – VTB Holdings, Inc.” on page 45. Additional information about Turtle Beach is contained in this proxy statement. For more information about Turtle Beach’s business, see “Turtle Beach’s Business” on page 112.

*Paris Acquisition Corp.* Paris Acquisition Corp., referred to as “Merger Sub,” is a Delaware corporation and is currently a wholly-owned subsidiary of Parametric that was formed solely for the purpose of entering into the merger agreement and completing the merger. Upon the consummation of the merger, Merger Sub will be merged with and into Turtle Beach and will cease to exist. See “Parties to the Merger – Paris Acquisition Corp.” on page 45.

**The Merger (Page 46)**

Parametric, Merger Sub and VTBH agreed to consummate a merger under the terms of the merger agreement that is described in this proxy statement and attached hereto as Annex A. Pursuant to the merger agreement, Merger Sub will merge with and into VTBH, with VTBH surviving the merger and continuing as a subsidiary of Parametric, wholly-owned except for the holders of Series B Preferred Stock, the shares of which

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will remain outstanding after the merger. At the effective time of the merger, the stockholders of VTBH, other than the holders of Series B Preferred Stock, will receive shares of Parametric common stock which, together with options to purchase shares of VTBH common stock that will be converted into options to purchase shares of Parametric common stock (and will be assumed by Parametric at the effective time of the merger pursuant to the terms of the merger agreement), will represent approximately 80% of the shares of Parametric common stock on a fully-diluted basis after the merger, subject to adjustment as provided in the merger agreement.

The merger agreement is attached as Annex A to this proxy statement. We encourage you to carefully read the merger agreement in its entirety because it is the legal document governing the merger.

### **Reasons for the Merger and Recommendation of the Parametric Board (Page 59)**

We believe that the combination of Parametric's and Turtle Beach's businesses will create more value for Parametric's stockholders in the long-term than Parametric could achieve as an independent, stand-alone company.

In the course of reaching its decision to approve the merger agreement and the transactions contemplated thereby, and to recommend that Parametric stockholders vote to approve the merger proposal, the Parametric board of directors, referred to as the "Parametric Board," reviewed a significant amount of information and considered a number of factors, including, among others, the following factors:

- Parametric's estimated near- and long-term operations and performance on an independent, stand-alone basis;
- the substantial additional financing that would be needed to achieve such performance assuming Parametric continued its planned technology development activities and recognized revenue from its core consumer, commercial and health care markets, possible dilution of the Parametric stockholders from such potential financings and the risk that such substantial additional financing may not be obtained on terms favorable to Parametric, or at all;
- the industry in which Parametric competes, including that many competitors in targeted consumer and commercial audio markets have greater resources, financial and otherwise, than Parametric, and the risks involved in maintaining and establishing business relationships with customers and suppliers;
- the belief that Turtle Beach's experience, financial resources, technical expertise, sales and marketing resources, scalable supply chain and global distribution network will help accelerate the design, development, commercialization and distribution of Parametric's products and technology, including its HyperSound-based products, in particular in Parametric's three target market segments;
- the belief that Turtle Beach's position as a leading and established consumer audio brand will support adoption of Parametric's current and planned HyperSound-based products;
- historical and current information concerning Turtle Beach's business, financial performance, financial conditions, financial prospects and operations presented by Turtle Beach's management to the Parametric Board, Parametric's management team and its advisors;
- the process undertaken to explore strategic alternatives available to Parametric to maximize stockholder value, and the review and assessment of the possible outcomes of such alternatives, including the possibility of remaining independent, combinations with other merger partners, being acquired by other entities, licensing Parametric's intellectual property and the possibility of equity or debt public or private offerings;
- the number of shares of Parametric's common stock to be issued to VTBH's stockholders pursuant to the merger agreement and the fact that, following the completion of the merger, Parametric stockholders and option holders would participate in approximately 20% of the future growth and earnings of the combined company in light of the issuance of new shares of Parametric's common stock (and the assumption of Turtle Beach stock options) pursuant to the merger agreement;



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- Parametric may be unable to obtain stockholder approval as required for the transactions contemplated by the merger agreement on a timely basis, or at all;
- the conditions to the closing and the transactions contemplated by the merger agreement may not be satisfied due to events beyond Parametric's control;
- Parametric's obligation, in certain circumstances upon a termination of the merger agreement, to pay a \$1,000,000 termination fee and/or enter into a license agreement with VTBH with respect to certain Parametric intellectual property for use in console audio products on an exclusive basis and certain computer audio products on a non-exclusive basis;
- the ability of Parametric to solicit alternative merger partners during the 30-day post-signing "go shop" period and furnish information to and engage in discussions or negotiations with a third party under certain circumstances described in the merger agreement, as well as the ability to withdraw or modify its recommendation regarding the merger under certain circumstances; and
- the opinion of Craig-Hallum Capital Group LLC, dated August 2, 2013, to the Parametric Board as to the fairness to Parametric, from a financial point of view, as of the date of the opinion, of the "Per Share Exchange Ratio" contemplated by the merger agreement, as more fully described below in the section titled "The Merger – Opinion of Craig Hallum Capital Group LLC" on page 61.

For a more complete discussion of Parametric's reasons for the merger, as well as risks and uncertainties related thereto, see "The Merger – Reasons for the Merger" on page 59.

### Opinion of the Financial Advisor to the Parametric Board (Page 61)

In connection with the evaluation of the proposed merger by the Parametric Board, Craig-Hallum Capital Group LLC ("Craig-Hallum"), financial advisor to the Parametric Board, rendered a written opinion to the Parametric Board, dated August 2, 2013, that, as of that date and subject to the assumptions, qualifications and limitations set forth in its opinion, the "Per Share Exchange Ratio" as set forth in the merger agreement was fair, from a financial point of view, to Parametric.

The full text of the written opinion of Craig-Hallum, dated August 2, 2013, which sets forth assumptions made, procedures followed, matters considered and limitations on the review undertaken in connection with the opinion, is attached as Annex B to this proxy statement. Craig-Hallum provided its opinion for the information and assistance of the Parametric Board in connection with its consideration of the merger. The Craig-Hallum opinion was not intended to and does not constitute a recommendation as to how any holder of Parametric common stock should vote or make any election with respect to the merger or any other matter.

For a more complete description, see "The Merger – Opinion of Craig-Hallum Capital Group LLC, Financial Advisor to the Parametric Board" on page 61.

### Treatment of VTBH Capital Stock in the Merger (Page 84)

**Common Stock and Series A Preferred Stock.** At the effective time of the merger, each share of VTBH common stock and Series A Preferred Stock will be cancelled and converted into the right to receive a number of shares of Parametric common stock equal to the "Per Share Number," plus any cash paid in lieu of fractional shares. The Per Share Number is computed in accordance with a formula specified in the merger agreement and is estimated, as of the date of this proxy statement, to be approximately 0.3567, which would result in approximately 29,950,374 shares of Parametric common stock being issued to the former holders of VTBH common stock and Series A Preferred Stock at the effective time of the merger. These newly issued shares, together with the options to purchase shares of VTBH common stock that will be converted into options to

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purchase shares of Parametric common stock (and will be assumed by Parametric at the effective time of the merger), would represent approximately 80% of the shares of Parametric common stock, on a fully-diluted basis, after the effective time of the merger.

**Series B Preferred Stock.** Each share of VTBH Series B Preferred Stock that is issued and outstanding immediately prior to the effective time of the merger shall remain issued and outstanding after the effective time of the merger. The Series B Preferred Stock is not convertible into VTBH common stock, and after the merger it will not be convertible into Parametric common stock. 1,000,000 shares of Series B Preferred Stock are currently outstanding, with a liquidation preference, at November 30, 2013, of \$13.6 million inclusive of accrued dividends. These shares accrue dividends at the rate of eight percent per annum and are payable only when, as and if declared by the VTBH board of directors or upon redemption. After the merger, the Series B Preferred Stock will vote (at the VTBH subsidiary level) on an as-if converted basis with the VTBH common stock (representing 0.99% of the voting power of VTBH after the merger) and is mandatorily redeemable upon the earlier to occur of maturity (September 2030) or certain liquidation events, such as certain change of control transactions of VTBH. The merger contemplated by the merger agreement will not require that the Series B Preferred Stock be redeemed.

### Treatment of VTBH Equity-Based Awards in the Merger (Page 85)

**Stock Options.** At the effective time of the merger, each outstanding option to purchase a share of VTBH common stock, whether vested or unvested, will be deemed to constitute an option to purchase, on the same terms and conditions, a number of shares of Parametric common stock equal to the product of (i) the number of shares of VTBH common stock subject to such option, multiplied by (ii) the "Per Share Exchange Ratio" (defined below), at an exercise price per share of Parametric common stock equal to the quotient of (i) the exercise price per share of VTBH common stock subject to such option divided by (ii) the "Per Share Exchange Ratio." The "Per Share Exchange Ratio" means the ratio of the Per Share Number to one. See "Summary – Treatment of VTBH Capital Stock in the Merger" above.

**Phantom Stock Units.** Each phantom stock unit of VTBH that is outstanding immediately prior to the effective time of the merger shall remain outstanding after the effective time of the merger. As of the date of the merger agreement, 1,153,697 phantom stock units were outstanding.

### Special Meeting of Stockholders (Page 40)

**Date, Time and Place.** A Special Meeting of Parametric stockholders will be held on December 27, 2013, at Hampton Inn & Suites, 14068 Stowe Drive, Poway CA 92064, at 1:00 p.m. local time for the following purposes:

1. To consider and vote upon the merger proposal;
2. To consider and vote, on an advisory (non-binding) basis, upon specified compensation that may become payable to the named executive officers of Parametric in connection with the merger;
3. To consider and vote upon a proposal to adjourn the Special Meeting to a later date, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the Special Meeting to approve the merger proposal;
4. To consider and vote upon a proposal to approve the Parametric Sound Corporation 2013 Stock-Based Incentive Compensation Plan (the "Stock Plan");
5. To consider and vote upon a proposal to approve the Parametric Sound Corporation Annual Incentive Bonus Plan (the "Bonus Plan"); and
6. To transact such other business as may properly come before the Special Meeting or any adjournment of the Special Meeting.

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**Record Date and Voting Power.** You are entitled to vote at the Special Meeting if you held shares of Parametric common stock at the close of business on November 11, 2013, the record date for the Special Meeting. You will have one vote at the Special Meeting for each share of Parametric common stock you owned at the close of business on the record date. 6,837,321 shares of Parametric common stock are entitled to be voted at the Special Meeting.

**Vote Required to Approve Merger Proposal.** The affirmative vote of the holders of a majority of the votes cast on the merger proposal at the Special Meeting (assuming a quorum is present in person or by proxy), excluding abstentions, is required for approval of the merger proposal.

**Vote Required to Approve the Other Proposals.** Approval, by non-binding, advisory vote, of specified compensation that may become payable to the named executive officers of Parametric in connection with the merger requires the affirmative vote of a majority of the votes cast, excluding abstentions. Approval of each of the Stock Plan and the Bonus Plan requires the affirmative vote of a majority of the votes cast, excluding abstentions. Approval of the proposal to adjourn the Special Meeting, whether or not a quorum is present, requires the affirmative vote of a majority of the votes cast, excluding abstentions.

### Voting Agreements; Lock-Up of Certain Parametric Stockholders (Page 79)

Concurrently with the execution of the merger agreement, Parametric and VTBH entered into Stockholder Agreements and Irrevocable Proxies, referred to as the "voting agreements," with Messrs. Potashner, Barnes and Norris, as well as certain entities over which they exercise voting and/or investment control, collectively referred to as the "management stockholders."

Under the voting agreements, (i) the management stockholders have agreed to vote all Parametric shares that they hold at the time of such vote in favor of the merger proposal (and against other acquisition proposals) and (ii) the management stockholders have agreed to a lock-up restriction whereby they have agreed not to sell or otherwise transfer the shares of Parametric common stock beneficially owned by them (or subsequently acquired by them) until six months following the closing of the merger, subject to certain exceptions including, without limitation, the right to sell shares in order to pay certain taxes which may arise in connection with the merger. The shares subject to the voting agreements represented approximately 19.2% of the outstanding shares of Parametric common stock as of the record date.

### Stockholder Agreement; Lock-Up of Certain Turtle Beach Stockholders (Page 79)

Concurrently with the execution of the merger agreement, VTBH and certain stockholders of VTBH (including all of the holders of VTBH common stock and Series A Preferred Stock), referred to as the "VTBH stockholders," entered into a Stockholder Agreement, referred to as the "Stockholder Agreement," pursuant to which the VTBH stockholders agreed to certain restrictions and other provisions with respect to the VTBH capital stock currently held by them (and subsequently acquired by them), the shares of Parametric common stock that will be issued to them pursuant to the merger agreement, and other Parametric shares subsequently acquired by them, collectively referred to as the "merger shares."

Under the Stockholder Agreement, the VTBH stockholders have agreed to a lock-up restriction whereby they will not sell or otherwise transfer the merger shares for a period of six months following the closing of the merger, subject to certain exceptions including, without limitation, the right to sell shares in order to pay certain taxes which may arise in connection with the merger. Additionally, the Stockholder Agreement provides for certain post-closing registration rights, block voting covenants, the formation of a group for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended (referred to as the "Exchange Act"), and the election to cause Parametric to become a "controlled company" under NASDAQ rules after the merger. The VTBH stockholders also executed a written consent of stockholders in favor of the merger concurrently with the

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execution of the Stockholder Agreement. For more information about the Stockholder Agreement and the management of Parametric following the merger, see "Management of Parametric Following the Merger" on page 148.

**Interests of Parametric Executive Officers and Directors in the Merger (Page 74)**

When considering the recommendation of the Parametric Board that Parametric stockholders vote in favor of the merger proposal, you should be aware that Parametric executive officers and directors have interests in the merger that may be different from, or in addition to, the interests of Parametric's stockholders. See "The Merger – Interests of Parametric Executive Officers and Directors in the Merger" on page 74 for a description of such interests that may be different from, or in addition to, the interests of Parametric stockholders.

The Parametric Board knew about these interests and considered them, among other matters, when it determined that the merger agreement and the merger are fair to, advisable and in the best interests of Parametric and its stockholders.

The following is a summary of certain interests of Parametric executive officers and directors in the merger:

- in connection with the negotiation and execution of the merger agreement, certain amendments were made to the employment, compensation and severance conditions for Parametric's executive officers and directors as described under "The Merger – Interests of Parametric Executive Officers and Directors in the Merger" on page 74;
- Mr. Barnes, either directly or through an affiliate, holds warrants to purchase Parametric common stock which, pursuant to the terms of such warrants, may trigger a payment obligation from Parametric to Mr. Barnes upon the closing of the merger;
- pursuant to the merger agreement, the Parametric Board will have the right to designate two members of the reconstituted Parametric board of directors (see "Proposal 1 – The Merger Proposal – Post-Merger Board of Directors"); and
- in connection with the negotiation and execution of the merger agreement, certain amendments were made with respect to an option Mr. Potashner held to acquire shares of common stock of HyperSound Health, Inc., a subsidiary of Parametric, such that, among other changes, the option would terminate in full and no vesting would occur in the event the merger closes.

**Market Prices and Dividend Data (Page 36)**

Parametric common stock is quoted on the NASDAQ Capital Market under the symbol "PAMT." On August 5, 2013, the last full trading day before the public announcement of the merger agreement, the closing price for our common stock was \$17.69 per share and on November 29, 2013, the latest practicable trading day before the printing of this proxy statement, the closing price for our common stock was \$12.39 per share.

**Conditions to the Merger (Page 94)**

The merger is subject to the satisfaction or waiver of various conditions, at or prior to the effective time, which include the following with respect to each party:

- Parametric stockholders will have approved the merger proposal at the Special Meeting;
- the approval of the continued listing application by NASDAQ of Parametric's common stock to be issued in connection with the merger and in connection with the exercise of the VTBH stock options to be assumed by Parametric;



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- any applicable waiting period (and any extension thereof) under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, referred to as the “HSR Act,” shall have expired or been terminated (which occurred on September 5, 2013);
- the absence of any law, order or legal other restraint or prohibition that prevents the consummation of the merger and the transactions contemplated by the merger agreement; and
- PNC Bank, the collateral agent under Turtle Beach’s current credit agreement, shall have consented to the terms and conditions of any “Qualified Equity Offering” in connection with or following Parametric’s consummation thereof and shall not have revoked such consent.

Additionally, Parametric is not obligated to effect the merger unless the following conditions are satisfied or waived, at or prior to the effective time:

- the representations and warranties of VTBH in the merger agreement must be true and correct, except to the extent that breaches of such representations and warranties (without giving effect to any materiality qualifiers) would not, individually or in the aggregate, reasonably be expected to result in a material adverse effect on VTBH (other than certain specified representations and warranties of VTBH concerning organization and good standing, capitalization and corporate authorization, which representations and warranties must be true and correct in all material respects);
- VTBH must have performed, in all material respects, all obligations to be performed by it under the merger agreement on or prior to the effective time and VTBH must have delivered a certificate dated as of the closing and signed by its chief executive officer or chief financial officer certifying as to the satisfaction thereof; and
- No change, state of facts, circumstance, event or effect shall have occurred that would have a material adverse effect on VTBH.

VTBH is not obligated to effect the merger unless the following conditions are satisfied or waived, at or prior to the effective time:

- the representations and warranties of Parametric in the merger agreement must be true and correct, except to the extent that breaches of such representations and warranties (without giving effect to any materiality qualifiers) would not, individually or in the aggregate, reasonably be expected to result in a material adverse effect on Parametric (other than certain specified representations and warranties of Parametric concerning organization and good standing, capitalization and corporate authorization, which representations and warranties must be true and correct in all material respects);
- Parametric must have performed, in all material respects, all obligations to be performed by it under the merger agreement on or prior to the effective time and Parametric must have delivered a certificate dated as of the closing and signed by its chief executive officer or chief financial officer certifying as to the satisfaction thereof;
- No change, state of facts, circumstance, event or effect shall have occurred that would have a material adverse effect on Parametric;
- Parametric shall have completed a “Qualified Offering” (defined below) (which occurred on November 15, 2013); and
- Certain individuals shall have delivered to Parametric valid and binding releases in the forms approved by VTBH.

Neither Parametric nor Turtle Beach can give any assurance that all of the conditions of the merger will be either satisfied or waived or that the merger will occur.



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### **Limitation on Considering Other Acquisition Proposals (Page 91)**

The merger agreement contains detailed provisions that restrict Parametric and its subsidiaries (and their respective representatives) from (i) initiating, soliciting or knowingly encouraging any inquiry or the making of any proposal or offer that constitutes, or would reasonably be expected to result in, an "acquisition proposal" (as defined in "Proposal 1 – The Merger Proposal – Limitation on Considering Other Acquisition Proposals" on page 91), (ii) engaging in, entering into, continuing or otherwise participating in any discussions or negotiations with any person with respect to, or providing any non-public information or data about Parametric and its subsidiaries to any person relating to, any proposal or offer that constitutes, or could reasonably be expected to result in, an acquisition proposal or (iii) entering into an "alternative acquisition agreement" (as defined in "Proposal 1 – The Merger Proposal – Limitation on Considering Other Acquisition Proposals" on page 91).

The merger agreement does not, however, prohibit the Parametric Board from considering and recommending to Parametric stockholders an unsolicited acquisition proposal from a third party if specified conditions are met (such as the acquisition proposal constituting a "superior proposal") and to change its recommendation to Parametric's stockholders under certain circumstances. See "Proposal 1 – The Merger Proposal – Limitation on Considering Other Acquisition Proposals – Change in Recommendation; Termination for Superior Proposal" on page 92.

### **Termination of the Merger Agreement (Page 97)**

In general, the merger agreement may be terminated at any time prior to the effective time of the merger, whether before or after the approval of merger proposal by Parametric stockholders, in the following ways:

- by mutual written consent of Parametric and VTBH;
- by either Parametric or VTBH if:
  - the closing of the merger agreement shall not have been consummated on or before February 28, 2014, referred to as the "outside date," provided that such right to terminate is not available to any party if the inability to satisfy a closing condition was due to the failure of such party to perform in any material respect any of its obligations under the merger agreement;
  - a court or other governmental authority, by law or order, has restrained, enjoined or otherwise prohibited the transactions contemplated by the merger agreement and such law or order has become final and non-appealable, provided that such right to terminate is not available to any party if such restraint was due to the failure of such party to perform in any material respect any of its obligations under the merger agreement; or
  - Parametric stockholders have failed to approve the merger proposal at the Special Meeting;
- by VTBH if:
  - Parametric has breached or failed to perform any of its representations, warranties, covenants or agreements set forth in the merger agreement (or if any of the representations and warranties of Parametric set forth in the merger agreement fail to be true), such that the closing conditions applicable to Parametric would not be satisfied, if occurring at the effective time, and such breach or failure is incapable of being cured, or is not cured by Parametric within 30 calendar days following receipt of written notice of such breach or failure, except that such right to terminate is not available to VTBH if, at the time of such termination, there exists a material breach of any the representations, warranties, covenants or agreements of VTBH contained in the merger agreement;
  - before receipt of the approval of the merger proposal by Parametric stockholders, the Parametric Board or any committee thereof effects a "change in recommendation" (as defined in Proposal 1 – The Merger Proposal – Limitations on Considering Other Acquisition Proposals);

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- Parametric has materially breached its obligations relating to the calling of the Special Meeting or the solicitation or consideration of other acquisition proposals; or
- Parametric has entered into an "alternative acquisition agreement" (as defined in Proposal 1 – The Merger Proposal – Limitations on Considering Other Acquisition Proposals);
- by Parametric if:
  - VTBH has breached or failed to perform any of its representations, warranties, covenants or agreements set forth in the merger agreement (or if any of the representations and warranties of VTBH set forth in the merger agreement fail to be true), such that the closing conditions applicable to VTBH would not be satisfied, if occurring at the effective time, and such breach or failure is incapable of being cured, or is not cured by VTBH within 30 calendar days following receipt of written notice of such breach or failure, except that such right to terminate is not available to Parametric if, at the time of such termination, there exists a material breach of any the representations, warranties, covenants or agreements of Parametric contained in the merger agreement;
  - before approval of the merger proposal by Parametric stockholders, the Parametric Board has authorized Parametric to enter into a definitive acquisition agreement, letter of intent, agreement in principle or any other agreement with respect to a superior proposal and has complied in all material respects with its obligations under the merger agreement related to soliciting or considering other acquisition proposals; provided that substantially concurrently with such termination, Parametric pays the required termination fee set forth in the merger agreement and described elsewhere in this proxy statement; or
  - all required closing conditions (other than those conditions which by their nature are to be satisfied at the closing) have been satisfied other than the condition requiring the completion of a Qualified Offering, except that such right to terminate is not available to Parametric if, at the time of such termination, there exists a material breach of any representation, warranty, covenant or agreement of Parametric contained in the merger agreement.

**Termination Fees and Break-Up Fee License Agreement (Page 98)**

If the merger agreement is terminated in certain circumstances, as described in more detail under "Proposal 1 – The Merger Proposal – Termination Fees and Break-Up Fee License Agreement" on page 98:

- Parametric may be required to pay to VTBH a termination fee of \$1,000,000 and/or enter into a license agreement with VTBH relating to Parametric's HyperSound technology; or
- VTBH may be required to pay to Parametric a "reverse" termination fee of \$1,000,000.

**Specific Performance (Page 101)**

In addition to any other remedy that may be available at law or in equity, Parametric and VTBH have agreed that they are each entitled to sue in equity for specific performance and/or to obtain an injunction to prevent breaches of the merger agreement and to enforce specifically the terms and provisions of the merger agreement in the Delaware Court of Chancery or any federal court sitting in the State of Delaware. Parametric and VTBH have further agreed that they will not oppose the granting of an injunction, specific performance and other equitable relief on the basis that the other party has an adequate remedy at law or that an award of specific performance is not an appropriate remedy for any reason at law or equity.

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### Anticipated Accounting Treatment (Page 80)

The merger will be accounted for as a “reverse acquisition” pursuant to which VTBH will be considered the acquiring entity for accounting purposes in accordance with U.S. generally accepted accounting principles, referred to as “GAAP.” As such, VTBH will allocate the total purchase consideration to Parametric’s tangible and identifiable intangible assets and liabilities based on their respective fair values at the date of completion of the merger. VTBH’s historical results of operations will replace Parametric’s historical results of operations for all periods prior to the merger. After completion of the merger, the results of operations of both companies will be included in Parametric’s financial statements, which will also reflect the Series B Preferred Stock of VTBH that will remain outstanding after the merger. See “The Merger – Anticipated Accounting Treatment” on page [•].

### Material U.S. Federal Income Tax Consequences of the Merger (Page 80)

The merger agreement and transactions contemplated thereby, including the merger and issuance of shares pursuant to the merger agreement, is intended to be tax free to holders of Parametric common stock. The merger agreement provides that Parametric, Merger Sub and VTBH intend that for U.S. federal income tax purposes, the merger will constitute a tax free reorganization with the meaning of Internal Revenue Code Section 368(a)(1)(B). None of the parties to the merger agreement is seeking tax or legal or accounting opinions or rulings on whether the merger agreement qualifies for tax-free treatment and tax-free treatment is not a condition precedent to the obligations of the parties to the merger agreement. See “The Merger – Restrictions on Sales of Parametric Common Stock Following the Merger” on page [•] for a discussion of exceptions to lock-up restrictions for VTBH stockholders in the event that the IRS or another applicable tax authority successfully challenges the treatment of the merger as a tax free reorganization.

### Regulatory Matters (Page 81)

The merger is subject to U.S. antitrust laws. VTBH and Parametric have made all required filings under applicable U.S. antitrust laws with the Antitrust Division of the Department of Justice and the U.S. Federal Trade Commission. The U.S. Federal Trade Commission granted early termination of the applicable waiting period under the U.S. antitrust laws on September 5, 2013.

### Dissenters’ Rights (Page 81)

Parametric stockholders are not entitled to dissenters’ rights under Nevada law in connection with the merger agreement and the transactions contemplated thereby. See “The Merger – Dissenters’ Rights” on page [•].

### Litigation Relating to the Merger (Page 81)

On August 8, 2013, James Harrison, Jr., a purported shareholder of Parametric, filed a class action lawsuit in the Superior Court California, County of San Diego, under the caption *Harrison v. Parametric Sound Corp.*, naming Parametric, Parametric’s directors, Paris Acquisition Corp. (a wholly-owned subsidiary of Parametric) and Turtle Beach as defendants. Several other substantially similar shareholder class action complaints were filed in the same court in August 2013. In August and September 2013, several substantially similar shareholder class action complaints were filed in the Eighth Judicial District Court, Clark County, Nevada. All complaints related to the same events and transactions regarding the merger, allege breaches of fiduciary duty and aiding and abetting breaches of fiduciary duty in connection therewith, sought class action status, and demanded an order enjoining the proposed merger and unspecified reforms, actions and disclosures. On September 10, 2013, the California Superior Court consolidated all related cases before it under the caption *In re Parametric Sound Corp. Shareholder Litigation*, Case No. 37-2013-00061953-CU-BT-CTL. On September 23, 2013, the Nevada District

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Court consolidated all related cases before it under the caption *In re Parametric Sound Corp. Shareholders' Litigation*, Lead Case No. A-13-686890-B, Dep't XI. Following Parametric's filing of a preliminary proxy statement with the SEC on November 4, 2013, amended consolidated complaints were filed on November 14, 2013 in the consolidated action pending in Nevada and on November 19, 2013 in the consolidated action pending in California. These amended complaints reiterate the same claims and seek the same relief as asserted and sought in the original complaints. On November 20, 2013, Shana Vasek, a purported shareholder of Parametric, filed a class action lawsuit in the United States District Court for the District of Nevada, under the caption *Vasek v. Parametric Sound Corp.*, Case No. 2:13-cv-02148-JAD-GWF, naming the same defendants, asserting the substantially the same allegations and seeking substantially the same relief as asserted and sought in the above-referenced consolidated action pending in Nevada state court. In addition to asserting substantially the same claims for breach of fiduciary duty and aiding and abetting as asserted in the above-referenced consolidated action pending in Nevada state court, the plaintiff in the federal court action asserts a claim for violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 and SEC Rule 14a-9.

**Risk Factors (Page 20)**

In evaluating the proposals set forth in this proxy statement, you should carefully read this proxy statement, including the annexes, and especially consider the factors discussed in the section entitled "Risk Factors" on page 20.

**Recent Developments**

*Completion of Qualified Equity Offering.* On November 12, 2013, Parametric entered into a Subscription Agreement with Hodges Small Cap Fund with respect to the registered direct offer and sale by Parametric of 364,286 shares of Parametric common stock, at a purchase price of \$14.00 per share in a privately negotiated transaction in which no party acted as an underwriter or placement agent. The sale of the shares settled on November 15, 2013. The net proceeds to Parametric were \$5.08 million after deducting offering expenses. Parametric intends to use the net proceeds from this offering for general corporate working capital purposes. This transaction constituted a "Qualified Offering" in satisfaction of the merger agreement closing condition and also a "Qualified Equity Offering" for purposes of adjusting the Per Share Number. See "Proposal 1 – The Merger Proposal – Treatment of VTBH Capital Stock in the Merger" on page 84 and "Proposal 1 – The Merger Proposal – Conditions to the Merger" on page 94.

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Table of Contents**QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING AND THE MERGER**

The following questions and answers briefly address some commonly asked questions regarding the Special Meeting, the merger agreement and the merger. These questions and answers may not address all questions that may be important to you. Please refer to the more detailed information contained elsewhere in this proxy statement, the appendices to this proxy statement and the other documents Parametric refers to, or incorporated by reference into, this proxy statement.

**Q: Why am I receiving this proxy statement?**

A: Parametric, Merger Sub and VTBH have agreed to consummate a merger under the terms of the merger agreement that is described in this proxy statement. A copy of the merger agreement is attached to this proxy statement as Annex A.

In order to complete the merger, Parametric stockholders must vote to approve the issuance of Parametric common stock pursuant to the merger and the corresponding change of control of Parametric, as required by NASDAQ rules. Parametric will hold a Special Meeting of its stockholders to obtain this vote. You are receiving this proxy statement in connection with the solicitation of proxies to be voted at the Special Meeting or at any adjournments or postponements thereof.

You should carefully read this proxy statement, including its annexes and the other documents we refer to, or incorporated by reference, into this proxy statement, because they contain important information about the merger, the merger agreement and the Special Meeting. The enclosed voting materials allow you to vote your shares without attending the Special Meeting. **Your vote is very important. We encourage you to vote as soon as possible.**

**Q: What am I being asked to vote on?**

A: You are being asked to vote on a proposal to approve the issuance of Parametric common stock pursuant to the merger and the corresponding change of control of Parametric, which proposal we refer to as the "merger proposal." You are also being asked to vote upon: (i) on an advisory (non-binding) basis, the approval of specified compensation that may become payable to the named executive officers of Parametric in connection with the merger; (ii) a proposal to adjourn the Special Meeting to a later date, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the Special Meeting to approve the merger proposal; (iii) the approval of the Parametric Sound Corporation 2013 Stock-Based Incentive Compensation Plan ("Stock Plan"); and (iv) the approval of the Parametric Sound Corporation Annual Incentive Bonus Plan ("Bonus Plan").

**Q: How does the Parametric Board recommend that I vote?**

A: The Parametric Board unanimously recommends that you vote:

- "FOR" the merger proposal;
- "FOR" the non-binding, advisory proposal to approve specified compensation that may become payable to the named executive officers of Parametric in connection with the merger;
- "FOR" the proposal to adjourn the Special Meeting to a later date, if necessary or appropriate;
- "FOR" the approval of the Stock Plan; and
- "FOR" the approval of the Bonus Plan.

**Q: What should I do now?**

A: After carefully reading and considering the information contained in this proxy statement, including the appendices, we encourage you to vote by proxy as soon as possible, whether you plan to attend the Special Meeting or not. All shares represented by valid proxies that we receive through this solicitation, and that are



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not revoked, will be voted in accordance with your instructions on the proxy card or as instructed via Internet or telephone. You may specify whether your shares should be voted "FOR," "AGAINST" or "ABSTAIN" with respect to each of the proposals. If you properly submit a proxy without giving specific voting instructions, your shares will be voted in accordance with the Parametric Board's recommendations, as noted below. Voting by proxy will not affect your right to attend the Special Meeting. If your shares are registered directly in your name through our stock transfer agent, or you have stock certificates registered in your name, you may vote as follows:

- \* *Voting by Telephone.* You may vote by calling the toll-free telephone number and following the instructions printed on your proxy card. The deadline for voting by telephone is December 26, 2013, at 8:59 p.m., Pacific Standard Time. If you vote by telephone, you do not need to return your proxy card.
- \* *Voting on the Internet.* You may vote on the Internet by accessing the website and following the instructions printed on your proxy card. The deadline for voting on the Internet is December 26, 2013, at 8:59 p.m., Pacific Standard Time. If you vote on the Internet, you do not need to return your proxy card.
- \* *Voting by Proxy Card.* You may vote by completing, signing and returning your proxy card by mail. To vote in this manner, please mark, date and sign the enclosed proxy card and return it by mail in the accompanying postage-prepaid envelope. You should mail your signed proxy card sufficiently in advance for it to be received by December 26, 2013.
- \* *Voting in Person.* Even if you have voted by one of the methods described above, you may still attend and vote your shares in person at the Special Meeting, if you are the record owner of those shares. If you do attend and vote your shares in person at the Special Meeting after having voted by any of the methods described above, only your last vote will be counted. However, attendance at the Special Meeting alone will not result in a revocation of any previously submitted proxy cards.

If your shares are held in "street name" (held in the name of a bank, broker or other holder of record), you will receive voting instructions from the holder of record. You must follow the instructions of the holder of record in order for your shares to be voted. Telephone and Internet voting also will be offered to stockholders owning shares through certain banks and brokers. If your shares are not registered in your own name and you plan to vote your shares in person at the Special Meeting, you should contact your broker or agent to obtain a legal proxy or broker's proxy card and bring it to the Special Meeting in order to vote.

**Q: Why are Parametric and Turtle Beach proposing to effect the merger?**

- A:** We believe that the combination of Parametric's and Turtle Beach's businesses will create more value for Parametric's stockholders in the long-term than Parametric could achieve as an independent, stand-alone company. For a more complete description of the reasons for the merger, see "The Merger – Reasons for the Merger" on page 59.

**Q: How will Parametric stockholders be affected by the merger?**

- A:** The merger will have no effect on the number of shares of Parametric common stock held by Parametric stockholders as of immediately prior to the completion of the merger. However, it is expected that upon completion of the merger such shares will represent approximately 20% of the outstanding shares of Parametric common stock after the merger, on a fully-diluted basis, whereas prior to the completion of the merger such shares represented 100%.

**Q: When do Parametric and Turtle Beach expect the merger to be completed?**

- A:** Parametric and Turtle Beach are working to complete the merger as quickly as practicable. However, we cannot predict the exact timing of the completion of the merger because it is subject to certain conditions. See "Proposal 1 – The Merger Proposal – Conditions to the Closing of the Merger" on page 94. We plan to complete the merger as soon as practicable after the Special Meeting if the merger proposal is approved.

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### **Q: What will happen to Parametric if, for any reason, the merger does not close?**

- A:** Parametric has invested significant time and incurred, and expects to continue to incur, significant expenses related to the proposed merger. If the merger does not close, the Parametric Board will, among other things, (i) continue to evaluate and review our business operations, properties and capitalization, (ii) make such changes as are deemed appropriate, and (iii) continue to seek to identify strategic alternatives to enhance stockholder value. In addition, upon termination of the merger agreement under specified circumstances, Parametric may be required to pay VTBH a termination fee of \$1,000,000 and/or enter into a license agreement with Turtle Beach related to Parametric's HyperSound technology, in each case as described under "Proposal 1 – The Merger Proposal – Effect of Termination of Merger Agreement" beginning on page 98.

### **Q: Who will be the Parametric's directors and executive officers following the merger?**

- A:** Following the merger, the Parametric Board will be comprised of a total of nine directors, with five directors designated by VTBH, two designated by Parametric and two vacancies at the closing of the merger. The Parametric Board is anticipated to include the following individuals as of the closing of the merger:

<u>Name</u>	<u>Current Principal Affiliation</u>
Juergen Stark	Turtle Beach
Kenneth A. Fox	Turtle Beach
Ronald Doornink	Turtle Beach
Kenneth F. Potashner	Parametric
Andrew Wolfe, Ph.D.	Parametric

VTBH is entitled to designate two additional individuals to serve as independent directors on the Parametric Board, but had not yet done so as of the date of this proxy statement.

Following the merger, the executive officers of Parametric are anticipated to include the following individuals (and others yet to be determined):

<u>Name</u>	<u>Position</u>
Juergen Stark	Chief Executive Officer and President
John Hanson	Chief Financial Officer, Treasurer and Secretary

For more information about Parametric's anticipated directors and executive officers following the merger and related corporate governance matters, see "Management of Parametric Following the Merger" on page 148.

### **Q: Will my shares be voted if I do not provide my proxy?**

- A:** Under stock market rules currently in effect, brokerage firms and nominees have the authority to vote their customers' unvoted shares on certain "routine" matters if the customers have not furnished voting instructions within a specified period prior to the Special Meeting. However, the proposals to be voted upon at the Special Meeting are not considered "routine" matters and hence brokerage firms and nominees will not be able to vote the shares of customers from whom they have not received voting instructions. If you hold your shares directly in your own name, they will not be counted as shares present for the purposes of determining the presence of a quorum or be voted if you do not provide a proxy or attend the Special Meeting and vote the shares yourself.

Broker non-votes occur when shares held by a broker are not voted with respect to a proposal because (i) the broker has not received voting instructions from the beneficial owner of the shares and (ii) the broker lacks the authority to vote the shares at the broker's discretion. Broker non-votes will be counted as shares present and entitled to vote for the purposes of determining the presence of a quorum on each of the proposals to be voted on at the Special Meeting.

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Table of Contents**Q: If my shares are held in "street name" by my broker, can my broker vote my shares for me?**

- A: Yes, but your broker will only be permitted to vote your shares of Parametric common stock if you instruct your broker how to vote. You should follow the procedures provided to you by your broker regarding how to instruct your broker to vote your shares.

**Q: When and where is the Special Meeting?**

- A: The Special Meeting will be held on December 27, 2013, at Hampton Inn & Suites, 14068 Stowe Drive, Poway CA 92064, at 1:00 p.m. local time.

**Q: Who may attend the Special Meeting?**

- A: All Parametric stockholders who owned shares of Parametric common stock at the close of business on November 11, 2013, the record date for the Special Meeting, may attend.

**Q: Who may vote at the Special Meeting?**

- A: Only holders of record of Parametric common stock as of the close of business on November 11, 2013, the record date for the Special Meeting, may vote at the Special Meeting. As of the record date, Parametric had 6,837,321 outstanding shares of Parametric's common stock entitled to vote at the Special Meeting.

**Q: What vote is required to approve the merger proposal?**

- A: Approval of the merger proposal requires the affirmative vote of a majority of the votes cast on the proposal, excluding abstentions, at a meeting at which a quorum is present.

**Q: Do any of Parametric's directors or officers have interests in the merger that may differ from or be in addition to my interests as a stockholder?**

- A: In considering the recommendation of the Parametric Board with respect to the merger proposal, you should be aware that some of Parametric's directors and executive officers may have interests that are different from, or in addition to, the interests of our stockholders generally. See "The Merger – Interests of Parametric Executive Officers and Directors in the Merger," beginning on page 74.

**Q: How will our directors and executive officers vote on the merger proposal?**

- A: Our directors and current executive officers have informed us that, as of the date of this proxy statement, they intend to vote all of their shares of Parametric common stock in favor of the merger proposal. As of November 11, 2013, the record date for the Special Meeting, our directors and current executive officers, directly or indirectly, owned, in the aggregate, 1,349,696 shares of Parametric common stock, or collectively approximately 19.7% of the shares of Parametric common stock entitled to vote at the Special Meeting. VTBH is deemed under the securities laws to hold voting power over approximately 19.2% of the total number of outstanding shares of Parametric common stock as of the record date for the Special Meeting on account of voting agreements entered into with Messrs. Potashner, Barnes and Norris (and certain entities controlled by them), which agreements provide, among other things, that each of Messrs. Potashner, Barnes and Norris (and certain entities controlled by them) will vote all of their shares in favor of the merger proposal. See "The Merger – Restrictions on Sales of Parametric Common Stock Following the Merger – Voting Agreements" beginning on page 79 for additional information.

**Q: Why am I being asked to approve specified merger-related compensation that may become payable to the named executive officers of Parametric?**

- A: SEC regulations require us to seek a vote, on an advisory (non-binding) basis, with respect to certain merger-related executive compensation arrangements, or "golden parachute" compensation, that will be



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paid or may become payable to the Parametric's named executive officers. See "Proposal 2 – Advisory (Non-Binding) Proposal to Approve Specified Compensation That May Become Payable to Parametric Named Executive Officers in Connection With the Merger" beginning on page 102.

**Q. What vote is required to approve the "golden parachute" compensation?**

- A. Approval (by non-binding, advisory vote) of "golden parachute" compensation requires the affirmative vote of a majority of the votes cast on the proposal, excluding abstentions, at a meeting at which a quorum is present. Abstentions and broker non-votes (or other failures to vote) will have no effect on the proposal to approve the golden parachute compensation arrangements.

**Q. What happens if stockholders do not approve the "golden parachute" compensation?**

- A: Approval (by non-binding, advisory vote) of "golden parachute" compensation that Parametric's named executive officers will or may receive in connection with the merger is not a condition to completion of the merger. The vote with respect to "golden parachute" compensation is on an advisory basis and will not be binding on Parametric or VTBL. Therefore, regardless of whether stockholders approve the "golden parachute" compensation, if the merger proposal is approved by the stockholders and the merger is completed, the "golden parachute" compensation will be paid or may become payable to Parametric's named executive officers to the extent provided in the merger agreement and in our related compensation plans and agreements.

**Q. Why am I being asked to approve the 2013 Stock-Based Incentive Compensation Plan?**

- A: NASDAQ listing rules require stockholder approval prior to the issuance of securities to Parametric's officers, directors, employees and consultants pursuant to a newly established or materially amended stock option plan or other equity compensation arrangement. Parametric is seeking approval of the 2013 Stock-Based Incentive Compensation Plan to enable it to grant stock-based incentive compensation to eligible officers, directors, employees and consultants in connection with and following the consummation of the merger.

**Q: Why am I being asked to approve the Annual Incentive Bonus Plan?**

- A: Section 162(m) of the Internal Revenue Code of 1986, as amended, generally prohibits the deduction by Parametric of compensation paid to certain of its executive officers in excess of \$1,000,000. An exception to this prohibition is provided for compensation that is paid pursuant to the achievement of performance goals, the material terms of which are disclosed to and approved by our stockholders. If the Annual Incentive Bonus Plan is approved by stockholders, Parametric will preserve the ability to pay compensation to such officers that may qualify for the exemption from such limitations on its deductibility.

**Q: What is a "quorum"?**

- A: Under our bylaws, the presence, in person or by proxy duly authorized, of the holder or holders of not less than 50% of the outstanding shares of stock entitled to vote shall constitute a "quorum" for the transaction of business. If a quorum is not present at the Special Meeting, Parametric expects that the Special Meeting will be adjourned or postponed to solicit additional proxies. In general, shares of Parametric common stock represented by a properly signed and returned proxy card will be counted as shares present and entitled to vote at the Special Meeting for purposes of determining a quorum. Shares represented by proxies marked "ABSTAIN" are counted in determining whether a quorum is present. In addition, a "broker non-vote" is counted in determining whether a quorum is present.

**Q: Who is soliciting my proxy?**

- A: This proxy is being solicited by the Parametric Board.



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**Q. Who is paying for the solicitation of proxies?**

- A:** Parametric will bear the cost of solicitation of proxies by us. In addition to soliciting stockholders by mail, Parametric directors, officers and employees, without additional remuneration, may solicit proxies in person or by telephone or other means of electronic communication. Parametric will not pay these individuals for their solicitation activities but will reimburse them for their reasonable out-of-pocket expenses. Brokers and other custodians, nominees and fiduciaries will be requested to forward proxy-soliciting material to the owners of stock held in their names, and Parametric will reimburse such brokers and other custodians, nominees and fiduciaries for their reasonable out-of-pocket costs. Solicitation by Parametric's directors, officers and employees may also be made of some stockholders in person or by mail, telephone or other means of electronic communication following the original solicitation.

In addition, Parametric has retained Morrow & Co. LLC to assist in the solicitation of proxies, for a fee estimated to be approximately \$6,500.

**Q: What does it mean if I get more than one proxy card?**

- A:** If your shares are registered in multiple accounts with one or more brokers and/or our transfer agent, you will receive more than one proxy card. If you are submitting your proxy by completing and returning your proxy card, please complete and return each of the proxy cards you receive to ensure that all of your shares are voted.

**Q: If I have given a proxy, may I subsequently change my vote?**

- A:** Yes. If you give us your proxy, you may change or revoke it at any time before the Special Meeting. You may change or revoke your proxy in any one of the following ways:

- by re-voting by Internet or by telephone as instructed above;
- by signing a new proxy card with a date later than your previously delivered proxy and submitting it as instructed above; provided that it is received prior to the deadline set forth above;
- by notifying our Secretary in writing before the Special Meeting that you have revoked your proxy; or
- by attending the Special Meeting in person and voting in person in accordance with the instructions above. Attending the meeting in person will not in and of itself revoke a previously submitted proxy unless you specifically request it.

Your most current vote, whether by telephone, Internet or proxy card, is the one that will be counted.

If you have instructed a broker or other nominee to vote your shares, you must follow the procedures provided by your broker or nominee to change those instructions.

**Q: Will I have dissenters' rights as a result of the merger agreement and the transactions contemplated thereby?**

- A:** No. See "The Merger – Dissenters' Rights" on page 81.

**Q: Will the merger agreement and the transactions contemplated thereby be taxable to me as a Parametric stockholder?**

- A:** No. See "The Merger – Material U.S. Federal Income Tax Consequences of the Merger" on page 80.

**Q. After the Special Meeting, how can I determine whether the merger proposal was approved by Parametric stockholders?**

- A:** Promptly after the Special Meeting, Parametric will issue a press release announcing whether the merger proposal has been approved by holders of a sufficient number of outstanding shares of Parametric common

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stock. In addition, within four business days after the Special Meeting, Parametric will file a Form 8-K with the SEC to report the results of the voting on the proposals presented to the Parametric stockholders at the Special Meeting.

**Q: Who can help answer my questions?**

- A: If you have questions about the Special Meeting or the merger after reading this proxy statement, you should contact our proxy solicitor, Morrow & Co. LLC, 470 West Avenue, Stamford, CT 06902, or by phone as follows: stockholders, please call (800) 279-6413 (toll free); banks and brokerage firms, please call (203) 658-9400.

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Table of Contents**FORWARD-LOOKING STATEMENTS**

This proxy statement includes and incorporates by reference statements that are not historical facts. These forward-looking statements are based on Parametric's and/or, where applicable, VTBH's current estimates and assumptions and, as such, involve uncertainty and risk. Forward-looking statements include the information concerning possible or assumed future results of operations and also include those preceded or followed by words such as "anticipates," "believes," "thinks," "could," "estimates," "expects," "intends," "may," "should," "plans," "targets" and/or similar expressions. There may be events in the future that cannot be accurately predicted or over which Parametric has no control. Stockholders should be aware that the occurrence of the events described in this proxy statement or in the documents incorporated herein by reference could have a material adverse effect on our business, operating results and financial condition or ability to consummate the transaction. Examples of these risks include, without limitation:

- the risk factors disclosed in this proxy statement under "Risk Factors" and in Parametric's Annual Report on Form 10-K for the fiscal year ended September 30, 2013, which report is incorporated by reference in this proxy statement;
- the risk that the merger may not be consummated and that the merger agreement could be terminated, including under circumstances that would require Parametric to pay a termination fee of \$1,000,000 and/or enter into a license agreement with VTBH related to Parametric's HyperSound technology; and
- the risk that, even though Parametric has incurred the costs and expenses related to the merger, the merger may not be completed.

The forward-looking statements are not guarantees of future performance, events or circumstances, and actual results may differ materially from those contemplated by the forward-looking statements.

Table of Contents**RISK FACTORS**

*You should consider carefully the following risk factors, as well as the other information set forth in this proxy statement, before making a decision on the merger proposal or the other proposals presented. The value of your investment may increase or may decline and could result in a loss. You should carefully consider the following factors as well as the other information contained in this proxy statement. In particular, you should consider the risks related to potential conflicts of interest disclosed under "The Merger – Interests of Directors and Executive Officers in the Merger" on page 74.*

**Risk Factors Related to Parametric and the Merger**

*Although Parametric and Turtle Beach expect that the merger will result in benefits to the combined company, the combined company may not realize those benefits because of various challenges.*

Parametric and Turtle Beach believe that the merger will result in Turtle Beach's experience, financial resources, technical expertise, sales and marketing resources, scalable supply chain and global distribution network helping to accelerate the design, development, commercialization and distribution of Parametric's products and technology, including its HyperSound-based products, in particular in Parametric's three target market segments, and that the merger will drive future growth across the businesses of the combined company. However, the integration of a new company is a complex, costly and time-consuming process. This process may disrupt the business of either or both of the companies, and may not result in the full benefits expected by Parametric and Turtle Beach. There can be no assurance that the combination of Parametric with Turtle Beach will result in the realization of the anticipated benefits from the merger.

*The announcement and pendency of the merger have had and may continue to have an adverse effect on our stock price and/or our business, financial condition, results of operations or business prospects.*

The announcement and pendency of the merger has had and may continue to have an adverse effect on our stock price and increase the price volatility and risk of trading in our stock. Our business, financial condition, results of operations or business prospects could also be adversely affected. For example, third parties may seek to terminate and/or renegotiate their relationships with us as a result of the merger, whether pursuant to the terms of their existing agreements or otherwise. Potential licensees and commercial customers may decide not to continue discussions with us. In addition, the attention of our management may be directed toward the completion of the merger and related matters and may be diverted from the day-to-day business operations, including from other opportunities that otherwise might be beneficial to us.

*Failure to complete the merger could impact negatively our business, financial condition or results of operations or our stock price.*

The completion of the merger is subject to a number of conditions and there can be no assurance that the conditions to the completion of the merger will be satisfied. If the merger is not completed, Parametric will be subject to several risks, including:

- the current trading price of Parametric's common stock may reflect a market assumption that the merger will occur, meaning that a failure to complete the merger could result in a decline in the price of our common stock;
- certain of our executive officers and/or directors may seek other employment opportunities, and the departure of any of our executive officers and the possibility that Parametric would be unable to recruit and hire a replacement executive could impact negatively our business and operating results;
- the Parametric Board would need to reevaluate our strategic alternatives, which alternatives may include a sale of the company, liquidation of the company, a return to pre-merger strategies of seeking licensing candidates and growing commercial sales or other strategic transactions;

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- Parametric may be required to reimburse VTBH a termination fee of \$1,000,000 and/or enter into a license agreement to Turtle Beach for certain of our intellectual property for use in console audio products on an exclusive basis and computer audio products on a non-exclusive basis if the merger agreement is terminated under certain circumstances;
- we have incurred and will continue to incur substantial transaction costs in connection with the merger whether or not the merger is completed;
- we would not realize any of the anticipated benefits of having completed the merger; and
- under the merger agreement, we are subject to certain restrictions on the conduct of our business prior to the completion of the merger, which restrictions could adversely affect our ability to realize our business strategies or take advantage of certain business opportunities in the event the merger is not completed.

If the merger is not completed, these risks may materialize and materially and adversely affect our business, financial condition, results of operations or stock price.

*The issuance of shares of our common stock to VTBH stockholders in connection with the merger will reduce substantially the voting power of our current stockholders.*

Pursuant to the merger agreement, at the effective time of the merger, Parametric will issue shares of common stock to the former VTBH stockholders which, together with options to purchase shares of VTBH common stock that will be converted into options to purchase shares of our common stock (and will be assumed by us at the effective time of the merger), will represent approximately 80% of our common stock on a fully-diluted basis after the merger, subject to adjustment pursuant to the merger agreement. Accordingly, the issuance of shares of our common stock to VTBH stockholders in connection with the merger will reduce significantly the relative voting power of each share of our common stock held by our current stockholders. Consequently, our stockholders as a group will have significantly less influence over the management and policies of the combined company after the merger than prior to the merger.

*The Per Share Number and Per Share Exchange Ratio are not adjustable based on the market price of our common stock and if the market price of our common stock fluctuates, the market value of the shares of each party to the merger can change prior to the completion of the merger.*

The Per Share Number and Per Share Exchange Ratio, as calculated in the merger agreement, which determine the number of shares to be issued to the former VTBH stockholders pursuant to the merger and the number of Parametric common stock to be subject to options held by former VTBH option holders, respectively, is based on the fully-diluted number of shares of our common stock and VTBH capital stock outstanding as of immediately prior to the completion of the merger, subject to adjustment as provided in the merger agreement. No adjustments to the Per Share Number or Per Share Exchange Ratio will be made based on changes in the trading price of our common stock or the value of VTBH capital stock prior to the completion of the merger. Changes in the trading price of our common stock or the value of VTBH capital stock may result from a variety of factors, including, among others, general market and economic conditions, changes in our or Turtle Beach's respective businesses, operations and prospects, market assessment of the likelihood that the merger will be completed as anticipated or at all, and regulatory considerations. Many of these factors are beyond our control or Turtle Beach's control. As a result, the value of the shares of our common stock issued to VTBH stockholders in connection with the merger could be substantially less or substantially more than the current market value of our common stock. Likewise, such factors including those related to Turtle Beach could affect the value of our common stock prior to closing of the merger.



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*The “Parent Percentage” (as defined in the merger agreement) is not adjustable based on issuances by us of additional shares of our common stock either upon the exercise of options or warrants or issuance of certain new securities or otherwise, and any new issuances could result in additional dilution to our current stockholders.*

Subject to certain conditions in the merger agreement, we are not prohibited from issuing additional equity securities, including securities issued pursuant to the exercise of outstanding options or warrants or the granting of new stock options or the issuance of new securities related to a qualified offering or otherwise. It is possible that prior to the completion of the merger, we may grant additional stock options or issue additional equity securities including in connection with a Qualified Equity Offering. The Parent Percentage, as defined in the merger agreement, which determines in part the number of shares to be issued to the former VTBH stockholders pursuant to the merger and the number of Parametric options to be granted to former VTBH option holders, respectively, is not adjustable based on issuances by us of additional shares of our common stock, or an increase in our fully-diluted shares by issuance of additional stock options or warrants as such (but may be adjusted in the event of a Qualified Equity Offering). See “Proposal 1 – The Merger Proposal – Treatment of VTBH Capital Stock in the Merger” on page [\*]. Therefore, any such new issuances by us could result in additional dilution to our current stockholders.

*We have incurred and will continue to incur significant transaction and litigation costs in connection with the merger, some of which will be required to be paid even if the merger is not completed.*

We have incurred and will continue to incur significant transaction and litigation costs in connection with the merger. These costs are primarily associated with the fees of attorneys and accountants and our financial advisors. Many of these costs will be paid even if the merger is not completed. In addition, if the merger agreement is terminated due to certain triggering events specified in the merger agreement, we may be required to pay VTBH a termination fee of \$1,000,000 and may be required to enter into the break-up fee license agreement. See “Proposal 1 – The Merger Proposal – Termination Fees and Break-Up Fee License Agreement” on page 98.

*The merger agreement and certain related voting agreements contain provisions that could discourage or make it difficult for a third party to acquire us prior to the completion of the merger.*

The merger agreement contains provisions that may make it difficult for us to entertain a third-party proposal for an acquisition. These provisions include:

- \* certain prohibitions on our soliciting or engaging in discussions or negotiations regarding any alternative acquisition proposal outside a limited 30-day go shop period that expired on September 5, 2013; and
- \* the requirement that we pay VTBH a termination fee of \$1,000,000 and/or enter into the break-up fee license agreement if the merger agreement is terminated under certain circumstances.

In addition, pursuant to agreements entered into between VTBH and our three executive officers, each executive officer is subject to a voting agreement, pursuant to which he has agreed to vote in favor of the approval and adoption of the Merger Agreement and the transactions contemplated thereby and vote against other acquisition proposals defined in the agreement. These provisions might discourage an otherwise interested third party from considering or proposing an acquisition of us, even one that may be deemed of greater value than the merger to our stockholders. Furthermore, even if a third party elects to propose an acquisition, the potential termination and the break-up fee license agreement may result in that third party offering a lower value to our stockholders than such third party might otherwise have offered.

*Because the lack of a public market for VTBH's outstanding shares makes it more difficult to evaluate the value of such shares, VTBH stockholders may receive consideration in the merger that is greater than the fair market value of the VTBH shares.*

VTBH is privately held and its outstanding capital stock is not traded in any public market. The lack of a public market makes it difficult to determine the fair market value of VTBH or its shares of capital stock. Since

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the percentage of our equity to be issued to the VTBH stockholders was determined based on negotiations between the parties, it is possible that the value of the our common stock to be issued in connection with the merger will be greater than the fair market value of VTBH.

*The merger will result in changes to the Parametric Board and Parametric may pursue different strategies after the merger than we may have pursued independently.*

If the merger is completed, the composition of the Parametric Board will change in accordance with the merger agreement. Following completion of the merger, the Parametric Board is expected to consist of nine members initially to be comprised of two directors appointed by us, five directors appointed by former VTBH stockholders and two vacancies. Currently, it is anticipated that after the merger Parametric will continue to advance the current product development efforts and business strategies of both Parametric and Turtle Beach. However, because a majority of the Parametric Board after the merger will initially be comprised of directors selected by Turtle Beach, following the merger we may pursue certain business strategies that we would not have pursued had the merger not taken place.

*Ownership of the combined company's common stock will be highly concentrated, and it will prevent our stockholders from influencing many significant corporate decisions and may result in conflicts of interest that could cause the combined company's stock price to decline.*

Upon completion of the merger, certain VTBH stockholders acting as a group are expected to beneficially own or control a significant majority of Parametric. Accordingly, these stockholders, acting as a group pursuant to the Stockholder Agreement, will have substantial influence over the outcome of corporate actions of Parametric requiring stockholder approval, including the election of directors, any merger, consolidation or sale of all or substantially all of Parametric's assets or any other significant corporate transaction. These stockholders also may exert influence in delaying or preventing a change in control of Parametric, even if such change in control would benefit the other stockholders of Parametric. In addition, the significant concentration of stock ownership may affect adversely the market value of Parametric's common stock due to investors' perception that such conflicts of interest may exist or arise.

*Following the merger, we expected to be a "controlled company" within the meaning of the corporate governance standards of NASDAQ and, as a result, qualify for, and rely on, exemptions from certain corporate governance requirements.*

Upon completion of the merger, it is anticipated that Parametric will be a "controlled company" under NASDAQ rules. A "controlled company" under NASDAQ rules is a listed company more than 50 percent of the voting power of which is held by an individual, a group or another company (and which elects to be treated as a "controlled company"). Following the merger, certain stockholders of VTBH will constitute a group controlling more than 50% of the voting power of Parametric's voting stock. As a "controlled company," Parametric will be permitted to, and intends to, opt out of certain NASDAQ rules that would otherwise require (i) a majority of the members of the Parametric Board to be independent, (ii) that the compensation committee of Parametric be comprised entirely of independent directors and (iii) that Parametric establish a nominating and governance committee comprised entirely of independent directors, or otherwise ensure that director nominees are determined or recommended to the Parametric Board by the independent members of the Parametric Board. Accordingly, after the merger, you will not have the same protections afforded to stockholders of companies that are subject to all of the corporate governance requirements of NASDAQ.

*Following the merger, sales of shares of our common stock into the market in the future could cause the market price of our common stock to drop significantly, even if our business is doing well.*

Concurrently with the execution of the merger agreement, Parametric and VTBH entered into Stockholder Agreements and Irrevocable Proxies, referred to as the "voting agreements," with Messrs. Potashner, Barnes and

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Norris, as well as certain entities over which they exercise voting and/or investment control, collectively referred to as the "management stockholders." Under the voting agreements, the management stockholders have agreed to a lock-up restriction whereby they have agreed not to sell or otherwise transfer the shares of Parametric common stock beneficially owned by them (or subsequently acquired by them) until six months following the closing of the merger, subject to certain exceptions including, without limitation, the right to sell shares in order to pay certain taxes which may arise in connection with the merger.

Additionally, pursuant to the Stockholder Agreement, VTBH stockholders have agreed to a lock-up restriction whereby they will not sell or otherwise transfer the merger shares for a period of six months following the closing of the merger, subject to certain exceptions including, without limitation, the right to sell shares in order to pay certain taxes which may arise in connection with the merger. Additionally, the Stockholder Agreement provides for certain post-closing registration rights after the merger, which rights could facilitate the sale of the shares held by VTBH stockholders into the market.

If the shares held by the aforementioned stockholders are sold, or if it is perceived that they will be sold in the public market, the trading price of our common stock could decline. For more information on the lock-up restrictions set forth in the voting agreements and the Stockholder Agreement, see "The Merger – Restrictions on Sales of Parametric Common Stock Following the Merger" on page 79.

*Several lawsuits have been filed against Parametric, Parametric's directors, Merger Sub and VTBH challenging the merger, and an adverse judgment in such lawsuits may prevent the merger from becoming effective or from becoming effective within the expected timeframe.*

Parametric, Parametric's directors, Merger Sub and VTBH are named as defendants in purported class action lawsuits brought by Parametric stockholders challenging the proposed merger, seeking, among other things, to enjoin the defendants from consummating the merger on the agreed-upon terms. If the plaintiffs are successful in obtaining an injunction prohibiting the parties from completing the merger on the agreed-upon terms, the injunction may prevent the completion of the merger in the expected timeframe (or altogether). See "The Merger – Litigation Relating to the Merger" on page 81 for more information about the class action lawsuits related to the merger that have been filed.

*In connection with the consummation of the merger, Parametric and its subsidiaries will become subject to the terms and conditions of Turtle Beach's credit facility and, accordingly, will be required to grant to the lenders under such facility a first-priority lien against the assets of Parametric and its subsidiaries.*

Upon the closing of the merger, Parametric and its subsidiaries will become parties to Turtle Beach's credit facility and subject to the terms and conditions thereof. For more information about this credit facility and related risks, see "Turtle Beach's Management's Discussion and Analysis of Financial Condition and Results of Operations – Liquidity and Capital Resources – Debt Obligations" on page 127, "Risk Factors – Turtle Beach depends upon the availability of capital under its credit facility..." on page 33 and "Risk Factors – Turtle Beach's Credit Facility provides its lenders with a first priority lien against substantially all of its assets..." on page 34. If the combined company were to fail to comply with the affirmative and negative covenants of the credit facility, the lenders under such facility could under certain circumstances foreclose on the assets of the combined company, which would result in a material adverse effect on the combined company's financial condition and results of operations.

## **Risks Related to Turtle Beach's business**

*The current transition and future transitions in console platforms could adversely affect the market for Turtle Beach's products and adversely affect Turtle Beach's business.*

In 2005, Microsoft released the Xbox 360, in 2006, Sony introduced the PlayStation 3 and in 2012, Nintendo introduced the Wii U. Sony launched its next-generation console, PlayStation 4, on November 15,

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2013, and Microsoft launched its next-generation console, Xbox One®, on November 22, 2013. When new console platforms are announced or introduced into the market, consumers typically reduce their purchases of game console peripherals and accessories, including headsets, for current console platforms in anticipation of new platforms becoming available. During these periods, sales of game console headsets such as those sold by Turtle Beach may slow or decline until new platforms are introduced and achieve wide consumer acceptance, which acceptance Turtle Beach cannot guarantee. This decrease or decline may not be offset by increased sales of products for the new console platforms. As console hardware moves through its life cycle, hardware manufacturers typically enact price reductions and decreasing prices may put downward pressure on prices for Turtle Beach's products for such platforms. During platform transitions, Turtle Beach may simultaneously incur costs both in continuing to develop and market new products for prior-generation video game platforms, which may not sell at premium prices, and also in developing products for current-generation platforms, which will not generate immediate or near-term revenue. As a result, Turtle Beach's operating results during platform transitions are more volatile and more difficult to predict than during other times.

*A significant portion of Turtle Beach's revenue is derived from a few large customers, and if any of these customers chooses to terminate its relationship with Turtle Beach or reduce its spending on Turtle Beach's products, Turtle Beach's financial condition and results of operations would suffer.*

A substantial portion of Turtle Beach's sales are generated from a small number of large customers. Turtle Beach's top three customers, GameStop Corp., Best Buy Co., Inc. and Wal-Mart Stores, Inc., accounted for a total of approximately 51% of Turtle Beach's gross sales in fiscal 2012, 51% of Turtle Beach's gross sales in fiscal 2011 and 58% of Turtle Beach's gross sales in fiscal 2010.

Turtle Beach does not have long-term agreements with these or other significant customers and Turtle Beach's agreements with these customers do not require them to purchase any specific number or amount of Turtle Beach's products; all of Turtle Beach's customers generally purchase from it on a purchase order basis. As a result, agreements with respect to pricing, returns, cooperative advertising or special promotions, among other things, are subject to periodic negotiation with each customer. No assurance can be given that these or other customers will continue to do business with Turtle Beach or that they will maintain their historical levels of business. The loss of any of Turtle Beach's significant customers, including as a result of the bankruptcy of a customer, could have a material adverse effect on Turtle Beach's business, results of operations, financial condition and liquidity. In addition, the uncertainty of product orders can make it difficult to forecast Turtle Beach's sales and allocate Turtle Beach's resources in a manner consistent with actual sales, and Turtle Beach's expense levels are based in part on Turtle Beach's expectations of future sales. If Turtle Beach's expectations regarding future sales are inaccurate, Turtle Beach may be unable to reduce costs in a timely manner to adjust for sales shortfalls.

### *Turtle Beach depends upon third parties to develop products.*

The performance of Turtle Beach's business is affected by the continued development of new and enhanced videogame platforms by first-party manufacturers, such as Sony, Microsoft and Nintendo, as well as videogames by such manufacturers and other publishers. Turtle Beach's business could suffer if any of these parties fail to develop new or enhanced videogame platforms or popular game and entertainment titles for current or future generation platforms. If a platform is withdrawn from the market or fails to sell, Turtle Beach may be forced to liquidate Turtle Beach's inventories or accept returns resulting in significant losses.

Historically, the videogame industry has been cyclical with many consumers delaying the purchase of new videogame systems for one to two years following the launch of a new system. However, since the announcement of Sony's PlayStation 4 and Microsoft's Xbox One systems, the industry has been in a transitional period. Turtle Beach expects this transition period to be a challenging sales environment for the videogame industry and for Turtle Beach's products designed for use with videogame platforms. The general decline in the videogame industry that typically occurs during these transition periods may adversely impact Turtle Beach's



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business, results of operations and financial condition, and if the decline is longer or deeper than expected, the impact on Turtle Beach's business will be more severe.

*Turtle Beach must make significant expenditures to develop products for new platforms and may not recover those costs, which would cause Turtle Beach's results of operations to suffer.*

Turtle Beach must make substantial product development and other investments in a particular platform well in advance of introduction of the platform and may be required to realign its product portfolio and development efforts in response to market changes. Furthermore, development costs for new console platforms are greater than those costs for current console platforms. If increased costs are not offset by higher revenues and other cost efficiencies, operating results and Turtle Beach's financial position will suffer. If the platforms for which Turtle Beach develops new products or modifies existing products do not attain significant market penetration, Turtle Beach may not be able to recover its development costs, which could be significant, and Turtle Beach's business and financial results could suffer. Additionally, if Sony or Microsoft do not produce and timely release sufficient quantities of their next-generation consoles, Turtle Beach's sales of headsets for the next-generation consoles could be adversely effected, making it more difficult to recover its development costs for the next-generation consoles.

In addition, Turtle Beach's Xbox One headsets require Xbox One console-specific components and software to function. If the required components are not produced in sufficient quantities or the required software is not released, Turtle Beach's ability to sell headsets for the Xbox One would be reduced or eliminated, and Turtle Beach's business and financial results could suffer. For example, Microsoft has informed its partners in the Xbox One console launch that the Xbox One Headset Adapter, being built by Microsoft and provided to Turtle Beach for inclusion with new gaming headsets, will not be available until early 2014. Turtle Beach anticipates that the current console transition will likely adversely affect sales of gaming headsets through the majority of the fourth quarter of 2013.

*Turtle Beach's financial results are dependent on timely introduction of its new products, and any failure or delay in the introduction of new products to the marketplace may have a material adverse effect on Turtle Beach's business and results of operations.*

There are numerous steps required to develop a product from conception to commercial introduction and to ensure timely shipment to retail customers, including designing, sourcing and testing the electronic components, receiving approval of hardware and other third-party licensors, factory availability and manufacturing and designing the graphics and packaging. Any difficulties or delays in the product development process will likely result in delays in the contemplated product introduction schedule. It is common in new product introductions or product updates to encounter technical and other difficulties affecting manufacturing efficiency and, at times, the ability to manufacture the product at all. Although these difficulties can be corrected or improved over time with continued manufacturing experience and engineering efforts, if one or more aspects necessary for the introduction of products are not completed as scheduled, or if technical difficulties take longer than anticipated to overcome, the product introductions will be delayed, or in some cases may be terminated. No assurances can be given that products will be introduced in a timely fashion, and if new products are delayed, Turtle Beach's sales and revenue growth may be limited or impaired.

Some of Turtle Beach's products have been only recently introduced and although they may experience strong initial market acceptance, no assurance can be given that any initial acceptance will result in future sales. As a general matter, Turtle Beach expects that sales of these products will decline over the product's life cycle. Turtle Beach cannot predict the length of the life cycle for any particular product. In order to control costs, and take advantage of the limited shelf space provided to Turtle Beach, Turtle Beach may discontinue some of Turtle Beach's product offerings. Turtle Beach's long-term operating results will therefore depend largely upon Turtle Beach's continued ability to conceive, develop and introduce new appealing products at competitive prices.



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*The gaming industry is subject to rapid technological change, and if Turtle Beach does not adapt to, and appropriately allocate its resources among, emerging technologies, Turtle Beach's revenues could be negatively affected.*

Technology changes rapidly in the gaming industry. Turtle Beach must anticipate and adapt its products to emerging technologies in order to keep those products competitive. When Turtle Beach chooses to incorporate a new technology into a product or to develop a product for a new platform or operating system, Turtle Beach often is required to make a substantial investment prior to the introduction of the product. If Turtle Beach invests in the development of a new technology or for a new platform that does not achieve significant commercial success, Turtle Beach's revenues from those products likely will be lower than anticipated and may not cover Turtle Beach's development costs. Further, Turtle Beach's competitors may adapt to an emerging technology more quickly or effectively than Turtle Beach does, creating products that are technologically superior to Turtle Beach's, more appealing to consumers, or both. If, on the other hand, Turtle Beach elects not to pursue the development of products incorporating a new technology or for new platforms that achieve significant commercial success, Turtle Beach's revenues could also be adversely affected. It may take significant time and resources to shift product development resources to that technology or platform and may be more difficult to compete against existing products incorporating that technology or for that platform. Any failure to successfully adapt to, and appropriately allocate resources among, emerging technologies could harm Turtle Beach's competitive position, reduce Turtle Beach's share and significantly increase the time Turtle Beach takes to bring popular products to market.

*The major videogame console manufacturers do not currently manufacture a large number of products that compete with Turtle Beach's headsets. These manufacturers could increase their level of competition in the future, which could have a materially adverse impact on Turtle Beach's business.*

Of the main console manufacturers, only Sony presently manufactures and sells headsets that compete with Turtle Beach's headsets, and Sony offers only two models that Turtle Beach considers competitive with its headsets. If Sony increases its product offerings that are competitive with Turtle Beach's headsets, or if Microsoft begins offering competing headsets, Turtle Beach's revenues could decline. In addition, the console manufacturers could fail to grant licenses to Turtle Beach, or implement new technologies, through hardware or software, which would cause Turtle Beach's headsets to become incompatible with that hardware manufacturer's console, in each case to increase the sales of the hardware manufacturer's own competing products. If Sony or Microsoft takes any of these actions, they could cause unanticipated delays in the release of Turtle Beach's products as well as increases to projected development, manufacturing, marketing or distribution costs, any of which could harm Turtle Beach's business and financial results.

*Errors or defects contained in Turtle Beach's products, failure to comply with applicable safety standards or a product recall could result in delayed shipments or rejection of Turtle Beach's products, damage to Turtle Beach's reputation and expose Turtle Beach to regulatory or other legal action.*

Any defects or errors in the operation of Turtle Beach's products may result in delays in their introduction. In addition, errors or defects may be uncovered after commercial shipments have begun, which could result in the rejection of Turtle Beach's products by its customers, damage to Turtle Beach's reputation, lost sales, diverted development resources and increased customer service and support costs and warranty claims, any of which could harm Turtle Beach's business. A product recall would be harmful to Turtle Beach because it would detract management's attention from implementing Turtle Beach's core business strategies. A significant product defect or product recall could materially and adversely affect Turtle Beach's brand image, causing a decline in Turtle Beach's sales, and could reduce or deplete Turtle Beach's financial resources.

*Turtle Beach may be unable to sustain its past growth, which may have a material adverse effect on its future operating results.*

Turtle Beach has experienced rapid growth since 2010. Turtle Beach increased its net revenues from \$91.9 million in 2010 to \$207.1 million in 2012. Turtle Beach cannot guarantee that it will continue to experience

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a similar growth in the future. Turtle Beach's future success will depend upon various factors, including the strength of Turtle Beach's brand image, broad market acceptance of Turtle Beach's current and future products, competitive conditions and the implementation of its growth strategy. Turtle Beach intends to finance its anticipated growth through cash flows generated from sales to Turtle Beach's existing retailers and distributors, borrowings under Turtle Beach's credit facility and additional funding from future financing transactions. However, if Turtle Beach's net revenues decline, Turtle Beach may not have the cash flow necessary to pursue its growth strategy.

*If Turtle Beach's design and marketing efforts do not effectively extend the recognition and reputation of its brand, Turtle Beach may not be able to successfully implement its growth strategy.*

Turtle Beach believes that its ability to extend the recognition and favorable perception of Turtle Beach's brand is critical to implement Turtle Beach's growth strategy, which includes further establishing its position in existing gaming headsets, developing a strong position in new console headsets, expanding beyond existing console, PC and mobile applications to new technology applications, accelerating its international growth and expanding complementary product categories. To extend the reach of Turtle Beach's brand, Turtle Beach believes it must devote significant time and resources to product design, marketing and promotions. These expenditures, however, may not result in a sufficient increase in net sales to cover such expenses.

*Turtle Beach's pricing and product return policies and other promotional activities may negatively impact its sales and profitability and harm its business, results of operations and financial condition.*

In the event that a competitor of Turtle Beach reduces its prices, Turtle Beach could be forced to respond by lowering its prices to remain competitive. If Turtle Beach is forced to lower prices, it may be required to "price protect" the products that remain unsold in its customers' inventories at the time of the price reduction. Price protection results in Turtle Beach issuing a credit to its customers in the amount of the price reduction for each unsold unit in the customer's inventory. Turtle Beach's price protection policies, which are customary in its industry, can have a major impact on its sales and profitability. Turtle Beach may experience increased price competition, which could lead to price protection, as Turtle Beach continues to introduce new and enhanced products.

To the extent Turtle Beach introduces new versions of products or changes its product sales mix, the rate of product returns may increase above historical levels. Although Turtle Beach establishes allowances for anticipated product returns and believes its existing accounting policies have resulted in allowances that are adequate, there can be no assurance that such product return obligations will not exceed Turtle Beach's allowances in the future, which would have a material adverse effect on its future operating results and financial condition.

*Turtle Beach's net sales and operating income fluctuate on a seasonal basis and decreases in sales or margins during Turtle Beach's peak seasons could have a disproportionate effect on Turtle Beach's overall financial condition and results of operations.*

Historically, a majority of Turtle Beach's annual revenues have been generated during the holiday season. As a result, Turtle Beach's net sales and gross margins are typically higher in the fourth quarter and lower in the first, second and third quarters, as fixed operating costs are spread over the differing levels of sales volume. Given the strong seasonal nature of Turtle Beach's sales, appropriate forecasting is critical to Turtle Beach's operations. Turtle Beach anticipates that this seasonal impact on Turtle Beach's net sales is likely to continue and any shortfall in expected fourth quarter net sales would cause Turtle Beach's annual results of operations to suffer significantly.

*If Turtle Beach does not accurately forecast demand for particular products, Turtle Beach could incur additional costs or experience manufacturing delays, which could adversely affect Turtle Beach's results of operations.*

Demand for Turtle Beach's products depends on many factors such as consumer preferences and the introduction or adoption of game platforms and related content, and can be difficult to forecast. It may become

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more difficult to forecast demand for Turtle Beach's products as Turtle Beach enters additional markets and as competition in Turtle Beach's markets intensifies. If Turtle Beach misjudges the demand for its products, Turtle Beach could face the following problems in Turtle Beach's operations, each of which could harm Turtle Beach's operating results:

- If Turtle Beach's forecasts of demand are too high, Turtle Beach may accumulate excess inventories of products, which could lead to markdown allowances or write-offs affecting some or all of such excess inventories. Turtle Beach may also have to adjust the prices of its existing products to reduce such excess inventories.
- If demand for specific products increases beyond what Turtle Beach forecasts, Turtle Beach's suppliers and third-party manufacturers may not be able to increase production rapidly enough to meet the demand. Turtle Beach's failure to meet market demand would lead to missed opportunities to increase Turtle Beach's base of users, damage Turtle Beach's relationships with retailers and harm Turtle Beach's business.
- The launch of next-generation consoles increases the likelihood that Turtle Beach could fail to accurately forecast demand for its next-generation console headsets and its existing headsets.
- Rapid increases in production levels to meet unanticipated demand could result in increased manufacturing errors, as well as higher component, manufacturing and shipping costs, all of which could reduce Turtle Beach's profit margins and harm Turtle Beach's relationships with retailers and consumers.

*The manufacture and supply of Turtle Beach's products are dependent upon a limited number of third parties, and Turtle Beach's success is dependent upon (i) the ability of these parties to manufacture and supply Turtle Beach with sufficient quantities of Turtle Beach's products and (ii) the continued viability and financial stability of these third-party suppliers.*

Turtle Beach relies on a limited number of manufacturers and suppliers for Turtle Beach's products. There can be no assurance that these manufacturers and suppliers will be able to manufacture or supply Turtle Beach with sufficient quantities of products to ensure consumer availability. In addition, these parties may not be able to obtain the raw materials, components, or energy supply required to manufacture sufficient quantities of Turtle Beach's products. Moreover, there can be no assurance that such manufacturers and suppliers will not refuse to supply Turtle Beach with products, and independently market their own competing products in the future, or will not otherwise discontinue their relationships with or support of Turtle Beach. Turtle Beach's failure to maintain its existing manufacturing and supplier relationships, or to establish new relationships in the future, could have a material adverse effect on Turtle Beach's business, results of operations, financial condition and liquidity. If Turtle Beach's suppliers are unable or unwilling for any reason to supply Turtle Beach with a sufficient quantity of Turtle Beach's products, Turtle Beach's business, results of operations and financial condition would be materially adversely affected. If any of Turtle Beach's key suppliers became financially unstable, Turtle Beach's access to these products might be jeopardized, thereby adversely affecting Turtle Beach's business, financial condition and operational results.

*Any shortage of raw materials or components could impair Turtle Beach's ability to ship orders of its products in a cost-efficient manner or could cause Turtle Beach to miss the delivery requirements of its retailers or distributors, which could harm Turtle Beach's business.*

The ability of Turtle Beach's manufacturers to supply its products is dependent, in part, upon the availability of raw materials and certain components. Turtle Beach's manufacturers may experience shortages in the availability of raw materials or components, which could result in delayed delivery of products to Turtle Beach or in increased costs to Turtle Beach. Any shortage of raw materials or components or inability to control costs associated with manufacturing could increase the costs for Turtle Beach's products or impair its ability to ship orders in a timely cost-efficient manner. As a result, Turtle Beach could experience cancellation of orders, refusal to accept deliveries or a reduction in its prices and margins, any of which could harm Turtle Beach's financial performance and results of operations.

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*Turtle Beach faces business, political, operational, financial and economic risks because all of Turtle Beach's products are currently manufactured outside of the United States and a portion of Turtle Beach's net sales are generated internationally.*

In 2013, all of Turtle Beach's products were manufactured in China. In addition, for the year ended December 31, 2012 international net revenues were 24.7% of net revenues. As a result, Turtle Beach faces business, political, operational, financial and economic risks inherent in international business, many of which are beyond Turtle Beach's control, including:

- trade restrictions, higher tariffs, currency fluctuations or the imposition of additional regulations relating to import or export of Turtle Beach's products, especially in China, where all of Turtle Beach's products are manufactured, which could force Turtle Beach to seek alternate manufacturing sources or increase Turtle Beach's expenses, either of which could have a material adverse effect on Turtle Beach's results of operations;
- difficulties obtaining domestic and foreign export, import and other governmental approvals, permits and licenses, and compliance with foreign laws, which could halt, interrupt or delay Turtle Beach's operations if Turtle Beach cannot obtain such approvals, permits and licenses, and that could have a material adverse effect on Turtle Beach's results of operations;
- difficulties encountered by Turtle Beach's international distributors or Turtle Beach in staffing and managing foreign operations or international sales, including higher labor costs, which could increase Turtle Beach's expenses and decrease Turtle Beach's net sales and profitability;
- transportation delays and difficulties of managing international distribution channels, which could halt, interrupt or delay Turtle Beach's operations;
- longer payment cycles for, and greater difficulty collecting, accounts receivable, which could reduce Turtle Beach's net sales and harm Turtle Beach's financial results;
- political and economic instability, including wars, terrorism, political unrest, boycotts, curtailment of trade and other business restrictions, any of which could materially and adversely affect Turtle Beach's net sales and results of operations; and
- natural disasters, which could have a material adverse effect on Turtle Beach's results of operations.

Any of these factors could reduce Turtle Beach's net sales, decrease Turtle Beach's gross margins or increase Turtle Beach's expenses. Should Turtle Beach establish its own operations in international territories where it currently utilizes a distributor, Turtle Beach will become subject to greater risks associated with operating outside of the United States.

*Any loss of China's Normal Trade Relations ("NTR") with the United States, or any changes in tariffs or trade policies, could increase Turtle Beach's manufacturing expenses and make it more difficult for Turtle Beach to manufacture its products in China.*

Turtle Beach's products are manufactured in China and exported to the United States and worldwide. As a result of opposition to policies of the Chinese government and China's growing trade surpluses with the United States, there has been, and in the future may be, opposition to the extension of NTR status for China. The loss of NTR status for China, changes in current tariff structures or adoption in the United States of other trade policies adverse to China could increase Turtle Beach's manufacturing expenses and make it more difficult for Turtle Beach to manufacture its products in China.

*Turtle Beach's business could suffer if any of its manufacturers fail to use acceptable labor practices.*

All of Turtle Beach's products are manufactured by third party manufacturers, and Turtle Beach does not control its manufacturers or their labor practices. The violation of labor or other laws by a manufacturer utilized by Turtle Beach, or the divergence of an independent manufacturer's labor practices from those generally accepted as ethical or



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legal in the United States, could damage Turtle Beach's reputation or disrupt the shipment of finished products to Turtle Beach if such manufacturer is ordered to cease its manufacturing operations due to violations of laws or if such manufacturer's operations are adversely affected by such failure to use acceptable labor practices. If this were to occur, it could have a material adverse effect on Turtle Beach's financial condition and results of operations.

***If Turtle Beach is unable to obtain intellectual property rights and/or enforce those rights against third parties who are violating those rights, Turtle Beach's business could suffer.***

Turtle Beach relies on various intellectual property rights, including patents, trademarks, trade secrets and trade dress to protect Turtle Beach's brand name, reputation, product appearance and technology. If Turtle Beach fails to obtain, maintain, or in some cases enforce its intellectual property rights, Turtle Beach's competitors may be able to copy Turtle Beach's designs, or use its brand name, trademarks or technology. As a result, if Turtle Beach is unable to successfully protect its intellectual property rights, or resolve any conflicts effectively, Turtle Beach's results of operations may be harmed.

Turtle Beach is susceptible to counterfeiting of its products, which may harm Turtle Beach's reputation for producing high-quality products and force Turtle Beach to incur expenses in enforcing its intellectual property rights. Such claims and lawsuits can be expensive to resolve, require substantial management time and resources, and may not provide a satisfactory or timely result, any of which would harm Turtle Beach's results of operations. Since some of Turtle Beach's products are sold internationally, Turtle Beach is also dependent on the laws of a range of countries to protect and enforce its intellectual property rights. These laws may not protect intellectual property rights to the same extent or in the same manner as the laws of the United States.

Further, Turtle Beach is a party to licenses that grant Turtle Beach rights to intellectual property, including trademarks, that are necessary or useful to Turtle Beach's business. For example, Turtle Beach licenses the right to market certain products with the trade names and imagery of brands such as Activision, Marvel and Major League Gaming. One or more of Turtle Beach's licensors may allege that Turtle Beach has breached Turtle Beach's license agreement with them, and accordingly seek to terminate Turtle Beach's license. If successful, this could result in Turtle Beach's loss of the right to use the licensed intellectual property, which could adversely affect Turtle Beach's ability to commercialize its technologies or products, as well as harm Turtle Beach's competitive business position and Turtle Beach's business prospects.

***Turtle Beach's license agreement with Microsoft may be terminated, which would reduce Turtle Beach's product offerings. In addition, Microsoft may grant similar licenses to other manufacturers, which could have an adverse impact on Turtle Beach's revenues.***

Turtle Beach is a party to a license agreement with Microsoft Corporation under which Turtle Beach has the right to manufacture (through third party manufacturers), market and sell audio products for the Xbox One videogame console (the "Xbox One Agreement"). Turtle Beach's Xbox One headsets are dependent on this license. Microsoft has the right to terminate the Xbox One Agreement under certain circumstances set forth in the agreement. Should the Xbox One Agreement be terminated, Turtle Beach's product offerings may be limited, thereby significantly reducing Turtle Beach's revenues.

As of this proxy statement, only one other company has announced it has been granted a license from Microsoft to manufacture, market and sell Xbox One compatible headsets. Turtle Beach expects to benefit from being one of the first companies to sell audio products compatible with the Xbox One. If and when Microsoft grants additional licenses to other manufacturers of audio products for the Xbox One, Turtle Beach's ability to capitalize on its first-to-market opportunity will be decreased which could adversely affect Turtle Beach's business, results of operations and financial condition.



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*Turtle Beach may be faced with legal challenges asserting that its products infringe third parties' intellectual property rights. These challenges could cause Turtle Beach to incur significant litigation or licensing expenses or could prohibit Turtle Beach from producing or marketing some or all of its products entirely.*

Although Turtle Beach does not believe that Turtle Beach's products infringe the proprietary rights of any third parties, there can be no assurance that infringement or other legal claims will not be asserted against Turtle Beach or that any such claims will not materially adversely affect Turtle Beach's business, financial condition or results of operations. Regardless of their validity or success, such claims may result in costly litigation, divert management's time and attention, cause product shipment delays or require Turtle Beach to enter into royalty or licensing agreements, which may not be available on terms acceptable to Turtle Beach, or at all. If licensing arrangements are required but unavailable, Turtle Beach may be prohibited from marketing and distributing these products. In addition, Turtle Beach could incur substantial costs to redesign its products to comply with legal orders or contractual arrangements. Any of these costs or outcomes could adversely affect Turtle Beach's business, results of operations and financial condition.

*Turtle Beach's intellectual property rights may not prevent its competitors from using its technologies or similar technologies to develop competing products, which could weaken Turtle Beach's competitive position and harm Turtle Beach's financial results.*

Turtle Beach's success depends in part on the use of proprietary technologies. Turtle Beach relies, and plans to continue to rely, on a combination of patents, copyrights, trademarks, trade secrets, confidentiality provisions and licensing arrangements to establish and protect Turtle Beach's proprietary rights. Although Turtle Beach has entered into confidentiality and invention assignment agreements with Turtle Beach's employees and contractors, and nondisclosure agreements with selected parties with whom Turtle Beach conducts business to limit access to and disclosure of Turtle Beach's proprietary information, these contractual arrangements and the other steps Turtle Beach has taken to protect Turtle Beach's intellectual property may not prevent misappropriation of that intellectual property or deter independent third-party development of similar technologies. Monitoring the unauthorized use of proprietary technology and trademarks is costly, and any dispute or other litigation, regardless of outcome, may be costly and time consuming and may divert Turtle Beach's management and key personnel from Turtle Beach's business operations. The steps taken by Turtle Beach may not prevent unauthorized use of Turtle Beach's proprietary technology or trademarks. Many features of Turtle Beach's products are not protected by patents; and as a consequence, Turtle Beach may not have the legal right to prevent others from reverse engineering or otherwise copying and using these features in competitive products. If Turtle Beach fails to protect or to enforce Turtle Beach's intellectual property rights successfully, Turtle Beach's competitive position could suffer, which could adversely affect Turtle Beach's financial results.

*Turtle Beach is subject to various environmental laws and regulations that could impose substantial costs upon Turtle Beach and may adversely affect Turtle Beach's business, operating results and financial condition.*

Turtle Beach's operations and some of Turtle Beach's products are regulated under various federal, state, local and international environmental laws. In addition, regulatory bodies in many of the jurisdictions in which Turtle Beach operates propose, enact and amend environmental laws and regulations on a regular basis. The laws and regulations applying to Turtle Beach's business include those governing the discharge of pollutants into the air and water, the management, disposal and labeling of, and exposure to, hazardous substances and wastes and the cleanup of contaminated sites. Turtle Beach could be required to incur additional costs to comply with such regulations and may incur fines and civil or criminal sanctions, third-party property damage or personal injury claims, or could be required to incur substantial investigation or remediation costs, if Turtle Beach were to violate or become liable under environmental laws. Liability under environmental laws can be joint and several and without regard to comparative fault. The ultimate costs under environmental laws and the timing of these costs are difficult to predict. Although Turtle Beach cannot predict the ultimate impact of any new laws and regulations, such laws will likely result in additional costs or decreased revenue, and could require that Turtle Beach redesign or change how Turtle Beach manufactures its products, any of which could have a material

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adverse effect on Turtle Beach's business. Additionally, to the extent that Turtle Beach's competitors choose not to abide by these environmental laws and regulations, Turtle Beach will be at a cost disadvantage, thereby hindering Turtle Beach's ability to effectively compete in the marketplace.

*Turtle Beach faces vigorous competition from other consumer electronics companies and this competition could have a material adverse effect on Turtle Beach's financial condition and results of operations.*

Turtle Beach competes with other producers of PC and video game console headsets, including video game console manufacturers themselves. In addition, because of Turtle Beach's established position and reputation in the gaming industry, Turtle Beach's competitors may target Turtle Beach's products to a greater extent than other producers of similar products. Turtle Beach's competitors vary in size from small companies with limited resources to very large corporations with significantly greater financial, marketing and product development resources than those of Turtle Beach. Those competitors are located both within the United States and, increasingly, in international jurisdictions. Turtle Beach's competitors may spend more money and time on developing and testing products, undertake more extensive marketing campaigns, adopt more aggressive pricing policies, pay higher fees to licensors for motion picture, television, sports, music and character properties, or develop more commercially successful products for the PC or video game platforms than Turtle Beach does. In addition, competitors with large product lines and popular products typically have greater leverage with retailers, distributors and other customers, who may be willing to promote products with less consumer appeal in return for access to those competitors' more popular products.

*Turtle Beach depends upon the availability of capital under its credit facility to finance its operations. Any additional financing that Turtle Beach may need may not be available on favorable terms or at all.*

In addition to cash flow generated from sales of Turtle Beach's products, Turtle Beach finances its operations with a Credit Facility (the "Credit Facility") provided by PNC Bank, National Association, ("PNC Bank"), as Administrative Agent for itself and a group of other lenders. If Turtle Beach is unable to comply with the restrictive and financial covenants contained in the Credit Facility, and is unable to obtain a waiver from PNC Bank and the other lenders under the Credit Facility, PNC Bank may declare the outstanding borrowings under the facility immediately due and payable. Such event would have an immediate and material adverse impact on Turtle Beach's business, results of operations and financial condition. Turtle Beach would be required to obtain additional financing from other sources, and Turtle Beach cannot predict whether or on what terms additional financing might be available. If Turtle Beach is required to seek additional financing and is unable to obtain it, Turtle Beach may have to change its business and capital expenditure plans, which would have a materially adverse effect on Turtle Beach's business, financial condition and results of operations. In addition, the debt under Turtle Beach's Credit Facility could make it more difficult to obtain other debt financing in the future, which could put Turtle Beach at a competitive disadvantage to competitors with less debt.

The Credit Facility contains financial and other covenants that Turtle Beach is obligated to maintain. If Turtle Beach violates any of these covenants, Turtle Beach will be in default under the Credit Facility. If a default occurs and is not timely cured or waived by PNC Bank, PNC Bank could seek remedies against Turtle Beach, including: (1) penalty rates of interest, (2) immediate repayment of the debt or (3) foreclosure on assets securing the Credit Facility. No assurance can be given that Turtle Beach will be able to maintain compliance with these covenants in the future. The Credit Facility is asset based and can only be drawn down in an amount to which eligible collateral exists and can be negatively impacted by extended collection of accounts receivable, unexpectedly high product returns and slow moving inventory, among other factors. Turtle Beach is required to meet quarterly financial covenants based on its trailing four quarter's total leverage, fixed-charge coverage and capital expenditures. On August 5, 2013, these covenants were amended and as of the date of this proxy statement, Turtle Beach was in compliance with its covenants.

If Turtle Beach needs to obtain additional funds for any reason, there can be no assurance that alternative financing can be obtained on substantially similar or acceptable terms, or at all. Turtle Beach's failure to

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promptly obtain alternate financing could limit its ability to implement its business plan and have an immediate, severe and adverse impact on Turtle Beach's business, results of operations and financial condition. In the event that no alternative financing is available, Turtle Beach would be forced to drastically curtail operations, dispose of assets or cease operations altogether.

*Turtle Beach's Credit Facility provides its lenders with a first-priority lien against substantially all of its assets and contains certain restrictions on Turtle Beach's ability to take certain actions.*

Turtle Beach's Credit Facility contains certain financial covenants and other restrictions that limit Turtle Beach's ability, among other things, to:

- engage in certain business activities;
- incur certain additional indebtedness;
- create liens;
- make certain investments;
- make restricted payments;
- issue capital securities;
- undergo a merger or consolidation;
- sell certain assets; and
- enter into certain restrictive agreements.

In addition, Turtle Beach has granted the lenders a first-priority lien against substantially all of its assets. Failure to comply with the operating restrictions or financial covenants in the Credit Facility could result in a default which could cause the lender to accelerate the timing of payments and exercise its lien on substantially all of Turtle Beach's assets.

*Turtle Beach's management team and certain members of its board of directors have limited experience in managing and governing a public company, and regulatory compliance may divert Turtle Beach's attention from the administration of its business.*

Turtle Beach's management team has limited experience managing a publicly-traded company or complying with the increasingly complex laws pertaining to public companies. In particular, Mr. Stark has not previously managed a publicly-traded company. In addition, certain of Turtle Beach's directors have limited experience serving on the boards of public companies. Turtle Beach may not successfully or efficiently manage the increased legal, regulatory and reporting requirements associated with being a public company, including significant regulatory oversight and reporting obligations under federal securities laws. Turtle Beach's failure to comply with all applicable requirements could lead to the imposition of fines and penalties, distract its management team from attending to the administration of its business, result in a loss of investor confidence in its financial reports and have an adverse effect on its business and stock price.

*If Turtle Beach fails to implement effective internal controls, its ability to produce accurate financial statements could be impaired, which could adversely affect its operating results and its ability to operate its business. Turtle Beach has not assessed the effectiveness of its disclosure controls and procedures or its internal control over financial reporting.*

Ensuring that Turtle Beach has adequate internal financial and accounting controls and procedures in place to enable Turtle Beach to produce accurate financial statements on a timely basis is a costly and time-consuming effort that needs to be re-evaluated frequently. Following the merger, Section 404 of the Sarbanes-Oxley Act of

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2002 ("SOX") will require annual management assessments of the effectiveness of the combined company's internal control over financial reporting and a report by Parametric's independent auditors regarding the effectiveness of the combined company's internal control over financial reporting. However, management's assessment of the effectiveness of the combined company's internal control over financial reporting may exclude internal controls relating to Turtle Beach's operations for up to one year following completion of the merger.

Turtle Beach has begun the process of documenting, reviewing and improving its internal controls and procedures in order to meet the requirements of Section 404 of SOX but, as of the date of this proxy statement, Turtle Beach has not fully assessed the effectiveness of its disclosure controls and procedures or its internal control over financial reporting. The financial statements for the year ended December 31, 2010 included in Annex D to this proxy statement have been restated and this restatement may indicate a material weakness in Turtle Beach's internal controls and disclosure controls. Turtle Beach and its independent auditors will be testing its internal controls pursuant to the requirements of Section 404 of SOX and could, as part of that documentation and testing, identify areas for further attention or improvement. Implementing any appropriate changes to Turtle Beach's internal controls may require additional personnel, specific compliance training of Turtle Beach's directors, officers and employees, entail substantial costs in order to modify its existing accounting systems and require a significant period of time to complete. If the combined company has a material weakness in its financial reporting, or if effective internal control over financial reporting is otherwise not achieved on a timely basis, then the combined company's ability to report financial results on a timely and accurate basis will be adversely affected, which could in turn have a material adverse effect on the combined company's ability to operate its business and remain listed on the NASDAQ Capital Market, and could result in legal sanctions or private lawsuits. Parametric's stock price could decline as a result of any of these occurrences.

Table of Contents**MARKET PRICES AND DIVIDEND DATA****Market Price of Parametric Corporation Stock**

Parametric common stock is traded on the NASDAQ Capital Market under the symbol "PAMT." The range of high and low sales prices as reported by NASDAQ Capital Market for each of the quarters of the fiscal years ended September 30, 2012 and 2013:

	Fiscal 2012	
	High	Low
First Quarter*	\$ 3.27	\$ 0.55
Second Quarter*	\$ 5.70	\$ 0.00
Third Quarter	\$ 9.85	\$ 3.86
Fourth Quarter	\$11.74	\$ 6.22

	Fiscal 2013	
	High	Low
First Quarter	\$ 7.39	\$ 3.49
Second Quarter	\$20.25	\$ 7.10
Third Quarter	\$22.39	\$14.52
Fourth Quarter	\$17.90	\$10.57

\* Reported bid prices. Other quarters reflect sales prices.

On August 5, 2013, the last full trading day before the public announcement of the merger agreement, the closing price for our common stock was \$17.69 per share and on November 29, 2013, the latest practicable trading day before the printing of this proxy statement, the closing price for our common stock was \$12.39 per share.

**Holders of Parametric Corporation Stock**

As of the close of business on November 11, 2013, the record date for the Special Meeting, there were 969 holders of record of Parametric common stock. The number of holders of record is based on the actual number of holders registered on the books of our transfer agent and does not reflect holders of shares in "street name" or persons, partnerships, associations, corporations or other entities identified in security position listings maintained by depository trust companies.

**Dividends on Parametric Corporation Stock**

Parametric did not pay any dividends in fiscal years 2012 and 2013 or during the interim periods of fiscal year 2014 through the date of this proxy statement. Parametric does not have a policy regarding a regular dividend payment and any future dividends declared will be at the discretion of the Parametric board of directors.

Under the merger agreement, Parametric is prohibited from paying any dividend or other distribution on Parametric common stock prior to the completion of the merger.

**Information Regarding Turtle Beach**

VTBH is a private company and shares of its capital stock are not publicly traded. VTB is a wholly-owned subsidiary of VTBH.

As of the date of this proxy statement, VTBH had one holder of record of its Series B Preferred Stock, six holders of record of its Series A Preferred Stock and two holders of record of its common stock. At the effective



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time of the merger, pursuant to the merger agreement, each share of VTBH common stock and VTBH Series A Preferred Stock will be cancelled and converted into the right to receive a number of shares of Parametric common stock, as further described in the "Proposal 1 – The Merger Proposal – Treatment of VTBH Capital Stock in the Merger" on page 84.

For the year ended December 31, 2012, dividends on VTBH common stock declared and paid by VTBH's board of directors were \$16.4 million. There have been no other dividends declared or paid on VTBH common stock for any other periods. Any determination to pay dividends to the holders of VTBH common stock following completion of the merger will be subject to the preferences of the VTBH Series B Preferred Stock, as described in Note 9 to VTBH's consolidated financial statements which are attached as Annex D to this proxy statement.

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Table of Contents**SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

The following ownership information with respect to Parametric common stock is set forth, as of record date for the Special Meeting (November 11, 2013), unless otherwise noted, with respect to (i) each stockholder known by Parametric to be beneficial owners of more than 5% of Parametric common stock, (ii) each of the current (as of the record date) directors of Parametric, (iii) each of the named executive officers of Parametric and (iv) all current (as of the record date) directors and executive officers as a group (eight persons). Other than as set forth below, we are not aware of any other stockholder who may be deemed to be a beneficial owner of more than 5% of our common stock.

Beneficial ownership is determined under the rules of the SEC and generally includes voting or investment power over securities. The percentage of beneficial ownership is based on 6,837,321 shares of common stock outstanding on the record date. In accordance with the SEC rules, shares of Parametric common stock that are subject to options or warrants that are currently exercisable or exercisable within 60 days of the record date are considered outstanding and beneficially owned by the person holding the options or warrants for the purpose of computing the percentage ownership of that person, but are not treated as outstanding for the purpose of computing the percentage ownership of any other person. The address of each director and executive officer shown below is c/o Parametric Sound Corporation, 13771 Danielson Street, Suite L, Poway California 92064.

Name and Address of Beneficial Owner	Amount and Nature of Beneficial Ownership	Percent of Class
<i>5% Stockholders:</i>		
<b>FRM LLC</b> 82 Devonshire Street Boston, Massachusetts 02109	599,068(1)	8.8%
<b>James E. Besser and Manchester Management Company, LLC</b> 131 Charles Street, 1 <sup>st</sup> Floor Boston, Massachusetts 02114	483,811(2)	7.1%
<b>VTB Holdings, Inc.</b> 100 Summit Lake Drive, Suite 100 Valhalla, New York 10594	1,313,520(3)	19.2%
<i>Directors and Officers:</i>		
Elwood G. Norris	1,103,770(4)	15.9%
James A. Barnes	446,000(5)	6.4%
Kenneth F. Potashner	417,500(6)	5.8%
Robert M. Kaplan	41,076(7)	*
Seth Putterman	29,100(8)	*
Andrew Wolfe	12,500(9)	*
James L. Honore	12,500(10)	*
All Directors and Executive Officers as a Group (8 persons)	2,084,696(11)	27.5%

\* less than 1%.

- (1) Beneficial ownership by FRM LLC is based on the information provided by the stockholders as reported in the Schedule 13G filed with the SEC on February 14, 2013. A wholly-owned subsidiary of FRM LLC, Fidelity Management & Research Company is an investment advisor and under the Investment Advisors Act of 1940 is deemed to beneficially own 599,068 shares as a result of acting as investment advisor to various investment companies.
- (2) Beneficial ownership by Mr. Besser and Manchester Management Company, LLC is based on information provided by the stockholder as reported in a Schedule 13G/A filed with the SEC on February 8, 2013. Consists of 135,000 shares as to which sole voting and dispositive power is held by Mr. Besser and 348,811 shares as to which shared voting and dispositive power is held by Mr. Besser and by Manchester Management Company, LLC.

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- (3) Beneficial ownership by VTBH is based on the information provided by the stockholders as reported in a Schedule 13D filed with the SEC. VTBH is deemed to have shared voting power with respect to the shares beneficially owned by certain members of Parametric's management team due to the proxy granted to VTBH in the voting agreements entered into with certain members of Parametric management and entities controlled by them, as described elsewhere in this proxy statement.
- (4) Includes 453,864 shares held by a family trust for which Mr. Norris serves as trustee, 4,500 held by EGN Holdings LLC and 180,083 held by Mt. Savage Products LLC both for which Mr. Norris is manager, and 284,825 shares representing Mr. Norris' pecuniary interest in shares held by Syzygy. Also includes options currently exercisable and those exercisable within 60 days on an aggregate of 92,500 shares. By virtue of the voting agreement entered into with VTBH, VTBH is deemed to share the power to vote the securities beneficially owned by Mr. Norris.
- (5) Consists of 17,733 shares held by Sunrise Capital, Inc., 67,000 shares held by Sunrise Management, Inc. Profit Sharing Plan, 63,000 shares held by Palermo Trust, 153,367 shares representing Mr. Barnes' pecuniary interest in shares held by Syzygy, 600 shares held by a personal retirement plan and 550 shares held by a personal retirement plan of his spouse. Mr. Barnes is President of Sunrise Capital, Inc. and Trustee of Sunrise Management, Inc. Profit Sharing Plan, the Palermo Trust and his personal retirement plan. He is also the managing member of Syzygy. Also includes 20,000 warrants held by Palermo Trust and options currently exercisable and those exercisable within 60 days on an aggregate of 123,750 shares. He disclaims any beneficial interest in the 550 shares held in his spouse's personal retirement plan. By virtue of the voting agreement entered into with VTBH, VTBH is deemed to share the power to vote the securities beneficially owned by Mr. Barnes.
- (6) Includes options currently exercisable and those exercisable within 60 days on an aggregate of 417,500 shares. By virtue of the voting agreement entered into with VTBH, VTBH is deemed to share the power to vote the securities beneficially owned by Mr. Potashner.
- (7) Includes options currently exercisable and those exercisable within 60 days on an aggregate of 12,500 shares.
- (8) Includes options currently exercisable and those exercisable within 60 days on an aggregate of 25,000 shares. Dr. Putterman resigned as a director of Parametric on November 21, 2013.
- (9) Includes options currently exercisable and those exercisable within 60 days on an aggregate of 12,500 shares.
- (10) Includes options currently exercisable and those exercisable within 60 days on an aggregate of 12,500 shares.
- (11) Includes options and warrants currently exercisable and those exercisable within 60 days on an aggregate of 735,000 shares.

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Table of Contents**SPECIAL MEETING OF STOCKHOLDERS**

The enclosed proxy is solicited on behalf of the Parametric Board for use at the Special Meeting of stockholders or at any adjournment or postponement thereof.

**Date, Time and Place**

The Special Meeting will be held on December 27, 2013, at Hampton Inn & Suites, 14068 Stowe Drive, Poway CA 92064, at 1:00 p.m. local time.

**Purpose of the Special Meeting**

At the Special Meeting, we will ask the holders of Parametric common stock:

1. To consider and vote upon the merger proposal;
2. To consider and vote, on an advisory (non-binding) basis, upon specified compensation that may become payable to the named executive officers of Parametric in connection with the merger;
3. To consider and vote upon a proposal to adjourn the Special Meeting to a later date, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the Special Meeting to approve the merger proposal;
4. To approve the Parametric Sound Corporation 2013 Stock-Based Incentive Compensation Plan (the "Stock Plan");
5. To approve the Parametric Sound Corporation Annual Incentive Bonus Plan (the "Bonus Plan"); and
6. To transact such other business as may properly come before the Special Meeting or any adjournment of the Special Meeting.

**Record Date and Shares Outstanding**

Only holders of record of Parametric common stock at the close of business on November 11, 2013, the record date for the Special Meeting, are entitled to notice of, and to vote at, the Special Meeting. On the record date, 6,837,321 shares of Parametric common stock were issued and outstanding and held by 969 holders of record.

**Quorum**

A quorum of stockholders is necessary to hold a valid Special Meeting. Under our bylaws, the presence, in person or by proxy duly authorized, of the holder or holders of not less than 50% of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. In the absence of a quorum, the Special Meeting may be adjourned, from time to time, either by the chairman of the meeting or by vote of the holders of a majority of the shares represented thereat, but no other business may be transacted at such meeting.

In general, shares of Parametric common stock represented by a properly signed and returned proxy card will be counted as shares present and entitled to vote at the Special Meeting for purposes of determining a quorum. Shares represented by proxies marked "ABSTAIN" are counted in determining whether a quorum is present. In addition, a "broker non-vote" is counted in determining whether a quorum is present. A "broker non-vote" is a proxy returned by a broker on behalf of its beneficial owner customer that is not voted on a particular matter because voting instructions have not been received by the broker from the customer, and the broker does not have discretionary authority to vote on behalf of such customer on such matter.

If a quorum is not present at the Special Meeting, Parametric expects that the Special Meeting will be adjourned or postponed to solicit additional proxies. If the Special Meeting is adjourned to another time or place, notice need not be given of the adjournment if the time and place thereof are announced at the Special Meeting. At the adjourned meeting, Parametric may transact any business that might have been transacted at the original

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Special Meeting. If the adjournment is for more than 30 days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting will be given to each stockholder of record entitled to vote at the meeting.

### **Vote Required**

Each holder of Parametric common stock is entitled to one vote for each share held of record on the record date.

The following votes are required to approve the proposals to be voted on at the Special Meeting:

- Approval of the merger proposal requires the affirmative vote of a majority of the votes cast, excluding abstentions;
- Approval, by non-binding, advisory vote, of specified compensation that may become payable to the named executive officers of Parametric in connection with the merger requires the affirmative vote of a majority of the votes cast, excluding abstentions;
- Approval of the proposal to adjourn the Special Meeting, whether or not a quorum is present, requires the affirmative vote of a majority of the votes cast, excluding abstentions;
- Approval of the Stock Plan requires the affirmative vote of a majority of the votes cast, excluding abstentions; and
- Approval of the Bonus Plan requires the affirmative vote of a majority of the votes cast, excluding abstentions.

For purposes of determining approval of the foregoing proposals, proxies marked "ABSTAIN" and broker non-votes will not affect the results of these votes.

### **Voting of Proxies**

Whether you plan to attend the Special Meeting or not, we encourage you to vote by proxy. All shares represented by valid proxies that we receive through this solicitation, and that are not revoked, will be voted in accordance with your instructions on the proxy card or as instructed via Internet or telephone. You may specify whether your shares should be voted "FOR," "AGAINST" or "ABSTAIN" with respect to each of the proposals. If you properly submit a proxy without giving specific voting instructions, your shares will be voted in accordance with the Parametric Board's recommendations, as noted below. Voting by proxy will not affect your right to attend the Special Meeting. If your shares are registered directly in your name through our stock transfer agent, or you have stock certificates registered in your name, you may vote as follows:

- *Voting by Telephone.* You may vote by calling the toll-free telephone number and following the instructions printed on your proxy card. The deadline for voting by telephone is December 26, 2013, at 8:59 p.m., Pacific Standard Time. If you vote by telephone, you do not need to return your proxy card.
- *Voting on the Internet.* You may vote on the Internet by accessing the website and following the instructions printed on your proxy card. The deadline for voting on the Internet is December 26, 2013, at 8:59 p.m., Pacific Standard Time. If you vote on the Internet, you do not need to return your proxy card.
- *Voting by Proxy Card.* You may vote by completing, signing and returning your proxy card by mail. To vote in this manner, please mark, date and sign the enclosed proxy card and return it by mail in the accompanying postage-prepaid envelope. You should mail your signed proxy card sufficiently in advance for it to be received by December 26, 2013.
- *Voting in Person.* Even if you have voted by one of the methods described above, you may still attend and vote your shares in person at the Special Meeting, if you are the record owner of those shares. If you do attend and vote your shares in person at the Special Meeting after having voted by any of the methods described above, only your last vote will be counted. However, attendance at the Special Meeting alone will not result in a revocation of any previously submitted proxy cards.



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If your shares are held in "street name" (held in the name of a bank, broker or other holder of record), you will receive instructions from the holder of record. You must follow the instructions of the holder of record in order for your shares to be voted. Telephone and Internet voting also will be offered to stockholders owning shares through certain banks and brokers. If your shares are not registered in your own name and you plan to vote your shares in person at the Special Meeting, you should contact your broker or agent to obtain a legal proxy or broker's proxy card and bring it to the Special Meeting in order to vote.

### **Revocability of Proxies**

If you give us your proxy, you may change or revoke it at any time before the Special Meeting. You may change or revoke your proxy in any one of the following ways:

- by re-voting by Internet or by telephone as instructed above;
- by signing a new proxy card with a date later than your previously delivered proxy and submitting it as instructed above; provided that it is received prior to the deadline set forth above;
- by notifying our Secretary in writing before the Special Meeting that you have revoked your proxy; or
- by attending the Special Meeting in person and voting in person in accordance with the instructions above. Attending the Special Meeting in person will not in and of itself revoke a previously submitted proxy unless you specifically request it.

Your most current vote, whether by telephone, Internet or proxy card, is the one that will be counted.

If you have instructed a broker or other nominee to vote your shares, you must follow the procedures provided by your broker or nominee to change those instructions.

### **Recommendation of the Parametric Board**

The Parametric Board unanimously recommends that you vote:

- "FOR" the merger proposal;
- "FOR" the non-binding, advisory proposal to approve specified compensation that may become payable to the named executive officers of Parametric in connection with the merger;
- "FOR" the proposal to adjourn the Special Meeting to a later date, if necessary or appropriate;
- "FOR" the approval of the Stock Plan; and
- "FOR" the approval of the Bonus Plan.

### **Voting by Parametric Executive Officers and Directors**

As of the record date, Parametric executive officers and directors as a group owned and were entitled to vote 1,349,696 shares of Parametric's common stock, which represents approximately 19.7% of Parametric's total common stock outstanding on that date.

Concurrently with the execution of the merger agreement, Parametric and VTBH entered into Stockholder Agreements and Irrevocable Proxies, referred to as the "voting agreements," with Messrs. Potashner, Barnes and Norris, as well as certain entities over which they exercise voting and/or investment control, collectively referred to as the "management stockholders." Under the voting agreements, the management stockholders have agreed to vote their currently-held Parametric shares in favor of the merger proposal (and against other acquisition proposals). The shares subject to the voting agreements represented approximately 19.2% of the outstanding shares of Parametric common stock as of the record date.

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**Table of Contents****Solicitation of Proxies**

Parametric will bear the cost of solicitation of proxies by us. In addition to soliciting stockholders by mail, Parametric directors, officers and employees, without additional remuneration, may solicit proxies in person or by telephone or other means of electronic communication. Parametric will not pay these individuals for their solicitation activities but will reimburse them for their reasonable out-of-pocket expenses. Brokers and other custodians, nominees and fiduciaries will be requested to forward proxy-soliciting material to the owners of stock held in their names, and Parametric will reimburse such brokers and other custodians, nominees and fiduciaries for their reasonable out-of-pocket costs. Solicitation by Parametric directors, officers and employees may also be made of some stockholders in person or by mail, telephone or other means of electronic communication following the original solicitation.

Parametric has retained the firm of Morrow & Co., LLC, 470 West Ave, Stamford, Connecticut 06902 to assist in the solicitation of proxies for a fee of \$6,500.

**Other Matters**

Parametric does not expect that any matter other than the proposals described in this proxy statement will be brought before the Special Meeting. If, however, the Parametric Board properly presents other matters, each of the persons named as a proxy on the proxy card will vote in accordance with his judgment as to matters that he believes to be in the best interests of Parametric stockholders. A proxy in the accompanying form or properly submitted by telephone or over the Internet will give authority to Kenneth F. Potashner, our Executive Chairman, and James A. Barnes, our Chief Financial Officer, Treasurer and Secretary, to vote on such matters at their respective discretion and they intend to do so in accordance with their best judgment on any such matter.

**List of Stockholders**

Our Secretary will prepare and make, at least ten (10) days before the Special Meeting, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the Special Meeting, during ordinary business hours, for a period of at least ten (10) days prior to the Special Meeting, either at a place within the city where the Special Meeting is to be held, which place shall be specified in the notice of the Special Meeting, or, if not specified, at the place where the Special Meeting is to be held. The list will be produced and kept at the time and place of Special Meeting during the whole time thereof and may be inspected by any stockholder who is present.

**Householding of Special Meeting Materials**

SEC rules allow us or your broker to send a single set of our proxy materials to any household at which two or more of our stockholders reside, if we or your broker believe that the stockholders are members of the same family. This practice, referred to as "householding," benefits both you and us. It reduces the volume of duplicate information received at your household and helps to reduce our expenses. The rule applies to our annual reports, proxy statements and information statements. Once you receive notice from your broker or from us that communications to your address will be "household," the practice will continue until you are otherwise notified or until you revoke your consent to the practice. Stockholders who participate in householding will continue to have access to and utilize separate proxy voting instructions.

If your household received a single set of proxy materials, but you would prefer to receive your own copy, please contact Broadridge, by calling their toll free number 1-800-542-1061. If you do not wish to participate in "householding" and would like to receive your own set of proxy materials in future years, please call Broadridge

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at the toll free number listed above. Conversely, if you share an address with another Parametric stockholder and together both of you would like to receive only a single set of proxy materials, follow these instructions:

- If your Parametric shares are registered in your own name, please contact Broadridge and inform them of your request by calling them at 1-800-542-1061 or writing them at Broadridge Household Department, 51 Mercedes Way, Edgewood, NY 11717.
- If a broker or other nominee holds your Parametric shares, please contact the broker or other nominee directly and inform them of your request. Be sure to include your name, the name of your brokerage firm and your account number.

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Table of Contents**PARTIES TO THE MERGER*****Parametric***

Parametric Sound Corporation  
13771 Danielson Street, Suite L  
Poway, California 92064  
(888) 477-2150

Parametric Sound Corporation, referred to as "Parametric," "we," "our" or "us," is a Nevada corporation. Parametric is a technology company focused on delivering novel audio solutions through its HyperSound® or "HSS®" technology platform, which pioneered the practical application of parametric acoustic technology for generating audible sound along a directional ultrasonic column. The creation of sound using Parametric's technology creates a unique sound image distinct from traditional audio systems. In addition to its commercial digital signage and kiosk product business, Parametric is targeting its technology for new uses in consumer markets, including computers, video gaming, televisions and home audio along with other commercial markets including casino gaming and cinema. Parametric is also focusing development on health applications for persons with hearing loss. Additional information about Parametric is contained in its public filings, some of which are incorporated by reference herein as described in "Where You Can Find Additional Information" beginning on page 173.

***VTBH***

VTB Holdings, Inc.  
100 Summit Lake Drive, Suite 100  
Valhalla, New York 10594  
(914) 345-2255

VTB Holdings, Inc., referred to as "VTBH," is a privately held Delaware corporation. Voyetra Turtle Beach, Inc., a Delaware corporation ("VTB"), is a wholly-owned subsidiary of VTBH. VTBH and its subsidiaries, including VTB, are collectively referred to as "Turtle Beach." Turtle Beach designs, develops and markets premium audio peripherals for video game, personal computer and mobile platforms, including its acclaimed line of Ear Force gaming headphones and headsets crafted for Microsoft Xbox, Sony PlayStation, Nintendo Wii and PC-based gaming. Turtle Beach's advanced products allow video game players to experience high-quality, immersive sound and communicate with others while playing video games. Unlike most traditional stereo headphones, the more advanced headsets from Turtle Beach incorporate sophisticated technology for processing audio and multi-band wires transmission capabilities. Turtle Beach has strong market share in established gaming markets, including a 53% dollar share of the U.S. console gaming headset market as of year-end 2012 according to The NPD Group, Inc. Turtle Beach has a presence in 40 countries and has partnered with major retailers, including Wal-Mart, Carrefour, Tesco, Best Buy, GameStop, Target and Amazon. For more information about Turtle Beach's business, see "Turtle Beach's Business" on page 112.

***Merger Sub***

Paris Acquisition Corp.  
c/o Parametric Sound Corporation  
13771 Danielson Street, Suite L  
Poway, California 92064  
(888) 477-2150

Paris Acquisition Corp, a Delaware corporation (referred to as "Merger Sub"), is a wholly-owned subsidiary of Parametric that was formed solely for the purpose of entering into the merger agreement and completing the merger. Upon the consummation of the merger, Merger Sub will merge with and into Turtle Beach and will cease to exist.

Table of Contents**THE MERGER**

This discussion of the merger is qualified in its entirety by reference to the merger agreement, which is attached to this proxy statement as Annex A and incorporated into this proxy statement by reference. You should read the entire merger agreement carefully as it is the legal document that governs the merger.

**Effect of the Merger**

Upon the terms and subject to the conditions of the merger agreement, Merger Sub will merge with and into VTBH, with VTBH continuing as the surviving corporation. As a result of the merger, VTBH will become a subsidiary of Parametric, wholly-owned except for the VTBH Series B Preferred Stock which will remain outstanding after the merger.

The time at which the merger will become effective, referred to as the effective time of the merger, will occur upon the filing of a certificate of merger with the Secretary of State of the State of Delaware (or at such later time as Parametric, VTBH and Merger Sub may agree and specify in the certificate of merger). At the effective time of the merger, and as a result of the merger:

- each share of VTBH common stock and Series A Preferred Stock will be cancelled and converted into the right to receive a number of shares of Parametric common stock equal to the "Per Share Number," plus any cash paid in lieu of fractional shares; the Per Share Number is computed in accordance with a formula specified in the merger agreement and is estimated as of the date of this proxy statement, to be approximately 0.3567, which would result in approximately 29,950,374 shares of Parametric common stock being issued to the former holders of VTBH common stock and Series A Preferred Stock at the effective time of the merger; and
- each outstanding option to purchase a share of VTBH common stock, whether vested or unvested, will be deemed to constitute an option to purchase, on the same terms and conditions, a number of shares of Parametric common stock equal to the product of (i) the number of shares of VTBH common stock subject to such option, multiplied by (ii) the "Per Share Exchange Ratio" (defined below), at an exercise price per share of Parametric common stock equal to the quotient of (i) the exercise price per share of VTBH common stock subject to such option divided by (ii) the "Per Share Exchange Ratio"; the "Per Share Exchange Ratio" means the ratio of the Per Share Number to one.

Each share of VTBH Series B Preferred Stock that is issued and outstanding and each VTBH phantom stock unit that is outstanding immediately prior to the effective time of the merger shall remain outstanding after the effective time of the merger, and shall not be cancelled or otherwise converted as a result of the merger.

We expect that Parametric's common stock will continue to be publicly traded on the NASDAQ Capital Market under the trading symbol "PAMT" after the effective time of the merger.

**Effect on Parametric if the Merger is Not Completed**

If the merger proposal is not approved by Parametric stockholders or if the merger is not completed for any other reason, the issuance of shares to the former VTBH stockholders contemplated by the merger agreement and corresponding change of control of Parametric will not occur. In such event, Parametric expects that management will operate the business in a manner similar to that in which it is being operated today, and that Parametric stockholders will continue to be subject to the same risks and opportunities to which they are currently subject.

Furthermore, if the merger is not completed, and depending on the circumstances that would have caused the merger not to be completed, the price of Parametric common stock may decline significantly from the trading price as of the date of this proxy statement. If that were to occur, it is uncertain when, if ever, the price of Parametric common stock would return to the price at which it trades as of the date of this proxy statement.



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Accordingly, if the merger is not completed, there can be no assurance as to the effect of these risks and opportunities on the future value of your shares of Parametric common stock. If the merger is not completed, the Parametric Board will, among other things, (i) continue to evaluate and review our business operations, properties and capitalization, (ii) make such changes as are deemed appropriate, and (iii) continue to seek to identify strategic alternatives to enhance stockholder value. If the merger proposal is not approved by Parametric stockholders or if the merger is not completed for any other reason, there can be no assurance that any other transaction acceptable to Parametric will be offered or that our business, prospects or results of operation will not be adversely impacted.

In addition, upon termination of the merger agreement under specified circumstances, Parametric may be required to pay VTBH a termination fee of \$1,000,000 and/or enter into a license agreement with VTBH related to Parametric's HyperSound technology, or may be entitled to receive a reverse termination fee from VTBH, in each case as described under "Proposal 1 – The Merger Proposal – Effect of Termination of Merger Agreement" beginning on page 98.

**Background of the Merger**

As part of Parametric's ongoing strategic planning process, the Parametric Board and Parametric's executive officers have regularly reviewed and evaluated Parametric's strategic direction and alternatives in light of the performance of Parametric's business and operations and market, economic, competitive and other conditions and developments.

On March 7, 2013, Parametric entered into a Mutual Non-Disclosure Agreement with Voyetra Turtle Beach, Inc., the operating subsidiary of VTBH, pursuant to which the parties agreed to share confidential information on customary terms and conditions.

From March 13, 2013 to March 25, 2013, representatives of Houlihan Lokey held three telephonic meetings with Parametric officers to discuss potential transaction alternatives with Turtle Beach, financing options and engagement terms.

On March 20, 2013, Parametric's executives provided a demonstration of the company's technology to business development personnel of Company A at Parametric's headquarters. On that same day, Parametric executives met with technology representatives of Company B at Parametric's headquarters (following previous product demonstrations to Company B personnel in late 2012 and in January 2013) to discuss strategic licensing and a proposed co-development effort.

On March 21, 2013, Juergen Stark, the Chief Executive Officer of VTB, and Mr. Ron Doornink, Chairman of Turtle Beach, visited Parametric's offices for product demonstrations and business discussions.

On March 27, 2013, representatives of Houlihan Lokey met in-person with Parametric officers to review potential strategic buyers of Parametric and to finalize engagement terms. On that same day, Parametric engaged Houlihan Lokey to act as its financial advisor with respect to potential transaction alternatives.

On March 28, 2013, Parametric issued a press release announcing that it had been approached by several industry leaders in key target verticals to discuss strategic alternatives, and that Parametric had engaged Houlihan Lokey to help it assess these opportunities.

On March 29, 2013, Mr. Stark advised Mr. Potashner that Turtle Beach was interested in discussing a potential acquisition of all or a part of Parametric, a license of Parametric's technology, or a combination of the foregoing. The parties did not discuss pricing or valuation.

On March 31, 2013, Mr. Stark and Mr. Potashner met in person to discuss potential deal structures and deal synergies.

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From April 1, 2013 to April 22, 2013, representatives of Houlihan Lokey contacted and held varying levels of discussions with a total of 13 parties other than Turtle Beach regarding a transaction involving Parametric. During this time period, all such parties advised representatives of Houlihan Lokey that they were not interested in pursuing an acquisition of Parametric.

On April 1, 2013, a meeting was held at Parametric's headquarters in Poway, California between Parametric's officers and representatives of Turtle Beach and SG VTB Holdings, LLC ("SG VTB"), the majority owner of VTBH, at which Parametric officers demonstrated Parametric's technology and provided an overview of Parametric's business and intellectual property. Mr. Stark, Mr. Richard Kulavik, the Chief Technology Officer of VTB, Mr. Doomink, Mr. Kenneth Fox, the Managing Partner of, SG VTB, and an officer and director of VTBH, and another representative of SG VTB were present at the meeting. At the same meeting, Mr. Stark provided an overview of Turtle Beach's business, and the parties discussed potential strategic transactions involving Parametric and Turtle Beach.

On April 3, 2013, a meeting was held at Turtle Beach's San Diego office at which Mr. Potashner made a presentation to Turtle Beach representatives regarding Parametric's business and Mr. Stark presented confidential business and financial information regarding Turtle Beach. On that same day, Mr. Stark provided Mr. Potashner with confidential materials regarding Turtle Beach, including financial information.

On April 5, 2013 a representative of Company A contacted Parametric to express interest in its technology and to begin strategic licensing discussions. Additional demonstrations and meetings with Company B occurred on May 29, August 27 and September 3, 2013. Although Company A declined to pursue an acquisition of Parametric, the parties continue to discuss licensing and co-development business.

On April 6, 2013, Turtle Beach sent Parametric a draft term sheet regarding a license of Parametric's technology for the fields of use of console gaming and computer audio, but noted Turtle Beach's continued strong interest in a transaction with Parametric. From April 7, 2013 to April 9, 2013, Mr. Stark and Mr. Potashner, and other representatives of Turtle Beach and Parametric, discussed and corresponded regarding various licensing, investment and joint venture structures, including the possibility of a license agreement to be entered into in the event of a termination of a definitive agreement for a transaction involving Parametric.

On April 9, 2013, Parametric issued a press release announcing that, with respect to strategic alternatives and licensing activities: (i) Parametric had received substantial licensing proposals for its HyperSound technology addressing key market verticals; (ii) Parametric had been approached by several industry leaders in key target verticals to pursue strategic discussions and, as a result, had retained investment bank Houlihan Lokey; (iii) Parametric was deferring decisions to execute licenses as it assessed strategic opportunities; and (iv) Parametric was actively pursuing strategic discussions regarding Parametric and its technology. The press release also announced the status of commercial pilot projects and reiterated that Parametric was focused on the global commercialization of its HyperSound technology.

From April 12, 2013 to April 30, 2013, Parametric and Turtle Beach began conducting due diligence on each other. Representatives of Parametric, Turtle Beach, Houlihan Lokey, Sheppard Mullin Richter & Hampton LLP ("Sheppard Mullin"), counsel to Parametric, Dechert LLP ("Dechert"), counsel to Turtle Beach, and McGladrey LLP ("McGladrey"), Turtle Beach's auditor, provided numerous information requests, organized and provided information and documentation in response to such requests, and corresponded and held numerous telephonic meetings with respect thereto.

On April 12, 2013, Company C requested an introductory call with Parametric. On that same day, the parties entered into a confidentiality agreement dated April 12, 2013. The introductory presentation was made by executives of Parametric telephonically on April 15 and on April 16, 2013, one executive and one business development consultant of Parametric visited the home office of Company C and made a product demonstration. A brief call with Company C was held on April 22, 2013.

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On April 18, 2013, Turtle Beach provided Parametric with a draft of an exclusivity agreement.

On April 19, 2013, a meeting was held at Turtle Beach's San Diego office which was attended by Mr. Stark, Mr. Doomink, Mr. Potashner and Mr. Barnes. At this meeting, Turtle Beach provided Parametric with (i) a presentation regarding its rationale for a proposed merger with Parametric and (ii) a draft, non-binding term sheet (referred to as the "April 19<sup>th</sup> term sheet") to acquire Parametric through a reverse merger, under which the security holders of VTBH (including option holders) immediately prior to the merger would own, on a fully-diluted basis, 80.88% of Parametric following the merger, and the security holders of Parametric (including option and warrant holders) immediately prior to the merger would own, on a fully-diluted basis, 19.12% of Parametric following the merger. The respective ownership proportions of Parametric following the merger of the security holders of VTBH, on the one hand, and the security holders of Parametric, on the other hand, is referred to hereafter as the "post-merger ownership ratio." At the meeting, the parties negotiated extensively regarding the post-merger ownership ratio and reached an oral agreement that it would be 78%/22%. On that same day, Mr. Barnes and representatives of Houlihan Lokey held a call with Mr. Stark and Bruce Murphy, the Chief Financial Officer of VTB, regarding Turtle Beach's operations.

On April 20, 2013, a telephonic meeting of the Parametric Board was held with its financial and legal advisors. At the meeting:

- The Parametric Board discussed and reviewed the April 19<sup>th</sup> term sheet, with Mr. Potashner noting that Turtle Beach had agreed orally to a post-merger ownership ratio of 78%/22%.
- Representatives of Houlihan Lokey presented information regarding Turtle Beach and the rationale for the transaction. Houlihan Lokey also advised the Parametric Board that the Parametric Board should consider retaining a second investment bank to provide a fairness opinion in a potential transaction between Parametric and Turtle Beach in order to avoid the appearance of a conflict of interest resulting from Houlihan Lokey's previous engagement by Turtle Beach on an unrelated matter in early 2012.
- Representatives of Sheppard Mullin presented to the Parametric Board regarding the fiduciary duties of directors in connection with evaluating a change of control transaction, as well as a process for the Parametric Board to follow to discharge its fiduciary duties in connection with the proposed transaction with Turtle Beach, including a general discussion with respect to customary transaction "protection" alternatives.
- The Parametric Board discussed Turtle Beach's request for a breakup fee in the form of a license agreement for Parametric's technology in the console gaming and computer audio fields of use.
- The Parametric Board discussed the proposed exclusivity agreement with Turtle Beach and the likelihood of alternative strategic transactions, and approved Parametric entering into the exclusivity agreement.

On April 21, 2013, Turtle Beach provided Parametric with a revised, non-binding term sheet that included a post-merger ownership ratio of 78%/22% (referred to as the "April 21<sup>st</sup> term sheet"). On that same day, Parametric and VTBH signed an exclusivity agreement that provided that Parametric would cease discussions with any other party regarding a proposed acquisition until May 1, 2013 (or May 8, 2013 if the parties were continuing to negotiate in good faith with respect to a definitive acquisition agreement on May 1, 2013).

On April 22, 2013, Mr. Potashner and Mr. Stark met at Turtle Beach's offices in San Diego and discussed various merger terms. Later that same day, a telephonic meeting of the Parametric Board was held with its financial and legal advisors. At the meeting:

- Houlihan Lokey presented regarding business and financial considerations related to the proposed transaction, including an overview of and comments regarding Turtle Beach and its business, the historical financial performance of Parametric and Turtle Beach, a discussion of strategic rationale and possible opportunities for growth that such a transaction could offer Parametric, an overview of the April 21<sup>st</sup> term sheet, illustrative valuation information, key items for the Parametric Board to consider and a summary of the exclusivity terms.

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- The Parametric Board discussed the April 21<sup>st</sup> term sheet and the proposed terms of the transaction with Turtle Beach, including the transaction structure, financing requirements, process and timing.
- The Parametric Board discussed at length the proposed terms of the transaction with Turtle Beach, including the transaction structure, financing requirements and process and timing considerations. Representatives of Sheppard Mullin discussed fiduciary duties with the Parametric Board, including “transaction protection” and related mechanisms such as “go shop” vs. “window shop” vs. “no shop”, “break-up fee” and “reverse break-up fees.”

From April 22, 2013 to April 26, 2013, both Parametric and Turtle Beach received due diligence request lists from representatives of Dechert, McGladrey, Houlihan Lokey, Craig-Hallum (engaged on April 26, 2013) and Sheppard Mullin.

On April 23, 2013, Parametric and VTB entered into a First Amendment to Mutual Non-Disclosure Agreement, which expanded the scope of the parties who could receive confidential information thereunder.

On April 24, 2013, Parametric received a due diligence request list from representatives of J.P. Morgan, Turtle Beach’s financial advisor.

On April 25, 2013, a meeting of the Parametric Board was held with its financial and legal advisors. At the meeting:

- Mr. Potashner provided an update regarding the status of merger negotiations with Turtle Beach.
- The Parametric Board discussed a number of key issues raised by the April 21<sup>st</sup> term sheet, including potential compensation to be given to Turtle Beach if the merger agreement were to be terminated under certain circumstances, including Parametric being required to enter into a license agreement under which Turtle Beach would receive an exclusive license to HyperSound technology for the console gaming field and a potentially exclusive license to HyperSound technology for the PC audio field (such license agreement, the “break-up fee license agreement”).
- Representatives of Sheppard Mullin presented to the Parametric Board regarding its fiduciary duties with respect to the proposed transaction with Turtle Beach (including those pertaining to the proposed break-up fee license agreement and break-up fees generally), related litigation risks and D&O insurance.
- Representatives of Houlihan Lokey discussed with the Parametric Board the proposed scope of financial due diligence of Turtle Beach and Houlihan Lokey’s recommendation with respect thereto.
- The Parametric Board discussed the engagement letters with Houlihan Lokey and Craig-Hallum, respectively, noting that Houlihan Lokey was initially expected to provide a fairness opinion related to the merger transaction but had recommended that a second advisor, Craig-Hallum, be hired to provide the fairness opinion.

On April 26, 2013, Parametric signed a letter engaging Craig-Hallum to provide a fairness opinion in connection with the proposed merger with Turtle Beach on terms approved by the Parametric Board.

On April 27, 2013, a telephonic meeting was held between Messrs. Stark, Doornink and Kulavic, the Chief Technology Officer of VTB, and Mr. Seth Putterman (a member of the Parametric Board) regarding the safety profile of Parametric’s products.

On April 30, 2013, Mr. Stark informed Mr. Potashner that Turtle Beach planned to conduct 10-14 days of additional due diligence regarding Parametric’s products and markets before proceeding further with negotiating the terms of the merger agreement.



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On May 1, 2013, the exclusivity agreement signed on April 21, 2013 expired because Parametric and Turtle Beach were not negotiating a definitive agreement for the merger. At such time, representatives of Parametric provided information in response to a request from Company C. On that same day, Parametric made an additional product demonstration to technical personnel at an engineering location of Company C.

On May 1, 2013, a meeting of the Parametric Board was held at which Mr. Potashner provided an update regarding the status of discussions with Turtle Beach, indicating that Turtle Beach wanted to perform additional due diligence related to Parametric's technology and customer preferences before proceeding further with negotiating the terms of the merger agreement, and that the timing of the execution of the merger agreement was accordingly uncertain. Mr. Potashner also discussed the level of interest of other strategic prospects.

On May 2, 2013, Parametric issued a press release announcing that (i) it had received a term sheet from Turtle Beach (referenced in the press release anonymously as a "leader in one of [Parametric's] target verticals") and was undergoing due diligence, and (ii) Parametric had also received and was evaluating strategic inquiries from additional parties. On that same day, Mr. Potashner advised on Parametric's quarterly earnings call that the due diligence phase with the party referenced in the press release was expected to last weeks but not months.

On May 7, 2013, Turtle Beach officers reviewed Parametric's technology license agreements and conducted a patent due diligence session with Parametric officers. On May 13, 2013, Parametric and Turtle Beach executed a Common Interest and Non-Disclosure Agreement related to patent information, at which time Parametric began delivering detailed patent files to Turtle Beach's patent counsel. From May 9, 2013 to May 15, 2013, Turtle Beach officers conducted hearing and preference marketing research sessions with Parametric officers overseeing these activities.

From May 18, 2013 to May 28, 2013, Mr. Potashner and Mr. Stark held numerous telephonic meetings regarding the status of due diligence and Turtle Beach's level of interest in pursuing the merger.

On May 21, 2013 and May 28, 2013, Parametric held further telephonic discussions with Company C regarding a potential strategic transaction.

On June 3, 2013, Mr. Stark had an in-person meeting with Mr. Elwood Norris, Parametric's President and Chief Scientist, at Parametric's research laboratory at which Mr. Norris demonstrated Parametric's latest new emitter prototypes.

On June 9, 2013, Mr. Stark provided Parametric with a revised post-merger ownership ratio of 81%/19% (or 80%/20% if Parametric raised \$5 million in equity capital prior to the closing of the merger).

On June 10, 2013, a meeting of the Parametric Board was held with its financial and legal advisors. At the meeting, the Parametric Board discussed the status and terms of negotiations with Turtle Beach regarding the proposed merger, and unanimously agreed to continue negotiations, while Parametric pursued, in tandem, other strategic, licensing and financing alternatives.

On June 11, 2013, Mr. Potashner met with Mr. Stark at the E3 video gaming conference in Los Angeles to view Turtle Beach's booth and range of products. The parties discussed the revised merger terms and Mr. Stark outlined a request for a new exclusivity agreement. On that same day, Mr. Stark delivered a new exclusivity agreement and non-binding term sheet to Parametric, which reflected the necessity of consent to the merger by Turtle Beach's third party lenders, and again proposed a post-merger ownership ratio of 81%/19% (80%/20% if Parametric raised \$5 million in equity capital prior to the closing of the merger).

On June 12, 2013, representatives of Houlihan Lokey and SG VTB held a telephonic meeting at which it was confirmed that Turtle Beach and Parametric would proceed with due diligence and that Dechert would begin preparing a first draft of the merger agreement.



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On June 13, 2013, Parametric and Turtle Beach signed a new exclusivity agreement. On that same day, Parametric issued a press release announcing that Turtle Beach (referred to in the press release anonymously as the "strategic partner") had completed its technology due diligence of Parametric's patents and IP, technology, products, markets and consumer preferences, and reported positive results. The press release also announced that (i) Parametric and the "strategic partner" had moved to an exclusive negotiating period and were working on the merger agreement, and (ii) Parametric, while it was evaluating strategic alternatives, was continuing to execute on its operational plan to grow commercial revenues, develop and co-develop products for consumer licensing and develop applications of its technology for the aging and hearing impaired markets.

On June 14, 2013, representatives of Dechert provided representatives of Sheppard Mullin with a first draft of the merger agreement. On that same day, Mr. Stark had an in-person meeting with Mr. Potashner to discuss the merger and potential future strategies for the combined businesses.

From June 17, 2013 to June 19, 2013: (i) representatives of McGladrey provided due diligence request lists to Parametric; (ii) representatives of Houlihan Lokey provided a supplemental due diligence request list to Turtle Beach and representatives of SG VTB; and (iii) representatives of Houlihan Lokey and SG VTB held a telephonic meeting to discuss due diligence and process timing.

On June 20, 2013, representatives of Sheppard Mullin, Houlihan Lokey, Dechert and SG VTB held a telephonic meeting to discuss the merger agreement and related issues. On June 22, 2013, Sheppard Mullin provided Dechert with a revised draft of the merger agreement.

On June 24, 2013, Mr. Potashner met with Mr. Stark at Turtle Beach's San Diego offices to discuss the merger transaction and related issues.

From to June 24, 2013 to June 28, 2013: (i) representatives of Craig-Hallum and Houlihan Lokey sent due diligence request lists to Turtle Beach and SG VTB; (ii) Mr. Murphy provided Parametric with unaudited financial statements for Turtle Beach; (iii) Mr. Barnes and representatives of Houlihan Lokey held telephonic meetings with Messrs. Stark and Murphy and representatives of SG VTB to get updates regarding Turtle Beach's business and financing efforts; and (iv) Parametric and representatives of Houlihan Lokey and Craig-Hallum held a telephonic due diligence session with Messrs. Stark and Murphy and representatives of SG VTB regarding Turtle Beach.

On June 25, 2013, a meeting of the Parametric Board was held with its financial and legal advisors. At the meeting: (i) the Parametric Board discussed with representatives of Sheppard Mullin and Houlihan Lokey the general status of merger agreement negotiations with Turtle Beach and related issues, including tax issues, financing issues surrounding the merger, the post-merger ownership ratio, termination issues, a proposed go-shop provision and other transaction items; (ii) representatives of Houlihan Lokey presented to the Parametric Board regarding the status of its business and financial due diligence of Turtle Beach; (iii) representatives of Houlihan Lokey and Craig-Hallum discussed with the Parametric Board future planned meetings with Turtle Beach and McGladrey regarding Turtle Beach business and financial due diligence matters; and (iv) the Parametric Board discussed licensing initiatives and the impact of the merger discussions thereon.

From June 26, 2013 to June 28, 2013, representatives of McGladrey held telephonic and in-person audit due diligence sessions with Mr. Barnes and representatives of Houlihan Lokey regarding the past audits of both Parametric and Turtle Beach. Representatives of McGladrey also performed a review of Parametric's audit workpapers during this time.

On June 26, 2013, representatives of Dechert communicated to representatives of Sheppard Mullin that Turtle Beach would require termination of the "HHI stock options" (defined below) and/or an amendment of the "HHI license agreement" (defined below) between Parametric and HyperSound Health, Inc. ("HHI"), a wholly-owned subsidiary of Parametric, prior to signing a definitive merger agreement. Parametric established HHI in October 2012 to facilitate Food and Drug Administration approval for certain medical applications of

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HyperSound technology (e.g., hearing devices); at that time, it was anticipated that the Parametric Board would hire a new CEO to run Parametric, and that Mr. Potashner would become CEO of HHI while remaining a director of Parametric. In February 2013 and March 2013, options were granted to four individuals (Mr. Potashner and three consultants) to purchase shares of the common stock of HHI (such options referred to as the "HHI stock options"). In April 2013, to enable HHI to pursue health care applications of the HyperSound technology and consider third party financing options, Parametric entered into a license agreement with HHI (referred to as the "HHI license agreement") pursuant to which Parametric granted to HHI an exclusive, worldwide, royalty-bearing license to use certain HyperSound-related intellectual property and technology solely for, and in connection with, the use, testing, manufacture, marketing, sale, offering for sale, commercialization, distribution and servicing of products in the "medical device" and "personal sound amplification product" fields.

On June 28, 2013, representatives of Dechert sent a revised due diligence request list to Parametric and Sheppard Mullin.

On July 1, 2013, Mr. Putterman held a telephonic meeting with Mr. Barnes and Mr. Stark at Turtle Beach's San Diego offices at which various HHI-related matters were discussed, including the structure and rationale for HHI, the financing to date of HHI by Parametric and the ownership of HHI's intellectual property. Mr. Stark reiterated Turtle Beach's position that either the HHI stock options would have to be terminated prior to signing a definitive merger agreement or that HHI would have to be dissolved prior to signing a definitive merger agreement.

On July 1, 2013, a meeting of the Parametric Board was held with its legal advisors. At the meeting:

- The Parametric Board discussed the issue of HHI stock options, the existence of which had become an issue of concern with Turtle Beach and a potential obstacle to proceeding with the merger. Because Mr. Potashner held an HHI stock option, the Parametric Board directed Mr. Putterman, and in his absence while on travel, Mr. Andrew Wolfe (an independent member of the Parametric Board), to negotiate with Turtle Beach and also with Mr. Potashner and one other (Parametric consultant) holder of HHI stock options, regarding the termination of HHI stock options.
- The Parametric Board considered a proposed requirement from Turtle Beach's lenders that, as a condition to the lenders' consenting to the merger and Parametric becoming a co-borrower under Turtle Beach's credit facility, Parametric raise at least \$5,000,000 in debt or equity capital prior to the closing of the merger, and the Parametric Board discussed Parametric's ability to effectuate such a capital raise. In addition, the Parametric Board discussed a requirement from Turtle Beach's lenders that Turtle Beach raise \$10,000,000 in debt or equity capital, which would be used to prepay an equivalent portion of its credit facility.

From July 1, 2013 to July 15, 2013: (i) representatives of Dechert provided representatives of Sheppard Mullin with a revised draft of the merger agreement; (ii) representatives of McGladrey, representatives of Squar, Milner, Peterson, Miranda and Williamson LLP ("Squar Milner"), Parametric's independent auditor, and Mr. Barnes held a telephonic meeting regarding tax due diligence of Parametric; (iii) representatives of Dechert and McGladrey sent various information request lists to Parametric and to representatives of Sheppard Mullin and Houlihan Lokey; (iv) representatives of Squar Milner reviewed Turtle Beach's audit workpapers; (v) representatives of Houlihan Lokey held a telephonic meeting with Messrs. Stark and Murphy and representatives of SG VTB regarding the merger and related financing process; (vi) representatives of Dechert held a telephonic meeting with Mr. Barnes and representatives of Sheppard Mullin regarding Parametric's options and warrants; and (vii) representatives of Houlihan Lokey and representatives of SG VTB held a telephonic meeting to discuss the merger agreement and related issues and timing.

On July 3, 2013, representatives of Dechert provided Sheppard Mullin with a draft of the break-up fee license agreement.

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On July 5, 2013, a meeting of the Parametric Board was held with its financial and legal advisors. At the meeting, the Parametric Board discussed the requirement of Turtle Beach's lenders that Parametric raise capital prior to the closing of the merger as a condition of delivering such lender's consent thereto.

On July 7, 2013, Mr. Potashner and Mr. Stark held an in-person meeting in San Diego at which the merger agreement, HHI, HHI stock options and related issues were discussed.

On July 12, 2013, representatives of Sheppard Mullin and Dechert held a telephonic meeting regarding the merger agreement and related issues. On July 13, 2013, representatives of Sheppard Mullin provided representatives of Dechert with a revised draft of the merger agreement; and on July 15, 2013, representatives of Sheppard Mullin provided Dechert with a revised draft of the break-up fee license agreement.

On July 16, 2013, a meeting was held in Costa Mesa, California with all members of the Parametric Board, Mr. Stark and Mr. Doornink to discuss merger issues and post-merger operating plans.

On July 17, 2013, a meeting was held with Mr. Stark, Mr. Potashner, Mr. Barnes and two medical consultants engaged by HHI where the parties discussed status and future plans regarding medical applications of Parametric's technology.

On July 19, 2013, a telephonic negotiating session regarding the merger agreement was held at which representatives of Houlihan Lokey, SG VTB, Sheppard Mullin and Dechert and Messrs. Potashner, Barnes, Stark and Murphy were present. The parties discussed, among other issues, (i) the termination of HHI stock options, (ii) the parties to be subject to voting and lock-up agreements, (iii) the proposed closing condition required by Turtle Beach's lender regarding Parametric raising at least \$5,000,000 in capital pursuant to a "Qualified Equity Offering" prior to the merger (and the effect on the post-merger ownership ratio), (iv) the treatment of Turtle Beach Series B Preferred Stock (and the effect on the post-merger ownership ratio), (v) termination fees and the break-up fee license agreement, (vi) the definitions of "material adverse effect" and related exclusions and (vii) the status of disclosure schedules to be provided pursuant to the merger agreement.

On July 20, 2013, a meeting of the Parametric Board was held with its legal advisors. At the meeting:

- The Parametric Board considered a proposed requirement from Turtle Beach's lenders that, as a condition to the lenders' consenting to the merger and Parametric becoming a co-borrower under Turtle Beach's credit facility, Parametric raise at least \$5,000,000 in debt or equity capital prior to the closing of the merger, and the Parametric Board discussed Parametric's ability to effectuate such a capital raise. In addition, the Parametric Board discussed a requirement from Turtle Beach's lenders that Turtle Beach raise \$10,000,000 in debt or equity capital, which would be used to prepay an equivalent portion of its credit facility. The Parametric Board discussed Turtle Beach's proposal that a closing condition be added to the merger agreement with respect to Parametric's completion of its capital raise. After discussing the risks of such a financing condition and potential "break-up fee" implications, the Parametric Board agreed to accept the financing closing condition.
- The Parametric Board discussed the status of negotiations regarding (i) the termination of HHI stock options and proposed amendments to the HHI license agreement, (ii) proposals from Mr. Potashner and from one of the consultants related to the termination of HHI stock options (which contemplated, in part, that the HHI stock options would survive the merger), and (iii) the possibility of litigation from a consultant related thereto. The Parametric Board directed Mr. Andrew Wolfe, an independent member of the Parametric Board, to contact Mr. Stark to discuss whether the proposals from Mr. Potashner and the consultant regarding their HHI stock options would be acceptable to Turtle Beach.

On July 21, 2013, Mr. Wolfe, Mr. Potashner, Mr. Barnes and Mr. Stark held a telephonic meeting at which Mr. Stark stated that the proposals from Mr. Potashner and the consultant regarding HHI stock options were unacceptable, and that Turtle Beach would not continue negotiating the merger agreement until HHI ownership issues were resolved. Later that same day, Mr. Potashner telephoned Mr. Stark and assured Mr. Stark that the HHI ownership issue would be resolved, and that the parties should continue pursuing the merger.

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On July 22, 2013, Mr. Barnes and representatives of Houlihan Lokey held a telephonic meeting with Mr. Murphy regarding business and financial due diligence issues regarding Turtle Beach. On that same day, Mr. Barnes and representatives of Houlihan Lokey held a telephonic meeting with McGladrey to conduct Turtle Beach audit due diligence.

On July 22, 2013, representatives of Dechert provided representatives of Sheppard Mullin with first drafts of the voting agreements under which Messrs. Potashner, Barnes and Norris, and certain entities controlled by them, would agree to vote Parametric shares beneficially owned by them in favor of the merger.

On July 23, 2013, a meeting of the Parametric Board was held with its financial and legal advisors. At the meeting:

- representatives of Craig-Hallum presented to, and answered questions from, the Parametric Board regarding Craig-Hallum's preliminary financial analysis regarding the merger proposed by Turtle Beach;
- representatives of Houlihan Lokey presented to, and answered questions from, the Parametric Board regarding: (i) the progress of negotiations with Turtle Beach; (ii) the status of Houlihan Lokey's financial and business due diligence of Turtle Beach and related issues (including the near-term softening of the market for gaming headsets until the next generation console releases for the Xbox and PlayStation); (iii) the requirement under the merger agreement for Parametric to raise capital in a "qualified offering" prior to closing and the related effect on the post-merger ownership ratio; (iv) potential sources of debt and equity capital for Parametric and related timing; and (v) the "go shop" period under the merger agreement and potential actions related thereto;
- after discussion with representatives of Sheppard Mullin, the Parametric Board, in a joint session with the Audit Committee, took the following actions with respect to HHI: (i) approved Parametric and HHI amending and restating the HHI license agreement to exclude "personal sound amplification products," as defined therein, from the fields of use thereunder; (ii) instructed Parametric's executive officers to reconstitute HHI's board of directors such that it would be the same as that of the Parametric Board; (iii) approved a proposal to pay an aggregate of \$250,000 to the aforementioned consultant in exchange for an amendment to his HHI stock option and a release of claims with respect to such option and the amended and restated HHI license agreement, in each case effective as of the closing of the merger (Mr. Potashner agreed to similar modifications to his option that would result in cancellation on merger closing and with similar releases, but without any payment or additional compensation); and
- the Parametric Board discussed, but took no action with respect to, potential cash bonuses under Parametric's 2013 Cash Bonus Plan, including the payment in full of such bonuses to Messrs. Potashner, Barnes and Norris upon the closing of the proposed merger with Turtle Beach, as well as potential "double trigger" acceleration of vesting of stock options upon such merger for Parametric's executive officers and directors.

On July 23, 2013, Parametric and HHI amended and restated the HHI license agreement to exclude "personal sound amplification products," as defined therein, from the fields of use thereunder. On the same date, Parametric, in its capacity as the sole stockholder of HHI, reconstituted the board of directors of HHI such that its composition was the same as that of the Parametric Board and representatives of Shepard Mullin provided representatives of Dechert with the proposed HHI resolution terms to ascertain whether such terms were acceptable to Turtle Beach.

On July 23, 2013, representatives of Dechert sent representatives of Sheppard Mullin initial comments on specific issues in the revised form of break-up fee license agreement. On July 23, 2013 on July 24, 2013, representatives of Sheppard Mullin and Dechert discussed various issues raised by the break-up fee license agreement, including the scope of the fields of use, term of the agreement and the right to renew, whether minimum royalties should be required and whether the agreement could be terminated for convenience.



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From July 25 to August 5, 2013, representatives of Sheppard Mullin and Dechert exchanged multiple drafts of the merger agreement, the Stockholder Agreement and the voting agreements, and the exhibits and attachments thereto, including the disclosure schedules to the merger agreement (with respect to both Turtle Beach and Parametric) and the break-up fee license agreement. Also during this time period: (i) representatives of Sheppard Mullin and representatives of Dechert held numerous telephone calls regarding the draft agreements and related issues, including issues pertaining to the tax treatment of the merger, the parties to be subject to the voting and lock-up agreements and certain proposed exclusions to the lock-up restrictions, and the terms and conditions of the break-up fee license agreement (including the term of the agreement, whether minimum royalties would be required, and the right of Parametric to convert the license to a non-exclusive license or to terminate for convenience); (ii) representatives of Houlihan Lokey provided Turtle Beach and representatives of Dechert with an updated due diligence request list, and Turtle Beach and Dechert provided responses in connection therewith; (iii) Mr. Murphy provided Parametric with McGladrey audit letters related to the 2011 and 2010 audits of VTB; and (iv) Parametric and representatives of Craig-Hallum and Houlihan Lokey held a due diligence call with Turtle Beach regarding its business and finances, and the status of consents required for the merger under Turtle Beach's credit agreement.

On July 30 and 31, 2013, two telephonic negotiating sessions regarding the merger agreement were held at which Messrs. Potashner, Barnes and Stark and representatives of Houlihan Lokey, SG VTB, Sheppard Mullin and Dechert were present. At these sessions, the parties discussed, among other things, (i) the post-merger ownership ratio and the formula in the merger agreement for calculating the number of shares of Parametric common stock to be issued to VTBH stockholders pursuant to the merger (including that the post-ownership ratio could be 78.5%/21.5% if Parametric raised \$15 million in a "Qualified Equity Offering"), (ii) finalizing the voting agreements and lock-up restriction terms for Messrs. Potashner, Barnes and Norris and related entities, (iii) the status of the stockholder agreement, (iv) termination fees and the break-up fee license agreement, (v) the definitions of "material adverse effect" and related exclusions and (vi) the definition of "Qualified Equity Offering" and the related closing condition.


On July 31, 2013, a joint meeting of the Parametric Board and compensation committee was held without Mr. Potashner present. Representatives from Sheppard Mullin discussed with the Parametric Board the status of negotiations regarding the final terms and conditions of the amendments to the HHI stock options of Mr. Potashner and the consultant who had also been negotiating, including with respect to the termination of such options upon the closing of the merger or alternative transaction. The Parametric Board instructed Mr. Barnes and Sheppard Mullin to finalize and execute the HHI-related documentation with Mr. Potashner and the consultant on the terms presented.

On July 31, 2013, a telephonic meeting regarding disclosure strategy for announcement of the merger was held at which Messrs. Potashner, Barnes and Stark and representatives of Houlihan Lokey, SG VTB, Sheppard Mullin, Dechert and J.P. Morgan were present.

On August 1, 2013, a meeting of the Parametric Board was held with its financial and legal advisors. At the meeting:

- Mr. Potashner and representatives from Sheppard Mullin and Houlihan Lokey reviewed and discussed with the Parametric Board the status of ongoing merger negotiations with Turtle Beach;
- representatives of Sheppard Mullin presented to the Parametric Board regarding Sheppard Mullin's legal due diligence of Turtle Beach and related issues and risks; and
- representatives of Houlihan Lokey presented to the Parametric Board regarding Houlihan Lokey's analysis of the proposed merger and related terms and conditions, and discussed with the Parametric Board, among other things: (i) the status of consents required for the merger under Turtle Beach's credit agreement; (ii) Houlihan Lokey's financial and business due diligence of Turtle Beach; (iii) the status of financing efforts for Parametric related to the "Qualified Offering" condition under the merger agreement; and (iv) the 30-day "go shop" provision in the merger agreement and proposed actions related thereto.





CLERK OF THE COURT

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23 *Andrew Wolfe and James Honoré*

24 **DISTRICT COURT**

25 **CLARK COUNTY, NEVADA**

26 IN RE PARAMETRIC SOUND  
27 CORPORATION SHAREHOLDERS'  
28 LITIGATION

CONSOLIDATED  
CASE NO.: A-13-686890-B

DEPT NO.: XI

Date: August 28, 2014  
Time: 8:30 a.m.

This Is Document Related To:  
ALL ACTIONS

**THE DIRECTOR DEFENDANTS'  
MOTION TO DISMISS THE FIRST  
CAUSE OF ACTION IN PLAINTIFFS'  
CLASS ACTION COMPLAINT IN  
INTERVENTION**

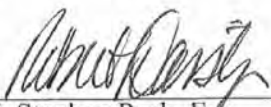
**(REDACTED)**

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1 Defendants Kenneth F. Potashner, Elwood G. Norris, Seth Putterman, Robert M. Kaplan,  
2 Andrew Wolfe and James L. Honoré (the "Director Defendants"), by and through their under-  
3 signed counsel, Holland & Hart, LLP and Sheppard Mullin Richter & Hampton LLP, respect-  
4 fully submit this Motion to Dismiss the First Cause of Action in plaintiffs' Class Action Com-  
5 plaint In Intervention (the "Motion"). This Motion is made and based upon the papers and  
6 pleadings on file, the following Memorandum of Points and Authorities, and any other evidence  
7 and argument as may be presented and considered by this Court.

8 DATED this 20th day of June, 2014.

9   
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NOTICE OF MOTION

TO ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE that the DIRECTOR DEFENDANTS' MOTION TO DISMISS will be brought before the above-entitled court on the 28th day of August 2014, at 8:30 a.m., or as soon thereafter as may be heard.

Dated this 20th day of June, 2014.

  
\_\_\_\_\_  
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Andrew Wolfe and James Honoré*

1                   **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**  
2                   **THE DIRECTOR DEFENDANTS' MOTION TO DISMISS**

3                   **I.**

4                   **INTRODUCTION**

5                   Defendants Kenneth F. Potashner, Elwood G. Norris, Seth Putterman, Robert M. Kaplan,  
6                   Andrew Wolfe and James L. Honoré (the "Director Defendants"), respectfully submit this me-  
7                   morandum of points and authorities in support of their Motion to Dismiss the First Cause of  
8                   Action in plaintiffs' Class Action Complaint in Intervention (the "Complaint in Intervention").<sup>1</sup>  
9                   As demonstrated below, the Court should dismiss the First Cause of Action in the Complaint in  
10                  Intervention for several separate and independent reasons.

11                 Plaintiffs are purported stockholders of Turtle Beach Corporation ("Turtle Beach" or the  
12                 "Company"), a Nevada corporation.<sup>2</sup> In this action, plaintiffs assert direct claims, purportedly on  
13                 behalf of a class of Turtle Beach stockholders, alleging breaches of fiduciary duty and aiding and  
14                 abetting breaches of those duties in connection with the recent merger between Turtle Beach and  
15                 VTB Holdings, Inc. ("VTBH").

16                 After plaintiffs sought (unsuccessfully) to obtain a preliminary injunction to block the  
17                 December 27, 2013 special meeting of Turtle Beach's stockholders to consider approving the  
18                 merger, Turtle Beach's stockholders voted overwhelmingly to approve the merger with VTBH.<sup>3</sup>  
19                 The merger closed on January 15, 2014. Turtle Beach was the surviving corporation. Plaintiffs  
20                 (along with all other pre-merger Turtle Beach stockholders) remained stockholders of Turtle  
21                 Beach after the merger, holding exactly the same number of Turtle Beach shares as they held  
22                 immediately before the merger.

23                 <sup>1</sup> To the Director Defendants' knowledge, the Complaint in Intervention has not yet been filed with the Court and is  
24                 not verified.

25                 <sup>2</sup> On May 20, 2014, Turtle Beach Corporation (formerly known as Parametric Sound Corporation) amended the  
26                 Company's Articles of Incorporation to effect a change of the Company's corporate name from "Parametric Sound  
27                 Corporation" to "Turtle Beach Corporation." (Turtle Beach Form 8-K, filed with the Securities and Exchange  
28                 Commission ("SEC") on May 28, 2014, attached to the Appendix as **Exhibit "A"**). For sake of consistency, all  
29                 references to Parametric have been changed to Turtle Beach.

30                 <sup>3</sup> Turtle Beach's Form 8-K filed with the Securities & Exchange Commission on December 30, 2013 (attached to the  
31                 Appendix as **Exhibit "B"**), reflects that 3,801,508 shares (out of a total of 4,012,274 present), or approximately  
32                 95%, were voted in favor of the merger.

1 In the First Cause of Action in the Complaint in Intervention, plaintiffs allege that the  
2 Director Defendants breached their fiduciary duties of care and loyalty in connection with their  
3 consideration and approval of the VTBH merger.<sup>4</sup> The purported injury that plaintiffs seek to  
4 remedy with their First Cause of Action is the alleged decrease in the value of their Turtle Beach  
5 shares as a result of the issuance of additional shares of Turtle Beach common stock to VTBH's  
6 stockholders for inadequate consideration — *i.e.*, stockholder dilution.<sup>5</sup>

7 Under Nevada law, when a stockholder alleges that his or her shares decreased in value  
8 due to the corporation's issuance of additional shares for allegedly inadequate consideration —  
9 *i.e.*, stockholder dilution — a claim to remedy such an injury must be brought *derivatively*, not  
10 *directly* as plaintiffs do here. To bring a derivative action, plaintiffs first must make a demand  
11 upon Turtle Beach's Board of Directors (the "Board") or, alternatively, plead particularized facts  
12 demonstrating that such a demand should be excused as futile. Plaintiffs here did neither. By  
13 reason of plaintiffs' failure to plead their First Cause of Action as a derivative claim, they lack  
14 legal standing to pursue their breach of fiduciary duty cause of action. For this reason alone, the  
15 Court should dismiss the First Cause of Action.

16 Even if plaintiffs had standing to pursue breach of fiduciary claims on behalf of Turtle  
17 Beach, the First Cause of Action would still fail because Nevada's business judgment rule pro-  
18 tects the actions and decisions of the Director Defendants in connection with the VTBH merger,  
19 and plaintiffs fail to plead sufficient facts to rebut this dispositive legal presumption. Under NRS  
20 38.178(7), directors and officers are liable for damages only if their actions and decisions were  
21 so egregious that they involved *both* a breach of the fiduciary duty of loyalty *and* intentional  
22 misconduct, fraud or a knowing violation of law. Although plaintiffs allege a litany of purported  
23 "bad acts" by five of the six Director Defendants, those allegations do not reflect that the  
24 Director Defendants engaged in any disloyal expropriation of assets belonging to the Company,  
25 were on both sides of the VTBH merger transaction or otherwise participated in a "side deal"

26  
27 <sup>4</sup> Plaintiffs have abandoned their separate claim for breach of the fiduciary duty of disclosure.

28 <sup>5</sup> In the Second Cause of Action in the Complaint in Intervention, plaintiffs allege that Turtle Beach and VTBH  
aided and abetted the Director Defendants' purported breaches of fiduciary duty. The Director Defendants respect-  
fully refer the Court to the motion to dismiss filed by those defendants simultaneously herewith.



1 that benefited them at the expense of Turtle Beach's public stockholders. Moreover, although  
2 plaintiffs criticize the Director Defendants' business judgment regarding the process set up for  
3 exploring Turtle Beach's strategic alternatives and approving the VTBH merger, plaintiffs fail to  
4 plead facts showing that the Director Defendants' actions rose to the level of "intentional  
5 misconduct, fraud or a knowing violation of law." For this separate and independent reason, the  
6 Court should dismiss the First Cause of Action in the Complaint in Intervention, with prejudice  
7 and without leave to amend.

8 **II.**

9 **STATEMENT OF RELEVANT ALLEGED FACTS**

10 **A. Turtle Beach**

11 Prior to the merger, Turtle Beach was a Nevada corporation, with its principal place of  
12 business in California. (Complaint in Intervention ¶ 13). Turtle Beach developed, sold and  
13 licensed audio system technologies that direct and focus sound. (*Id.*). Markets for this  
14 technology included digital signage and interactive kiosks, consumer entertainment and products  
15 for the hearing impaired. (*See id.* ¶¶ 23, 43-44). In its 2012 fiscal year, Turtle Beach had  
16 revenues of just \$233,649 and recorded only \$113,507 in gross profit. (Second Amended  
17 Complaint ("SAC") ¶ 55).<sup>6</sup> Its common stock was (and continues to be) publicly traded. (*See*  
18 Complaint in Intervention ¶ 13).<sup>7</sup>

19 **B. Turtle Beach's Majority-Independent and Disinterested Board of Directors**

20 Prior to the merger, Turtle Beach's six-member Board of Directors consisted of the  
21 Director Defendants. Of the Board members, only Messrs. Potashner and Norris were also  
22  
23

24 <sup>6</sup> The Complaint in Intervention is loosely organized around highlighting cherry-picked emails and documents pro-  
25 duced during expedited discovery, taken out of context, to create the impression that the Director Defendants acted  
26 improperly. Because the Complaint in Intervention fails to plead facts setting forth the full history the Board's  
27 efforts to consider a strategic transaction, the Director Defendants cite to plaintiffs' admissions in prior pleadings to  
28 provide the Court with a clearer timeline regarding the Board's exploration of strategic alternatives. *See, e.g.,*  
*Andrews v. Metro North Commuter R.R. Co.*, 882 F.2d 705, 707 (2d Cir. 1989) ("The amendment of a pleading does  
not make it any the less an admission of the party.").

<sup>7</sup> On April 11, 2014, Turtle Beach announced that its ticker symbol on the NASDAQ Global Market would change  
from "PAMT" to "HEAR." The new symbol became effective as of the opening of trading on Monday, April 14,  
2014. (Turtle Beach Form 8-K, filed with the SEC on April 11, 2014, attached to the Appendix as Exhibit "C").

1 Turtle Beach employees. (*Id.* ¶¶ 14-19). Only Messrs. Potashner and Wolfe remained on the  
2 Board of the post-merger Turtle Beach. (*Id.* ¶¶ 14-15).

3 **C. VTBH**

4 Prior to the merger, VTBH was a privately held company that designed and marketed  
5 audio peripherals for video games, computers, and mobile platforms including gaming  
6 headphones and headsets created for Xbox360, PS3 game consoles and PC games. (*Id.* ¶ 21). In  
7 contrast to Turtle Beach's extremely meager revenues, VTBH had revenues of over \$200 million  
8 in 2012, representing a multiple of over 855 times Turtle Beach's revenues. (Turtle Beach  
9 Definitive Proxy, filed with the SEC on December 3, 2013 ("Proxy"), attached to the Appendix  
10 as **Exhibit "D,"** at 112).

11 **D. The Board Explores Strategic Alternatives**

12 In March and April 2013, Turtle Beach began to explore various strategic alternatives for  
13 the Company. (Complaint in Intervention ¶ 48). Among the strategic alternatives explored by  
14 Turtle Beach was a transaction by which VTBH would acquire all or part of Turtle Beach. (*Id.*).  
15 Turtle Beach engaged Houlihan Lokey, Inc. ("Houlihan Lokey") to assist the Board with  
16 evaluating various potential strategic transactions. (*Id.* ¶ 49).

17 From April 1 to April 22, 2013, Houlihan Lokey approached thirteen different parties  
18 (other than VTBH) to explore whether they were interested in pursuing a strategic transaction  
19 with Turtle Beach. (SAC ¶ 69). None of the parties contacted was interested in pursuing an  
20 acquisition of Turtle Beach. (*Id.*).

21 On April 19, 2013, Mr. Potashner and James Barnes (the Company's Chief Financial  
22 Officer) met with VTBH and negotiated basic terms of a potential merger agreement.  
23 (Complaint in Intervention ¶ 49). They discussed a transaction whereby VTBH would acquire  
24 Turtle Beach through a reverse merger. (*Id.*) During these preliminary negotiations, the parties  
25 evaluated various structures including a reverse merger where VTBH would own between 78%  
26 and 80.88% percent of the post-merger Turtle Beach, with the remainder owned by the pre-  
27 merger Turtle Beach stockholders. (*Id.*) On April 20, 2013, the Board met with Houlihan Lokey  
28 and its legal advisors to review the terms discussed by Messrs. Potashner and Barnes the day

1 before. (*Id.*). After considering the details, the Board agreed to grant VTBH a short exclusivity  
2 period while parties conducted due diligence. (*Id.*). At this meeting, Houlihan Lokey also  
3 advised the Board that it should consider retaining a second investment bank to provide a  
4 fairness opinion on the proposed merger to avoid a possible appearance of a conflict of interest  
5 arising from Houlihan Lokey's prior work for VTBH. (SAC ¶ 73). Accordingly, on April 21,  
6 2013, Turtle Beach engaged Craig-Hallum Capital Group, LLC ("Craig-Hallum") to provide a  
7 fairness opinion regarding the value of the consideration offered by VTBH in exchange for the  
8 merger. (*Id.* ¶ 74).

9 The Board continued to hold meetings to discuss the status of negotiations and the pro-  
10 cess of exploring Turtle Beach's strategy alternatives. (Complaint in Intervention ¶ 51). For  
11 example, the Board held meetings on April 25 and June 25, 2013 to discuss the status of Turtle  
12 Beach's review of strategic alternatives. (*Id.*) On July 1, 2013, the Board received a draft of the  
13 proposed merger agreement which clarified many of the proposed deal terms. (*Id.* ¶ 53). Days  
14 later, on July 5, 2013, the Board held another meeting where it discussed certain stock options  
15 Mr. Potashner had in HyperSound Health, Inc. ("HHI"), a wholly-owned subsidiary of Turtle  
16 Beach, and the effect those stock options could have on Turtle Beach's strategic alternatives.  
17 (*Id.* ¶¶ 23, 55-56). On July 20, 2013, the Board held a conference call to discuss the cancellation  
18 of Mr. Potashner's stock options in HHI and to consider how to account for certain earned bonus  
19 income of Turtle Beach's executives. (*Id.* ¶ 61). The next day, the Board held another meeting  
20 where it agreed to, among things, the cancellation of Mr. Potashner's HHI stock options. (*Id.*  
21 ¶ 62-63).

22 After the exclusivity period ended, Turtle Beach (with Houlihan Lokey's assistance) con-  
23 tinued to explore alternatives with other parties until August 2, 2013. (*See Id.* ¶¶ 57, 63; SAC ¶¶  
24 77-78). On that day, after Craig-Hallum provided its detailed analysis and opinion to the Turtle  
25 Beach Board indicating that the proposed merger with VTBH was fair to Turtle Beach's  
26 stockholders from a financial point of view, the Board approved the merger with VTBH.  
27 (Complaint in Intervention ¶ 63; SAC ¶ 10).

1     **E.     The Merger Agreement**

2             On August 5, 2013, Turtle Beach and VTBH announced a definitive merger agreement  
3     whereby a Turtle Beach subsidiary formed for the purpose of effecting the merger would merge  
4     with and into VTBH, with VTBH surviving as a subsidiary of Turtle Beach. (Complaint in  
5     Intervention ¶ 2). In exchange, Turtle Beach was required to issue and VTBH stockholders  
6     (other than the holders of certain non-convertible preferred stock) were to receive new shares of  
7     Turtle Beach common stock, “the net effect being that [VTBH] controlled approximately 80% of  
8     the post-merger [Turtle Beach] entity” and the pre-merger Turtle Beach stockholders retained the  
9     remaining 20%. (*Id.* ¶ 3).

10            The merger agreement provided for a 30-day “go-shop” period starting on August 5,  
11     2013, during which Turtle Beach actively solicited alternative proposals. (*Id.* ¶ 84). The “go-  
12     shop” period was in addition to a longer “shop” period prior to the execution of the merger  
13     agreement during which the Board and Houlihan Lokey actively explored possible strategic  
14     transactions with at least thirteen other parties. (*See id.* ¶¶ 36, 39, 49; SAC ¶ 69).

15            The merger agreement also contained a “termination fee break-up license.” Under  
16     certain circumstances, if the merger agreement was terminated by Turtle Beach, the Company  
17     was obligated to deliver to VTBH (1) an exclusive license, worldwide, royalty-bearing, sub-  
18     licensable license to use, develop, and sell products in the “console audio products field,” which  
19     consists of gaming headsets and peripheral audio speakers, and (2) a non-exclusive, worldwide,  
20     royalty-bearing, non-sub-licensable license to use, develop and sell products in the “computer  
21     audio products field.” (Complaint in Intervention ¶ 64). Under this “Break-Up License,” VTBH  
22     would have been obligated to pay to Turtle Beach royalties of 6% of product net sales and 30%  
23     of any compensation received by VTBH from its sublicensee(s). (*Id.*). VTBH also would have  
24     been obligated to pay to Turtle Beach a minimum of \$2 million in royalties during the first five  
25     years of the license and \$1 million in royalties each year thereafter. (*Id.*). If, after the fourth  
26     year of the license, VTBH had not paid the minimum amount of royalties and it does not appear  
27     likely to do so, Turtle Beach could have provided notice that the exclusive license would become  
28     non-exclusive. (*Id.*)



1 As noted above, the vast majority of Turtle Beach stockholders approved the merger.  
2 The merger closed on January 15, 2014. (Complaint in Intervention ¶ 3). After the merger, the  
3 pre-merger Turtle Beach stockholders (previously owning 100% of Turtle Beach common stock)  
4 continued to own the same number of Turtle Beach shares, but, by virtue of the issuance of new  
5 shares as a result of the merger, owned 20% of the common stock (on a fully diluted basis) of the  
6 combined and much larger company. (*See id.*).

7 **II.**

8 **LEGAL STANDARD**

9 Under NRC 12(b)(5), a motion to dismiss is properly granted where the allegations in  
10 the complaint, taken at face value and construed favorably in the plaintiff's behalf, fail to state a  
11 cognizable claim for relief. *See Morris v. Bank of America Nevada*, 110 Nev. 1274, 1276, 886  
12 P.2d 454, 456 (1994). Although the court will presume the truth of the plaintiff's factual allega-  
13 tions, it will not "necessarily assume the truth of legal conclusions merely because they are cast  
14 in the form of factual allegations in [the] Complaint." *McMilan v. Department of Interior*, 907 F.  
15 Supp. 322, 327 (D. Nev. 1995). "A court may take judicial notice of matters of public record  
16 without converting a motion to dismiss into a motion for summary judgment as long as the facts  
17 are not subject to reasonable dispute." *Maldonado v. U.S. Bank Nat. Ass'n*, 2014 WL 497026, at  
18 \*1 n.1 (D. Nev. Feb. 6, 2014) (*citing Intri-Plea Technology, Inc. v. Crest Group, Inc.*, 499 F.3d  
19 1048, 1052 (9th Cir. 2007)). NRS 47.130 permits the Court to take judicial notice of facts  
20 "[c]apable of accurate and ready determination by resort to sources whose accuracy cannot  
21 reasonably be questioned." Further, "documents whose contents are alleged in a complaint and  
22 whose authenticity no party questions, but which are not physically attached to the pleading, may  
23 be considered in ruling on a Rule 12(b)(5) motion to dismiss." *Branch v. Tunnell*, 14 F.3d 449,  
24 454 (9th Cir. 1994); *see also Marder v. Lopez*, 450 F.3d 445, 448-49 (9th Cir. 2006) (considering  
25 on a motion to dismiss an agreement whose existence was alleged in the complaint); *Breliant v.*  
26 *Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993) (holding that the  
27 district court erred in declining to consider on a Rule 12(b)(5) motion matters raised by the  
28 pleadings).



III.

LEGAL ANALYSIS

A. Plaintiffs Lack Standing to Pursue Their Claim of Dilution

1. Plaintiffs' First Cause of Action Must Be Brought Derivatively, Not Directly

A claim for "harm to the corporation, shared by all stockholders and not related to an individual stockholder," belongs to the corporation. *Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 21, 62 P.3d 720, 734 (2003). "[I]f [the stockholder's complaint] seeks damages for wrongful conduct that caused harm to the corporation, [the claim] is derivative." *Id.* at 19, 62 P.3d at 732; see also *Sweeney v. Harbin Elec., Inc.*, 2011 U.S. Dist. LEXIS 82872, at \*5-6 (D. Nev. 2011) (applying Nevada law) ("[A]ctions to enforce corporate rights or redress injuries to a corporation cannot be maintained by a stockholder in his own name . . . even though injury to the corporation may incidentally result in the depreciation or destruction of the value of the stock.") (internal citations and quotations omitted).

It is well recognized that equity dilution claims belong to the corporation and must be brought derivatively. For example, in *Sweeney*, the corporation, in connection with a management-led buy-out, received an offer that, if accepted, allegedly would have required it "to issue shares of stock at below market value, thereby depriving the corporation of income and depressing the price of the stockholders' stock as a general matter." See *Sweeney*, 2011 U.S. Dist. LEXIS 82872, at \*6. A stockholder sued to prevent this. The court, applying Nevada law, held the allegations of dilution concerned injury to the corporation only. *Id.* at \*5-6. Accordingly, the court concluded that plaintiff lacked standing to assert the claim directly. *Id.*

Notably, this is *not* a case where the merger caused the loss of the Turtle Beach stockholders' "unique personal property — his or her interest in a specific Corporation," thereby conferring standing to stockholders directly to assert any breach of fiduciary duty claims. See *Cohen*, 119 Nev. at 19, 62 P.3d at 732. Here, Turtle Beach stockholders remained Turtle Beach stockholders after the merger, holding exactly the same number of Turtle Beach shares as they held before the merger. Moreover, plaintiffs are wrong to suggest that their claims are direct because "the shareholders' majority voting interest in the pre-Merger standalone company

1 ceased to exist” after the merger. (Complaint in Intervention ¶ 7). The pre-merger Turtle Beach  
2 stockholders were not part of a control group entitled to a control premium. After the merger,  
3 the pre-merger Turtle Beach stockholders remain in the exact same position. Accordingly, the  
4 exception to the general rule recognized in *Cohen* where a target corporation’s stockholders are  
5 required to tender their shares to the acquirer as part of a merger does not apply in this case.

6 The rule that share value “dilution” claims generally must be brought derivatively is fun-  
7 damental and widely recognized. *See, e.g., In re J.P. Morgan Chase & Co. Shareholder Litig.*,  
8 906 A.2d 808, 817-18 (Del. 2005) (breach of fiduciary duty claim where board of directors  
9 allegedly caused corporation to issue more shares than needed to secure acquisition of merger  
10 target in stock-for-stock transaction must be brought derivatively). As the Delaware Supreme  
11 Court has explained, “[s]uch claims are not normally regarded as direct, because any dilution in  
12 value of the corporation’s stock is merely the unavoidable result (from an accounting standpoint)  
13 of the reduction in the value of the entire corporate entity, of which each share of equity  
14 represents an equal fraction.” *Feldman v. Cutaia*, 951 A.2d 727, 732 (Del. 2008) (quoting *Gen-  
15 tile v. Rosette*, 906 A.2d 91, 99 (Del. 2005)).

16 In *Feldman*, the plaintiff stockholder argued that the board’s failure to consider the  
17 validity of certain stock options it had granted to itself prior to approving a merger gave rise to a  
18 direct cause of action for breach of fiduciary duty. *Id.* at 732-33. As is the case here, the merger  
19 in *Feldman* involved a third-party merger — not an insider and/or controlling shareholder trans-  
20 action. *Id.* at 728. At the conclusion of the merger, the plaintiff in *Feldman* was cashed-out. *Id.*  
21 Plaintiff claimed that he received inadequate consideration from the merger because of stock  
22 options previously issued to three of the defendants. *Id.* The Delaware Supreme Court affirmed  
23 the dismissal of plaintiff’s direct claims, noting that the plaintiff’s breach of fiduciary duty claim  
24 in connection with the stock options was simply recasting his derivative causes of action accus-  
25 ing the board of “wrongful equity dilution . . . by issuing additional stock for inadequate consi-  
26 deration [thereby making] the complaining stockholder’s investment less valuable.” *Id.* at 732.  
27 Relying upon prior authorities, the Delaware Supreme Court concluded that “equity dilution does  
28 not generally constitute a direct harm, but, instead, [constitutes] a derivative one.” *Id.* at 734.

1       The court in *Feldman* distinguished the narrow exception to the general rule established  
2 in *Gentile*. In *Gentile*, the Delaware Supreme Court considered a claim by a minority stock-  
3 holder arising from an allegedly self-interested transaction where the CEO/controlling stock-  
4 holder forgave certain debt the corporation owed to him in exchange for being issued stock. See  
5 *Gentile*, 906 A.2d at 93. Plaintiffs argued that the value of the issued stock allegedly exceeded  
6 the value of the forgiven debt. *Id.* The defendants moved for summary judgment on grounds  
7 that the plaintiffs' claims were derivative in nature. *Id.* at 96. After the company merged with  
8 another corporation, the Chancery Court dismissed the plaintiffs' claim holding that the merger  
9 deprived them of standing to pursue derivative claims. *Id.* at 93. The Delaware Supreme Court,  
10 however, reversed and held that the plaintiffs' claims were both direct and derivative. *Id.* The  
11 court recognized a narrow exception to the rule that a dilution claim is purely derivative where  
12 "(1) a stockholder having majority or effective control causes the corporation to issue 'excessive'  
13 shares of stock in exchange for assets of the controlling shareholder that have lesser value; and  
14 (2) the exchange causes an increase in the percentage of outstanding shares owned by the con-  
15 trolling shareholder, and a corresponding decrease in the shares percentage owned by the public  
16 (minority) shareholders." *Id.* at 100. The direct harm to the minority stockholders resulted from  
17 a breach by the controlling stockholder of its fiduciary duty "not to cause the corporation to  
18 effect a transaction that would benefit the [controlling stockholder] at the expense of the minority  
19 stockholders." *Id.* at 103.

20       Subsequent decisions confirm that the exception to the rule set forth in *Gentile* should be  
21 construed and applied narrowly. For example, the Chancery Court in *Feldman v. Cutaia*, 956  
22 A.2d 644, 657 (Del. Ch. 2007), *aff'd*, 951 A.2d 727 (Del. 2008), rejected plaintiff's attempt to  
23 invoke the exception in *Gentile* to challenge directly a series of dilutive transactions that were  
24 not orchestrated by a controlling stockholder for its own benefit. The court explained:

25       *Gentile* and *Gatz* are predicated on the idea that transactions of this type result in  
26 an improper transfer of both economic value and voting power from the  
27 minority to the controlling stockholder. Thus, it is clear from those decisions  
28 that the Delaware Supreme Court intended to confine the scope of its rulings to  
only those situations where a controlling stockholder exists. Indeed, any other  
interpretation would swallow the general rule that equity dilution claims are  
solely derivative . . . .

1 *Id.*

2 In *Carsanaro v. Bloodhound Technologies, Inc.*, 65 A.3d 618, 628 (Del. Ch. 2013), the  
3 Delaware Court of Chancery considered a situation where a group of venture capitalists allegedly  
4 obtained control of a promising company and proceeded to finance the company through a series  
5 of self-interested and highly dilutive stock issuances. The court denied the defendants' motion to  
6 dismiss the complaint and held that the plaintiffs could state a direct claim for dilution because  
7 "the directors could be said to have expropriated value from the common stockholders in the  
8 manner contemplated by *Gentile*." *Id.* at 658, 665. The court's analysis of whether the claim fell  
9 within the *Gentile* exception focused on whether a majority of the board of the corporation issu-  
10 ing stock was independent and disinterested of the intended recipients:

11 In my view, the Delaware Supreme Court's decisions preserve stockholder  
12 standing to pursue individual challenges to self-interested stock issuances when  
13 the facts alleged support an actionable claim for breach of the duty of loyalty.  
14 Standing will exist if a controlling stockholder stood on both sides of the  
15 transaction. Standing will also exist if the board that effectuated the transaction  
16 lacked a disinterested and independent majority. *Standing will not exist if there  
is no reason to infer disloyal expropriation, such as when stock is issued to an  
unaffiliated third party, as part of an employee compensation plan, or when a  
majority of disinterested and independent directors approve the terms.*

16 *Id.* (emphasis added).

17 Here, plaintiffs premise their First Cause of Action entirely on an alleged injury in the  
18 form of a depreciation of the value of their Turtle Beach stock resulting from the dilutive effect  
19 of the issuance of additional shares of Turtle Beach stock to VTBH stockholders. (See Com-  
20 plaint in Intervention ¶¶ 2-3, 9, 46, 91-92, 98, 128). By operation of the general rule, plaintiffs'  
21 claim of breach of fiduciary duty against the Director Defendants must be brought derivatively,  
22 not directly.

23 Plaintiffs may attempt to shoehorn this case into the narrow exception described by  
24 *Gentile* (and clarified in *Carsanaro*) by alleging a litany of supposed conflicts of interest held by  
25 five of the six Director Defendants. (See Complaint in Intervention ¶¶ 22-34). As demonstrated  
26 below, none of plaintiffs' allegations gives "any reason to infer a disloyal expropriation" (*Car-*  
27 *sanaro*, 65 A.3d at 658) because the Director Defendants were disinterested and independent  
28 from VTBH.



1        Mr. Potashner. Plaintiffs allege that Mr. Potashner was conflicted because he sought to  
2 develop the medical application HyperSound technology through HHI, a Board-approved inde-  
3 pendent subsidiary of Turtle Beach. (Complaint in Intervention ¶¶ 23-26). Although it is true  
4 that under certain circumstances Mr. Potashner's HHI stock options may have become more  
5 valuable after the merger with VTBH, the Board and Mr. Potashner proactively addressed this  
6 potential conflict of interests *prior* to the vote on merger. If anything, the negotiations over the  
7 HHI stock options placed Mr. Potashner personally *adverse* to VTBH because he faced the loss  
8 of these stock options upon closing of the merger, contradicting plaintiffs' theory that Mr.  
9 Potashner sought to favor VTBH in the canvassing process. In any event, prior to the vote on the  
10 merger (and without providing any payment to Mr. Potashner), the Board and Mr. Potashner  
11 agreed that his HHI stock options would cancel upon the closing of the proposed merger with  
12 VTBH. (Complaint in Intervention ¶¶ 61-63). Accordingly, Mr. Potashner could not have been  
13 conflicted by the HHI stock options when he voted to approve the merger between Turtle Beach  
14 and VTBH.<sup>8</sup>

15        Plaintiffs also allege that Mr. Potashner was conflicted because he was slated to remain  
16 on the Board after the merger and that, as a result of the merger, he received certain contractual  
17 bonus payments to which he was entitled. (*Id.* ¶ 26). Courts recognize that merely remaining on  
18 a board after a change-in-control transaction is not a disabling conflict of interest. *See, e.g., In re*  
19 *Atlas Energy Res., LLC*, 2010 Del. Ch. LEXIS 216, at \*46-47 (Del. Ch. Oct. 28, 2010); *Krim v.*  
20 *ProNet, Inc.*, 744 A.2d 523, 528 n.16 (Del. Ch. 1999). Courts also recognize that where, as here,  
21 a director's change-in-control compensation is not dependent upon the identity of the merger  
22 partner, the prospect of such compensation does not create a disabling conflict of interest. *See,*  
23 *e.g., In re Pennaco Energy, Inc. S'holder Litig.*, 787 A.2d 691, 708-10 (Del. Ch. 2001). In fact,

24        <sup>8</sup> [REDACTED] (Complaint in Intervention ¶¶ 52-56).  
25 [REDACTED]

26 [REDACTED] (*Id.* ¶ 54).  
27 [REDACTED]

28 [REDACTED] (*Id.* ¶ 26 ([REDACTED])).



1 as a large stockholder of Turtle Beach (owning 5.8% of the outstanding stock in the pre-merger  
2 Turtle Beach), Mr. Potashner's interests were fully aligned with those of the stockholders at-  
3 large. See *Houseman v. Sagerman*, 2014 WL 1478511, at \*7 (Del. Ch. Apr. 16, 2014) (granting  
4 motion to dismiss post-merger damages claim and noting that "the [p]laintiffs have not attempted  
5 to suggest what could have caused these directors with substantial economic interests in the  
6 Company [and who approved the transaction] to utterly abandon their responsibilities to  
7 maximize value in selling the Company").

8 Mr. Norris. Plaintiffs allege that Mr. Norris was conflicted when he voted in favor of the  
9 merger because (i) five months before the vote on the merger agreement, [REDACTED]  
10 [REDACTED]  
11 [REDACTED]; (ii) Mr. Norris remained an employee of the post-merger Turtle Beach; and (iii) as a  
12 result of the merger, Mr. Norris would allegedly be able to "cash-out" his allegedly "illiquid"  
13 holdings of Turtle Beach stock. (Complaint in Intervention ¶ 27).

14 As a preliminary matter, [REDACTED]  
15 [REDACTED]  
16 [REDACTED] As the lead inventor behind  
17 HyperSound technology, Mr. Norris was the largest individual stockholder in the pre-merger  
18 Turtle Beach, owning 15.9% of the outstanding stock. (Proxy at 38). Mr. Norris's large holding  
19 of Turtle Beach stock aligned his interests with those of the Company's public stockholders. See  
20 *Houseman*, 2014 WL 1478511, at \*7. [REDACTED]  
21 [REDACTED]  
22 [REDACTED] (Complaint in Intervention ¶ 27; [REDACTED]  
23 [REDACTED]

24 plaintiffs fail to plead any facts showing that Mr. Norris acted disloyally or sought to expropriate  
25 value from Turtle Beach's public stockholders.<sup>9</sup> Moreover, contrary to plaintiffs' assertion that

26  
27 <sup>9</sup> While courts do not typically consider material beyond the pleadings in evaluating a motion to dismiss, a court  
28 may "consider certain materials — documents attached to the complaint, documents incorporated by reference in the  
complaint, or matters of judicial notice — without converting the motion to dismiss into a motion for summary  
judgment." *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). Nevada recognizes this rule. See *Brelant v.*  
*Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993) (citing to federal authority recognizing

1 Mr. Norris voted in favor of the merger to cash-out his illiquid holdings, as part of the merger  
2 agreement, Mr. Norris executed a voting agreement which prohibited him from selling or  
3 otherwise transferring their shares for at least six months following the merger. (Proxy at 79-80).  
4 Moreover, plaintiffs do not allege (because they cannot) that any contractual restrictions  
5 prevented Mr. Norris from selling his stock prior to the time when the Board began to review  
6 Turtle Beach's strategic alternatives.

7 Plaintiffs are also wrong to suggest that Mr. Norris post-merger employment at Turtle  
8 Beach rendered him conflicted. Prior to the merger, Mr. Norris was the President and Chief  
9 Scientist of Turtle Beach and served as a director on the Board. (Complaint in Intervention ¶ 15).  
10 As a result of the merger, Mr. Norris lost his officer and director status at Turtle Beach.<sup>10</sup>  
11 Although it is true that Mr. Norris entered into an employment agreement with the post-merger  
12 Turtle Beach, plaintiffs fail to allege any facts showing that Mr. Norris's post-merger  
13 employment at Turtle Beach was superior to his prior position as President and Chief Scientist at  
14 the Company. Nor do plaintiffs allege facts sufficient to support the inference that Mr. Norris's  
15 continued post-merger employment at Turtle Beach materially influenced his vote in favor of the  
16 merger with VTBH. For example, plaintiffs do not allege that Mr. Norris was about to lose his  
17 employment with Turtle Beach, and thought that the merger with VTBH would save his job.

18 Mr. Wolfe. Plaintiffs allege that Mr. Wolfe was conflicted regarding the merger because,  
19 over ten years before the vote on the merger, Mr. Wolfe worked with Mr. Potashner at Sonic-  
20 Blue, Inc. ("SonicBlue"), a technology company unrelated to Turtle Beach. (*Id.* ¶¶ 28-29). A  
21 director lacks independence when he is beholden to a controlling party or so under the  
22 controller's influence that his or her discretion is sterilized. *Orman v. Cullman*, 794 A.2d 5, 24  
23 (Del. Ch. 2002). Control may be found when there is "a direction of corporate conduct in such a  
24 way as to comport with the wishes or interests of the corporation (or persons) doing the con-  
25 trolling." *Id.* (citing *Aronson v. Lewis*, 473 A.2d 805, 816 (Del. 1984)).

26 \_\_\_\_\_ (continued)  
27 that a "court may consider document incorporated by reference into the complaint.")

28 <sup>10</sup> Plaintiffs allege erroneously that Mr. Norris retained his position at Turtle Beach as President and Chief Scientist  
post-merger. (Complaint in Intervention ¶ 27). In reality, Mr. Norris is not a director or officer of the post-merger  
Turtle Beach. (Proxy at 14 (listing the post-merger Turtle Beach officers and directors)).

1       The allegations of the Complaint in Intervention contradict the notion that Mr. Wolfe was  
2 beholden to Mr. Potashner. Plaintiffs allege that [REDACTED]  
3 [REDACTED]. (Com-  
4 plaint in Intervention ¶¶ 23-26, 52-63). Nevertheless, the Board appointed the supposedly  
5 “beholden” Mr. Wolfe to handle the negotiations regarding the cancellation of Mr. Potashner’s  
6 HHI stock options. (Findings of Facts and Conclusions of Law ¶ 11). Mr. Wolfe and the Board  
7 arrived at a solution that was *adverse* to Mr. Potashner’s alleged personal interests: the Board  
8 cancelled Mr. Potashner’s HHI stock options without giving him anything in return. (Complaint  
9 in Intervention ¶¶ 61-63).

10       The Delaware Court of Chancery’s analysis in *Beam v. Stewart*, 833 A.2d 961 (2003),  
11 *aff’d*, 845 A.2d 1040 (Del. 2004), illustrates why plaintiffs’ allegations of control are insufficient.  
12 In *Beam*, the shareholder plaintiff alleged a claim for breach of fiduciary duty against the board  
13 of directors of Martha Stewart Living Omnimedia, Inc. (“MSO”) alleging that MSO was harmed  
14 because the board failed to exercise oversight over Martha Stewart to ensure that she would “not  
15 conduct her personal, financial, and legal affairs in a manner that would harm the Company.”  
16 *Beam*, 833 A.2d at 970-71. In an attempt to plead that a demand on MSO’s board to pursue legal  
17 action against Ms. Stewart would be futile, the plaintiff argued that Ms. Stewart had the capacity  
18 to control the outside directors. *Id.* at 978. In particular, the plaintiff alleged that Ms. Stewart  
19 controlled the outside directors because she “controlled over 94% of the shareholder vote . . .  
20 [and] she can remove or replace any or all of the directors.” *Id.* The plaintiff also alleged that  
21 some of the outside directors had a longstanding close friendship with Ms. Stewart. *Id.* at 979-  
22 80. Despite Ms. Stewart’s actual control over the directors’ employment and Ms. Stewart’s  
23 alleged close friendship with some of the directors, the court concluded the outside directors were  
24 independent. *See id.* at 978-81.

25       The detailed, yet insufficient, allegations in *Beam* stand in stark contrast to plaintiffs’  
26 speculative and conclusory allegations against Mr. Wolfe here. The mere fact that Messrs. Wolfe  
27 and Potashner served as officers of SonicBlue in 2002 is not enough to show that Mr. Wolfe  
28



1 lacked independence from Mr. Potashner (let alone VTBH) when he voted in favor of the merger  
2 between Turtle Beach and VTBH.

3 Plaintiffs also allege that Mr. Wolfe was conflicted because he remained on the Board of  
4 the post-merger Turtle Beach. (Complaint in Intervention ¶ 29). As noted above, the mere fact  
5 that Mr. Wolfe was slated to remain on the Board of the post-merger Turtle Beach does not  
6 create a disabling conflict of interest. *See, e.g., In re Atlas Energy Res., LLC*, 2010 Del. Ch.  
7 LEXIS 216, at \*46-47; *Krim*, 744 A.2d at 528 n.16.

8 Drs. Kaplan and Putterman. Plaintiffs allege that Drs. Kaplan and Putterman were  
9 “interested” in the merger [REDACTED]

10 [REDACTED]  
11 [REDACTED] (Complaint in Intervention ¶¶ 30-33).<sup>11</sup>  
12 [REDACTED]  
13 [REDACTED]

14 [REDACTED] *See In re Gen. Motors (Hughes) S’holder*  
15 *Litig.*, 2005 WL 1089021 at \*8 (Del. Ch. May 4, 2005) (*citing In re GM Class H S’holders*  
16 *Litig.*, 734 A.2d 611, 617-18 (Del. Ch. 1999) (“[A]llegations of pecuniary self-interest must  
17 allow the Court to infer that the interest was of ‘a sufficiently material importance, in the context  
18 of the director’s economic circumstances, as to have made it improbable that the director could  
19 perform her fiduciary duties without being influenced by her overriding personal interest.’”)).

20 Regardless, [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]

25  
26 <sup>11</sup> Plaintiffs also allege that Dr. Putterman was “not independent” with respect to the merger vote because he had a  
27 consulting agreement with Turtle Beach under which he received in excess of the “\$120,000 compensation limit set  
28 forth in NASDAQ Marketplace Rule 5605(a)(2)(B).” (Complaint in Intervention ¶ 34). Importantly, however,  
plaintiffs do not plead any facts showing Dr. Putterman’s consulting agreement affected his ability to vote impar-  
tially on the merger with VTBH — which was more likely to lead to the termination of his consulting agreement  
with Turtle Beach rather than its continuation.

1 [REDACTED] (Complaint  
2 in Intervention ¶ 31).

3 Mr. Honoré. Plaintiffs allege nothing whatsoever to suggest that Mr. Honoré had any  
4 conflict of interest in connection with the VTBH merger.

5 \* \* \*

6 Plaintiffs do not allege that as part of the merger transaction the Director Defendants  
7 “expropriated” for themselves any value from the stockholders. To the contrary, plaintiffs con-  
8 cede that the merger was consummated with VTBH, an unaffiliated private company.  
9 (Complaint in Intervention ¶¶ 2-3, 21). Plaintiffs fail to plead that any of the Director Defen-  
10 dants were VTBH stockholders and thus stood “on both sides of the transaction.” Plaintiffs also  
11 fail to plead facts indicating that a majority of the Board was not disinterested in the merger or  
12 independent of VTBH, and thus was unable to exercise its business judgment to approve the  
13 merger (and the concomitant issuance of additional shares). Even if this Court were to import,  
14 which it has not, the narrow Delaware exception to the general Nevada rule that dilution claims  
15 are derivative only, plaintiffs would not be able to invoke that exception here because they fail to  
16 plead “any reason to infer a disloyal expropriation.” *Carsanaro*, 65 A.3d at 658. Accordingly,  
17 plaintiffs lack standing to pursue their breach of fiduciary duty claim.

18 **2. Plaintiffs Fail to Comply With Procedural Requirements For Pleading a**  
19 **Derivative Claim**

20 Because the First Cause of Action belongs to Turtle Beach, only Turtle Beach has the  
21 authority to assert this claim. NRS 78.120(1) (“[T]he board of directors has full control over the  
22 affairs of the corporation.”); *see also Shoen v. SAC Holding Corp.*, 122 Nev. 621, 632, 137 P.3d  
23 1171, 1179 (2006) (“In managing the corporation’s affairs, the board of directors may generally  
24 decide whether to take legal action on the corporation’s behalf.”). Only in certain circumstances  
25 when the corporation’s board of directors fails to appropriately act may an individual stockholder  
26 file a suit in equity to act on behalf of the corporation to enforce the corporation’s rights. *Shoen*,  
27 122 Nev. at 632-33, 137 P.3d at 1179. Specifically, a derivative action allows a stockholder to  
28 pursue claims on the corporation’s behalf. *Id.* “But because the power to manage the



1 corporation's affairs resides in the board of directors, a shareholder must, before filing suit, make  
2 a demand on the board . . . to obtain the action that the shareholder desires." *Id.* at 633,137 P.3d  
3 at 1179; *see also* NRCp 23.1 (authorizing derivative actions). The stockholder also must satisfy  
4 special pleading requirements: "[T]he complaint must be *verified by oath* and must . . . set forth  
5 *with particularity* the efforts of the plaintiff to secure from the board of directors . . . such action  
6 as the plaintiff desires, and the reasons for the plaintiff's failure to obtain such action or the  
7 reasons for not making such effort." NRS 41.520(2) (emphasis added).

8 Here, the Complaint in Intervention is not verified. But even if it were, plaintiffs allege  
9 no pre-suit demand made upon the board of directors to investigate any potential claims or to  
10 take "such action as the [plaintiffs] desire." Nor does it set forth the reasons for not making a  
11 demand. The Complaint in Intervention contains no allegations, much less allegations set forth  
12 "with particularity," supporting demand futility. Indeed, after the merger closed, the Director  
13 Defendants no longer make up a majority of the current Board.<sup>12</sup> Accordingly, plaintiffs would  
14 be unable to allege facts to support demand futility. Because plaintiffs do not attempt to sustain  
15 any of the procedural or pleading burdens imposed on them by NRCp 23.1 and NRS 41.520(2),  
16 they lack the authority to prosecute claims on behalf of Turtle Beach against the Director  
17 Defendants. The Court should dismiss the First Cause of Action.

18 **B. Plaintiffs Fail to Plead Facts Sufficient to Rebut the Business Judgment Rule**  
19 **Presumption, and Thus Fail to State a Claim for Breach of Fiduciary Duty**

20 The board of directors of a Nevada corporation "has full control over the affairs of the  
21 corporation." NRS 78.120(1). In exercising such control, directors must act in "good faith and  
22 with a view to the interests of the corporation." NRS 78.138(1). The requirement imposed by  
23 NRS 78.138(1) "imparts upon directors the duties of care and loyalty." *Shoen*, 122 Nev. at 632,  
24

25 <sup>12</sup> Generally speaking, when an amended derivative complaint is filed, the existence of a new independent board of  
26 directors is relevant to demand futility analysis. *See Braddock v. Zimmerman*, 906 A.2d 776, 786 (Del. 2006). In  
27 order to avoid having to plead demand futility as to the new independent board, the shareholder plaintiff must show  
28 that (i) the original complaint was well pleaded as a derivative action; (ii) the original complaint satisfied the legal  
test for demand excusal; and (iii) the amended complaint concerns the same transaction as the original complaint.  
*Id.* Here, plaintiffs cannot show elements (i) and (ii) because their earlier complaints (and the Complaint in  
Intervention) are not pleaded as derivative actions. Accordingly, plaintiffs will be unable to plead demand futility as  
to Turtle Beach's new majority independent Board.

1 137 P.3d at 1178-79. The duty of due care requires a director to act in good faith, in the reason-  
2 able belief that the action taken was in the best interest of the corporation, and on an informed  
3 basis. *Id.* In performing this duty, a director is “entitled to rely on information, opinions [and]  
4 reports” from, among others, “[o]ne or more directors, officers or employees of the corporation  
5 reasonably believed to be reliable and competent in the matters prepared or presented.” NRS  
6 78.138(2)(a).

7 The duty of loyalty generally addresses conflicts of interests in relation to the corpora-  
8 tion’s interest, and requires a director to maintain the best interests of the corporation, its stock-  
9 holders and certain stakeholders over the interests of others. *Id.*; *see* NRS 78.138(4) (directors  
10 are permitted to consider the interests of the corporation’s employees, suppliers, creditors and  
11 customers; the economy of the state or the nation; the interests of the community and of society;  
12 and the long-term and short-term interests of the corporation and its stockholders). In perform-  
13 ing this duty, directors “are *not* required to consider the effect of a proposed corporate action  
14 upon any particular group having an interest in the corporation as a dominant factor.” NRS  
15 78.138(5) (emphasis added). In other words, as a matter of statutory law, directors of a Nevada  
16 corporation are not required to elevate the short-term interests of stockholders (such as maximiz-  
17 ing immediate, short-term share value) ahead of any of the other interests set forth in NRS  
18 78.138(4).

19 “[I]n deciding upon matters of business,” directors of a Nevada corporation “are pre-  
20 sumed to act in good faith, on an informed basis and with a view to the interests of the corpora-  
21 tion.” NRS 78.138(3). This legal presumption is known as the business judgment rule. As this  
22 Court already has recognized, Nevada statutory law makes clear that directors “confronted with a  
23 change or potential change in control of the corporation” have (a) the normal duties of care and  
24 loyalty imposed by operation of NRS 78.138(1); (b) the benefit of the business judgment rule  
25 presumption established by NRS 78.138(3); and (c) the “prerogative to undertake and act upon  
26 consideration pursuant to subsections 2, 4 and 5 of NRS 78.138.” NRS 78.139(1). Accordingly,  
27 as a matter of controlling Nevada law, a change-in-control transaction (such as the merger here)  
28 does not trigger any enhanced duties on the part of directors of a Nevada corporation to maxi-

1 mize immediate short-term share value or otherwise place the short-term interests of stockholders  
2 ahead of any other rational business interests of the corporation.

3 Under Nevada law, “[a] director or officer is not individually liable to the corporation or  
4 its stockholders or creditors for any damages as a result of any act or failure to act in his or her  
5 capacity as a director or officer unless it is proven that: (a) The director’s or officer’s act or  
6 failure to act constituted a breach of his or her fiduciary duties as a director or officer; and (b)  
7 [t]he breach of those duties involved intentional misconduct, fraud or a knowing violation of  
8 law.” NRS 78.138(7). In other words, “[d]irectors and officers may be held liable [for damages  
9 to the corporation] only if their behavior was so egregious that it involved *both* a breach of the  
10 duty of loyalty *and* intentional misconduct, fraud or a knowing violation of law.” Michal Bar-  
11 zuza, *Market Segmentation: The Rise of Nevada as a Liability-Free Jurisdiction*, 98 Va. L. Rev.,  
12 935, 950 (2012) (emphasis original); *see also In re AMERCO Deriv. Litig.*, 252 P.3d 681, 701  
13 (2011).

14 Thus, to state a cause of action against the Director Defendants, plaintiffs must plead facts  
15 indicating that the Director Defendants were disloyal *and* engaged in intentional misconduct,  
16 fraud or a knowing violation of law in connection with the process leading up to the approval of  
17 the merger. Otherwise, the conduct of the Director Defendants (including their assessments of  
18 the fair value of the transaction and the process by which they conducted the merger) is protected  
19 from challenge by the business judgment rule. *See generally Cohen*, 119 Nev. at 11-12, 62 P.3d  
20 at 727-28; *AMERCO*, 252 P.3d at 701. As explained by the Nevada Supreme Court, the proper  
21 analysis on a motion to dismiss is to review the allegations as to *each* director and determine  
22 whether the plaintiffs have pled (1) a breach of the fiduciary duty of loyalty and (2) intentional  
23 misconduct, fraud or a knowing violation of law. *See AMERCO*, 252 P.3d at 701. If either of  
24 these elements is not satisfied as to any defendant, the Court must dismiss that defendant from  
25 the action.

26 Plaintiffs’ breach of fiduciary duty allegations here fall into two main categories: (1)  
27 allegations of conflicts of interest by five of six Director Defendants and (2) criticisms of the  
28 process leading to the merger with VTBH. As discussed above, plaintiffs’ allegations do not



1 raise any legally cognizable disabling conflicts of interest among any of the Director Defendants,  
2 let alone intentional breaches of the duty of loyalty. To the contrary, the Director Defendants'  
3 collective ownership of a significant amount of Turtle Beach securities fully aligned them with  
4 the interests of the Company's public stockholders. Plaintiffs allege nothing to support the  
5 notion that any of the Director Defendants had a motive to "undersell" the Company or otherwise  
6 not to act in good faith to pursue what they believed was the best course of action for the  
7 Company and its stockholders in the exercise of their business judgment.

8 In the absence of allegations supporting an inference that the Director Defendants had a  
9 motive to "undersell" the Company in bad faith, plaintiffs' criticisms of the Board's process lead-  
10 ing to the VTBH merger can point to nothing more than an alleged breach of the duty of due  
11 care. As a matter of Nevada law, however, in the absence of bad faith, a breach of the duty of  
12 due care (as opposed to an intentional breach of the duty of loyalty) fails to state a claim for  
13 damages. See NRS 78.138(7). Accordingly, even if plaintiffs' laundry list of criticisms of the  
14 Board's process were true, they still would not state a claim for breach of fiduciary duty against  
15 the Director Defendants under Nevada law.<sup>13</sup>

16 In any event, plaintiffs' criticisms of the Board's process are conclusory, facially inconse-  
17 quential, internally inconsistent and/or rest upon incorrect legal assumptions. For example,  
18 plaintiffs allege that [REDACTED]  
19 [REDACTED] (Complaint in  
20 Intervention ¶ 49). [REDACTED]

21 [REDACTED]" (*Id.* (emphasis added)). [REDACTED]  
22 [REDACTED]  
23 [REDACTED].

24 Plaintiffs allege that Mr. Potashner favored VTBH [REDACTED]  
25 [REDACTED]. (*Id.* ¶¶ 36-42). [REDACTED]  
26 [REDACTED]

27 <sup>13</sup> Even under Delaware law, allegations that a board should have run an even better sales process are insufficient to  
28 state a claim for breach of fiduciary duty. To state such a claim in connection with a merger, the plaintiff must  
allege facts that, if true, would show that the board "*knowingly and completely failed* to undertake a reasonable sales  
process." *Houseman*, 2014 WL 1478511, at \*7.

1 [REDACTED]  
2 [REDACTED]. (*Id.* ¶ 39). [REDACTED]

3 [REDACTED]. Furthermore, the document cited by plaintiffs for this point shows that Mr.  
4 Potashner acted precisely as would be expected from a disinterested fiduciary: [REDACTED]

5 [REDACTED]  
6 [REDACTED]. [REDACTED]  
7 [REDACTED] (cited in Complaint in Inter-  
8 vention ¶ 39)).

9 Plaintiffs accuse [REDACTED]. (Com-  
10 plaint in Intervention ¶¶ 43-47). [REDACTED]

11 [REDACTED]  
12 [REDACTED]. (*Id.* ¶ 44). Plaintiffs do not and cannot allege that Mr.  
13 Potashner had any legal duty to make such a facially inconsequential disclosure.

14 Plaintiffs then go on to mischaracterize a portion of [REDACTED]

15 [REDACTED]  
16 [REDACTED] (*Id.*) [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED] [REDACTED]  
21 [REDACTED] (cited in Complaint in Intervention  
22 ¶ 44)).

23 Plaintiffs allege that the go-shop period was a “sham.” (Complaint in Intervention ¶¶ 84-  
24 90). They quote an [REDACTED]  
25 [REDACTED]

26 [REDACTED]. (*Id.* ¶ 84). [REDACTED]  
27 [REDACTED]  
28



1 [REDACTED] (cited in Complaint in Intervention  
2 ¶ 84)).

3 Plaintiffs further allege that the Break-Up License, 30-day “go-shop” period and 5-day  
4 match rights were unduly coercive, that the merger agreement limited Turtle Beach’s licensing  
5 discussions and that Houlihan Lokey was conflicted and thus should have done more to solicit a  
6 higher bid during the “go-shop” process. (Complaint in Intervention ¶¶ 87-90). Plaintiffs’  
7 allegations regarding the Break-Up License and matching rights/go-shop process rest upon the  
8 false assumption that the Director Defendants owed a legal duty to auction the Company to the  
9 highest bidder for Turtle Beach shares. As explained above, Nevada law is clear that the Direc-  
10 tors did not have a legal duty to favor a transaction that might have better served the stock-  
11 holders’ short-term interests. Plaintiffs’ assertion that the Directors should have done so cannot,  
12 as a matter of Nevada law, be a breach of fiduciary duty.

13 Plaintiffs criticize the Board for not asking its financial advisors, Houlihan Lokey and  
14 Craig-Hallum, to conduct a valuation of the proposed Break-Up License. (*Id.* ¶¶ 66-67).  
15 Plaintiffs concede, however, that the Board appointed [REDACTED]  
16 [REDACTED]  
17 [REDACTED]. (*Id.* ¶¶ 68, 74,  
18 76).<sup>14</sup> Although the Director Defendants did not obtain a formal, written valuation report for the  
19 break-up license, they were entitled to rely upon the experience and expertise of Mr. Wolfe and  
20 other Board members to gain comfort that the terms of the license were fair to the Company con-  
21 sistent with their fiduciary duties. *See* NRS 78.138(1)(a). Plaintiffs do not and cannot allege that  
22 Nevada law required them to do even more to satisfy their fiduciary duties.

23 Plaintiffs allege that the Director Defendants [REDACTED]  
24 [REDACTED]

25  
26 <sup>14</sup> Plaintiffs allege that Mr. Wolfe was not involved in negotiations regarding the terms of the Break-Up License.  
27 (Complaint in Intervention ¶¶ 74-76). This allegation, of course, contradicts the sworn declaration of Mr. Wolfe,  
28 submitted in opposition to plaintiffs’ motion for a preliminary injunction, in which Mr. Wolfe testified that he took  
control of the negotiations of the terms of the Break-Up License, treated the negotiations like ordinary arms-length  
licensing negotiations, and the terms of the Break-Up License were consistent with Turtle Beach’s existing business  
strategy. (*See* Findings of Fact and Conclusions of Law ¶ 17).

1 [REDACTED]  
2 [REDACTED]. (Complaint in Intervention  
3 ¶¶ 92, 98). [REDACTED]

4 [REDACTED]. (*Id.* ¶ 94). [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED].

10 Finally, plaintiffs continue to allege that the consideration for the merger was inadequate.  
11 (*Id.* ¶¶ 101-109). Plaintiffs repeat the August 2013 speculation of a blogger on the Seeking  
12 Alpha website that the combined market capitalization of the post-merger Turtle Beach would be  
13 “somewhere between \$102.5 million and \$205 million,” which he believed undervalued the pre-  
14 merger Turtle Beach. (*Id.* ¶¶ 103-104). We now know that the blogger was way off base in his  
15 speculation: as of January 16, 2014 (the day after the merger closed) the combined company had  
16 a market capitalization of over \$602 million,<sup>15</sup> which is 588% higher than the low end of the  
17 estimate in the Seeking Alpha article. Plaintiffs do not and cannot point to any objective  
18 measure by which the “price” actually obtained through the five-month process here was so far  
19 from reasonable that it suggests bad faith or an intentional breach of the Director Defendants’  
20 duty of loyalty.

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26 <sup>15</sup> On January 16, 2014, the day after the merger between Turtle Beach and VTBI closed, Turtle Beach’s share price  
27 closed at \$16.05 per share. See <http://finance.yahoo.com/q/hp?s=HEAR&d=5&c=11&f=2014&g=d&a=10&b=15&c=2010&z=66&y=66>. At that time, Turtle Beach had 37,558,414 shares of common stock outstanding.  
28 (Turtle Beach Form 10-Q, filed with the SEC on February 10, 2014, attached to the Appendix as Exhibit “I”). By  
multiplying the closing share price by the number of outstanding shares, Turtle Beach’s market capitalization on  
January 16, 2014, was over \$602.81 million.

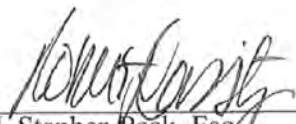
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IV.

CONCLUSION

The Director Defendants therefore respectfully request that the Court grant this Motion to Dismiss, with prejudice.

Dated this 20th day of June, 2014.

  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 20th day of June, 2014, a true and correct copy of the foregoing **THE DIRECTOR DEFENDANTS' MOTION TO DISMISS THE FIRST CAUSE OF ACTION IN PLAINTIFFS' CLASS ACTION COMPLAINT IN INTERVENTION** was served by the following method(s):

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22 CLARK COUNTY, NEVADA

23 In re PARAMETRIC SOUND  
24 CORPORATION SHAREHOLDERS'  
25 LITIGATION

) Lead Case No. A-13-686890-B

) Dept. No. XI

26 This Document Relates To:

) CLASS ACTION COMPLAINT IN  
) INTERVENTION

27 ALL ACTIONS.

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CLASS ACTION COMPLAINT IN INTERVENTION

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16	In re PARAMETRIC SOUND	)	Lead Case No. A-13-686890-B
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		)	
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	This Document Relates To:	)	INTERVENTION
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	ALL ACTIONS.	)	
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CLASS ACTION COMPLAINT IN INTERVENTION

1 INTRODUCTION

2 1. This is a stockholder class action brought by plaintiffs Raymond Boytim and Grant  
3 Oakes ("plaintiffs") on behalf of the holders of Parametric Sound Corporation ("Parametric" or the  
4 "Company") common stock against Parametric, its Board of Directors (the "Board" or the "Parametric  
5 Board"), its wholly owned subsidiary Paris Acquisition Corp. ("Merger Sub") and VTB Holdings, Inc.  
6 ("Turtle Beach").

7 2. As set forth in detail below, the members of the Board breached their fiduciary duties  
8 owed to the Company's shareholders, in connection with the unfair merger at an unfair price, first  
9 announced on August 5, 2013 and completed January 15, 2014 (the "Merger"). Parametric and Turtle  
10 Beach aided and abetted the Board in their breaches of fiduciary duty.

11 3. From March to April 2013, through multiple in-person meetings, Kenneth Potashner  
12 ("Potashner") hatched a plan with Turtle Beach whereby Turtle Beach would acquire Parametric and  
13 become Parametric's controlling shareholder, while Potashner would continue to pursue Parametric's  
14 health initiatives and obtain a seat on the post-Merger board. Potashner and Turtle Beach designed the  
15 deal as a Reverse Merger wherein the privately-held Turtle Beach merged into a Parametric subsidiary  
16 then into the publicly-traded Parametric itself. Upon close of the transaction, Parametric immediately  
17 issued millions of shares to Turtle Beach owners and insiders, the net effect being that Turtle Beach  
18 controlled approximately 80% of the post-merger Parametric entity as of January 15, 2014. Meanwhile,  
19 Parametric's shareholders, who previously owned a combined 100% of the Company, were reduced to a  
20 minority 20% interest in the post-merger Parametric.

21 4. The Merger was the byproduct of poor corporate governance and strikingly improper and  
22 selfish conduct by corporate fiduciaries. As set forth in detail below, five out of six Parametric Board  
23 members were conflicted when voting on the Merger. Indeed, in the hours leading up to, and in fact  
24 during, the final meeting where the Board voted on the Merger, multiple Board members were  
25 concerned primarily with their own personal payouts in order to "get even" with Potashner's golden  
26 parachute. Earlier in the Merger negotiations, with the Board's acquiescence, Potashner stalled  
27 discussions with other licensing partners and potential acquirers in order to appease Turtle Beach, even  
28 admitting that "My stock is taking a beating due to me deferring signing licensing deals." Similarly,

1 Potashner and the Board delayed positive and material Company announcements in an attempt to create  
2 a manipulated premium on the Merger. In just one of several such instances, Potashner wrote that he  
3 did so because Turtle Beach's "preference is that we don't defend the stock in that [the] premium on  
4 [the] deal will look better." Further, in response to Potashner's repeated threats, the Board permitted  
5 Potashner to demand a cash payment from Turtle Beach in exchange for an agreement not to sue  
6 Parametric.

7         5. In the end, the post-Merger-announcement go-shop process was a sham. Turtle Beach  
8 and Parametric agreed that "you're not looking for an alternative and neither are we," so the Board  
9 undermined the go-shop by referring incoming interest to Turtle Beach. For example, when Motorola  
10 Mobility indicated it was interested in purchasing Parametric's intellectual property, Potashner leaked  
11 the contact to Turtle Beach. Then Turtle Beach, rather than Parametric or its bankers, contacted  
12 Motorola and swatted away Motorola's overtures. These problems were further compounded by the  
13 coercive Break-Up License, which was set to give away Parametric's key intellectual property for well  
14 less than fair market value. Contrary to defendants' representations at the injunction stage, the Board  
15 did not rely on its financial advisors in considering the Break-Up License and Board member Andrew  
16 Wolfe ("Wolfe") had absolutely no impact on the negotiations. These facts are all set forth in detail  
17 below with cites to the evidentiary record obtained thus far.

18         6. The misconduct described herein resulted in an unfair and inadequate Merger valuation  
19 for Parametric's stockholders. In particular, the Parametric Board consciously disregarded a known  
20 component of Parametric's standalone value when it delayed and then excluded all potential revenues  
21 from the SIIG/ Optek Electronics soundbar from the projections it provided to Craig-Hallum Capital  
22 Group, LLC ("Craig Hallum"). In addition, the attractiveness of such a transaction to Parametric  
23 shareholders also depends upon the value of the larger-private company, but contrary to defendants'  
24 representations, Turtle Beach was a distressed company. Before the Merger, Turtle Beach's financial  
25 performance had rapidly deteriorated, having tripped its debt covenants with third-party lenders. It also  
26 appears that Turtle Beach's lenders forced the Merger in order for Turtle Beach to manipulate  
27 Parametric and access the public markets without incurring the expense of its own Initial Public  
28 Offering. As a result, the market reacted negatively to the Merger. The day before the Merger was

1 announced, Parametric's shares closed at \$17.69 per share and the first trading day thereafter,  
2 Parametric's stock closed at \$14.08 per share on August 6, representing an immediate 20% drop in  
3 shareholder value. Parametric shares dipped to post-announcement low of \$10.46 on December 11,  
4 2013 and ultimately stood at \$14.19 on January 15, 2014, the day the Merger closed.

5       7. This complaint alleges damages resulting from an improper Merger. Pursuant to the  
6 Merger and related misconduct described herein, plaintiffs and the class lost unique personal property.  
7 After the close of the Merger, the shareholders' majority voting interest in the pre-Merger standalone  
8 Company ceased to exist. Parametric is now considered a "controlled company" under NASDAQ rules,  
9 meaning that over 50% of the voting power is held by former Turtle Beach insiders. Minority  
10 ownership in a public company with a private controlling stockholder is subject to substantial discounts  
11 and carries few of the protections that should have otherwise been afforded to stockholders in  
12 Parametric's pre-Merger ownership structure. As a controlled company, Parametric is now opting out  
13 of NASDAQ rules that would otherwise require a majority of independent directors and independent  
14 compensation and governance committees. In addition, the Merger coercively deprived stockholders of  
15 a free and fair opportunity to vote on the Merger without severe repercussion for a "no" vote.

16       8. Through coercion and misinformation, defendants obtained a majority vote of woefully  
17 uninformed Parametric shareholders on December 27, 2013. Shareholders were coerced into voting for  
18 the Merger as a result of a Break-Up License that was set to cripple the Company in the event of a "no"  
19 vote. Further, shareholders were uninformed as a result of a misleading Definitive Proxy Statement  
20 Pursuant to Section 14(a) of the Securities Exchange Act of 1934 (the "Proxy"), filed with the SEC on  
21 December 3, 2013. The Board also amended Parametric's bylaws on August 2, 2013 to cancel  
22 Parametric shareholders' then-existing right to seek appraisal in connection with the Merger under  
23 Nevada law.

24       9. The Board acted disloyally and in bad faith throughout the improper Merger process.  
25 Under well-established Nevada law, plaintiffs and the shareholder class are entitled to monetary  
26 damages including the difference between the Merger valuation and the fair value of their shares.



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1        19. Defendant James L. Honore ("Honore") was a member of Parametric's Board. He was  
2 appointed a director in March 2012.

3        20. The defendants named above in ¶¶14-19 are sometimes collectively referred to herein as  
4 the "Individual Defendants."

5        21. Defendant Turtle Beach was a company that designed and marketed audio peripherals  
6 for video game, personal computer, and mobile platforms. It was headquartered in Valhalla, New York.  
7 It was majority owned by the Stripes Group, a growth equity fund based in New York City, and was a  
8 brand of Voyetra Turtle Beach, Inc.

9        **THE MERGER WAS NOT APPROVED BY AN INDEPENDENT, DISINTERESTED**  
10        **MAJORITY OF DIRECTORS – FIVE OF ITS SIX MEMBERS WERE CONFLICTED**

11        22. The Merger was not approved by a majority of disinterested and independent directors.  
12 At the time of the Board's merger vote on August 2, 2013, the Board had six members. Five of those  
13 six individuals were conflicted and/or acted in self-interest when voting on the Merger. Those conflicts  
14 are broken down as follows.

15        23. **Kenneth Potashner.** Potashner was conflicted and interested in the Merger in light of  
16 his position as the Company's top executive and his personal plans to transition to a role overseeing  
17 Parametric's hearing-related initiatives. At the time Potashner began negotiations and at the time he  
18 voted on the Merger, Potashner believed that the Merger would offer a better vehicle for his continued  
19 management of Parametric's hearing-related initiatives. Upon Potashner's first conversation with Stark  
20 in March 2013, Potashner stated that he could see the opportunity to take Parametric private, "break it  
21 into three companies (ip, health, digital signage), and then let each determine its path to future  
22 liquidity."<sup>1</sup> ("Health" referred to Potashner's role in HyperSound Health, Inc. ("HHI").) Potashner saw  
23 great personal "liquidity" in HHI, later admitting that "I believe over time the hhi component will be  
24 worth a billion."<sup>2</sup> In fact, at a December 13, 2013 board meeting, Potashner "outlined the longer-term  
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27        <sup>1</sup> PAMT0039492.

28        <sup>2</sup> PAMT004036.

1 plans for him to transition more time to HHI” and that, as a result, Parametric itself would need a new  
2 CEO.<sup>3</sup>

3 24. Potashner confided in a colleague that “my general attitude is to solve most HHI topics  
4 post DA [Definitive Merger Agreement] in that I don’t want to create barriers to moving forward.”<sup>4</sup> As  
5 Board member Norris recognized:

6 Since John [Todd] and Ken [Potashner] are threatening now, why should we think  
7 they’ll be easier after the deal? Juergen [Stark] is asking for a lawsuit if he buys that.  
8 John and Ken will force TB [Turtle Beach] to let them run HHI or sue TB That’s the  
9 next shoe that’ll drop. I guarantee it. I don’t think they connected that dot.<sup>5</sup>

10 25. Potashner was so determined to protect his own interests that he engaged in an egregious  
11 pattern of threats and misrepresentations to the Parametric Board throughout the Merger negotiations.  
12 Potashner repeatedly misrepresented and concealed information to the rest of the Parametric Board,  
13 defied the Board’s orders not to discuss certain issues with Turtle Beach on several occasions,  
14 threatened to displace the entire Board if they did not cave to his personal compensation demands, and  
15 threatened to sue the Board if they did not pay one of Potashner and one of Potashner’s colleagues  
16 \$250,000 in cash. That colleague, an individual named John Todd (“Todd”), has been found liable to  
17 the SEC in a unanimous jury verdict for securities fraud. In exchange, the Board required Potashner  
18 and Todd to sign a release of their rights to sue Parametric. In sum, Potashner’s repeated threats,  
19 misrepresentations, concealments, and outright lies to the rest of the Board are not the hallmark of a  
20 disinterested, independent director.

21 26. Potashner also negotiated for himself a continued seat on Parametric’s Board after the  
22 Merger, providing him with further input into his future role with the Company and preferred focus on  
23 Parametric’s hearing-related endeavors (whether or not through a formal HHI subsidiary). Even though  
24 Turtle Beach’s lenders forced it to dissolve HHI as an entity post-Merger, Parametric’s hearing  
25 initiatives are proceeding full speed ahead, just as Potashner had contemplated. On February 19, 2014,  
26 Parametric announced that it received FDA clearance for the marketing of the HyperSound® Audio

27 <sup>3</sup> PAMT0000006-07; PAMT0000062.

28 <sup>4</sup> PAMT004026.

<sup>5</sup> PAMT0033904.

1 System as a hearing improvement device.<sup>6</sup> In addition, Potashner received golden parachute  
2 compensation of a total of \$2,807,738 in the Merger, which further motivated him to complete the deal  
3 rather than step down as CEO when the Company eventually found a replacement.

4 27. **Elwood “Woody” Norris.** Norris was also conflicted as a result of his vying for  
5 employment in the post-Merger entity, resulting financial interest in completing the Acquisition, and  
6 related susceptibility to Potashner’s threats. Potashner recognized these conflicts and pounced,  
7 threatening Norris that he would personally lose millions if Norris did not go along with the planned  
8 Merger. On March 29, 2013, as Potashner was working out a deal with Stark, Potashner emailed Norris  
9 privately to state that the Merger was in doubt and that “If the bod [Board of Directors] costs us this  
10 deal I will look for them all to resign or I will resign. *The Bod is on the verge of losing you at least*  
11 *\$10m personally.*”<sup>7</sup> The deal’s \$10 million financial windfall to Norris left him susceptible to  
12 Potashner’s threats and existed in direct contrast to the impact on Parametric’s public shareholders  
13 generally, who have all lost significantly. Moreover, Norris is retaining his position at Parametric as  
14 President & Chief Scientist post-Merger, according to Parametric’s investor presentations regarding the  
15 post-Merger entity.<sup>8</sup> Norris was aware of this incentive when he voted on the Merger – by July 1, 2013,  
16 Potashner stated that “Woody Norris to have an employment contract with ‘Newco’” post-Merger was a  
17 term of the then-current Merger Agreement.<sup>9</sup> As a result of the Merger, Norris was able to cash out his  
18 extensive but illiquid stockholdings but also keeps his executive position post-Merger.

19 28. **Andrew Wolfe.** Wolfe was beholden to Potashner in light of their prior relationship in  
20 threatening boards for personal compensation and Potashner’s continued improper incentivizing of Wolfe  
21 to do Potashner’s bidding. As described in further detail below, Potashner and Wolfe served as CEO  
22 and Chief Technology Officer (“CTO”), respectively, of SonicBlue, Inc. (“SonicBlue”). Potashner  
23 promoted Wolfe to CTO and Senior Vice President of Business Development then procured

24 <sup>6</sup> See [http://www.sec.gov/Archives/edgar/data/1493761/000119312514058174/](http://www.sec.gov/Archives/edgar/data/1493761/000119312514058174/d678798dex991.htm)  
25 [d678798dex991.htm](http://www.sec.gov/Archives/edgar/data/1493761/000119312514058174/d678798dex991.htm).

26 <sup>7</sup> PAMT0033560.

27 <sup>8</sup> See [http://www.parametricsound.com/pdf/Parametric Turtle Beach IR Presentation12-10-13.pdf](http://www.parametricsound.com/pdf/Parametric%20Turtle%20Beach%20IR%20Presentation12-10-13.pdf).

28 <sup>9</sup> PAMT0061388.

1 company-issued loans for himself and Wolfe to purchase 654,717 and 171,179 shares of a SonicBlue  
2 subsidiary. When SonicBlue's board later voted to convert their own loans (but not Potashner's and  
3 Wolfe's) to non-recourse, Potashner publically demanded the board pay up or resign. Potashner then  
4 sued his own board. As a result, SonicBlue agreed to pay Wolfe a ten-month salary when SonicBlue  
5 terminated Wolfe in October 2002.

6 29. Wolfe was in Potashner's debt and Potashner continued this pattern by personally luring  
7 Wolfe to the Parametric board in February 2012. When Potashner began angling for a post-Merger  
8 Board seat with Turtle Beach, Potashner pushed for two candidates – himself and Wolfe. On July 1,  
9 2013, Potashner emailed Stark, "Have you settled on the 7 vs 9 man bod config yet? If it is 7 I  
10 anticipate I will be the choice if it is 9 I will also recommend we add Andy Wolfe to the BOD."<sup>10</sup> Two  
11 days later, Potashner again emailed Stark to state that Wolfe "will be my recommendation for the 2ND  
12 BOD seat should PAMT go to 2."<sup>11</sup> Wolfe currently remains on the Parametric Board post-Merger. In  
13 light of their mutual history of bad faith threats and incentives, Wolfe was in a position to comport with  
14 the wishes and interest of Potashner, rather than Parametric stockholders generally.

15 30. **Dr. Robert Kaplan.** Despite not participating in a single discussion with Turtle Beach,  
16 Kaplan voted on the Merger while vying for a personal payment to "get even" with Potashner. The day  
17 of the most significant vote in Parametric's corporate existence, Kaplan spent his time emailing about  
18 the personal bonus he felt the independent directors should receive. The Parametric Board voted on the  
19 Merger at a 4 p.m. meeting on August 2, 2013. One hour before the meeting, Kaplan wrote to propose  
20 the following resolution:

21 "\$50,000 is to be paid to each of the independent directors as compensation for their  
22 continuing efforts and activity in Corporate Development. This money is to be paid  
23 immediately." I mentioned this thought to you previously and have discussed it with  
24 Seth [Putterman]. Since it should not be tied to the merger, I have described it  
25 differently.<sup>12</sup>

26 <sup>10</sup> PAMT0060337.

27 <sup>11</sup> PAMT0033267.

28 <sup>12</sup> PAMT0072324.



1           31.     At the meeting an hour later, a few minutes before the Board actually voted on the  
2 Merger, the Board agreed to table the final decision on their bonuses: "The Board next discussed  
3 potential cash bonuses for the directors based on their increased level of work related to the Merger  
4 Agreement and other contemporaneous matters, but deferred any decision related thereto."<sup>13</sup> After  
5 voting on the Merger, the Board adjourned at 5:00 p.m.<sup>14</sup> Kaplan, however, still believed he would  
6 receive a cash bonus. At 7:35 p.m. that evening PDT (8:35 MDT), Kaplan continued in his personal  
7 quest for a Merger-related bonus, upping the ante:

8           I used 50K as a starting point. . . . My real suggestion is to have an average of all the  
9 executive bonuses and that figure is what the IDs [Independent Directors] should get,  
10 Ken has granted himself rather large bonuses. *This will get even with him, not that I  
want to get even, I really just want equality.*<sup>15</sup>

11           32.     Kaplan demonstrated the same money-hungry approach earlier in the Merger negotiation  
12 process as well. On July 7, 2013, Kaplan emailed Barnes and Norris stating: "I think the BoD should  
13 pass a resolution giving some kind of healthy golden parachutes to all the BoD members upon their  
14 termination, e.g., stock options (VTB is issuing an unlimited amount of options pre merger)."<sup>16</sup> These  
15 payments were material to Kaplan personally and, as demonstrated above, he was operating under the  
16 belief that he would receive the Merger-related bonus at the time he voted on the Merger. In fact, even  
17 in the Proxy released on December 3, 2013, defendants kept the option open, stating that "in connection  
18 with the negotiation and execution of the merger agreement, Parametric may elect to pay a fee to each  
19 of the non-employee members of the Parametric Board, commensurate to the incremental time devoted  
20 by them apart from normal board of director service in 2013, related to review and analysis of strategic  
21 transactions and related matters."<sup>17</sup>

22           33.     **Seth Putterman.** Like Kaplan, Putterman also voted on the Merger with the expectation  
23 of receiving a cash bonus. At 4:50 p.m. on August 2, 2013, *during the very meeting while Putterman*

24 <sup>13</sup> PAMT0000189.

25 <sup>14</sup> *Id.*

26 <sup>15</sup> PAMT0072292.

27 <sup>16</sup> PAMT0033288.

28 <sup>17</sup> Proxy at 75.

1 *and the rest of the Board were voting on the Merger*, Putterman agreed with Kaplan's bonus request in  
2 general, but offered a different rationale: "Can the bonus be made contingent on successfully raising  
3 the 5-15MS that we seek prior to closing but that we need in any event!"<sup>18</sup> Putterman knew his  
4 proposed rationale had no merit – Putterman was not involved in obtaining the financing and conducted  
5 no actual work in doing so. Putterman did not contact any financing sources, did not engage in an  
6 independent discussion with the bankers, and did not perform any analysis on the financing documents.  
7 The notion that Putterman would be entitled to a bonus for a financing he had nothing to do with was as  
8 absurd as it was self-interested.

9       34. Moreover, Putterman held a consulting agreement with Parametric and was forced to  
10 resign before the Merger's close. On November 12, 2013, Parametric was forced to notify the  
11 NASDAQ Stock Market ("NASDAQ") that Putterman was not actually "independent" under NASDAQ  
12 rules. The Board had earlier failed to disclose that it gave a consulting contract to Putterman and  
13 granted him options vesting over three years valued at \$162,775 and, according to Parametric, the  
14 payments "exceeded the \$120,000 compensation limit set forth in NASDAQ Marketplace Rule  
15 5605(a)(2)(B) and therefore precludes Dr. Putterman from being deemed independent according to this  
16 rule."<sup>19</sup> This meant that Parametric had been operating in violation of NASDAQ rules throughout the  
17 Merger process because half of its six-member Board was not independent – Potashner, Norris and  
18 Putterman. Consequently, on November 21, 2013, three months after voting on the Merger, Putterman  
19 tendered his resignation from the Parametric Board. According to Parametric, "[i]n connection with Dr.  
20 Putterman's resignation, the Parametric Board reduced its size from six members to five members. The  
21 five-member Parametric Board now has three independent directors, representing a majority."<sup>20</sup> As of  
22 August 2, 2013, however, there was no independent majority to vote on the Merger in light of the  
23 conflicts described above.

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25 <sup>18</sup> PAMT0072324.

26 <sup>19</sup> See [http://www.sec.gov/Archives/edgar/data/1493761/000101968713004399/  
parametric\\_8k.htm](http://www.sec.gov/Archives/edgar/data/1493761/000101968713004399/parametric_8k.htm).

27 <sup>20</sup> See [http://www.sec.gov/Archives/edgar/data/1493761/000101968713004581/pamt\\_8k-  
28 112113.htm](http://www.sec.gov/Archives/edgar/data/1493761/000101968713004581/pamt_8k-112113.htm).

1 **THE BOARD ENGAGED IN DISLOYAL AND BAD FAITH CONDUCT IN CONNECTION**  
2 **WITH THE MERGER**

3 35. In addition to their conflicts of interest, the Board engaged in multiple instances of bad  
4 faith conduct in breach of their fiduciary duties. All of the bad faith acts described below were directly  
5 related to the Merger and its process, impacted negotiations with Turtle Beach, and harmed Parametric  
6 shareholders.

7 **Potashner and the Board Favored Turtle Beach By Stalling**  
8 **Other Potential Acquirers and Licensing Discussions**

9 36. In order to roll out the red carpet for his preferred merger partner, Turtle Beach,  
10 Potashner – and by their acquiescence, the rest of the Board – stalled discussions with other licensing  
11 partners and potential acquirers as soon as Turtle Beach arrived on the scene. On April 7, 2013,  
12 Potashner wrote: “On the positive side I would be able to announce the license and buy additional time  
13 both with the parties that we have stalled . . . I have several things going on including defining a  
14 financing and the pressures of the license activities we put on hold.”<sup>21</sup> Turtle Beach CEO Juergen Stark  
15 (“Stark”) agreed, responding to Potashner that “In fact I assumed you would absolutely not want to  
16 announce any license deal since you’ve stalled all the other parties.”<sup>22</sup> Potashner explained to Turtle  
17 Beach at the same time that that “we are not in shop the company mode.”<sup>23</sup>

18 37. Potashner admitted to the harm caused by his stalling efforts. On April 9, 2013,  
19 Potashner wrote to his CFO and Turtle Beach: “*My stock is taking a beating due to me deferring*  
20 *signing licensing deals. Any ideas?*”<sup>24</sup>

21 38. Potashner also wrote in the same timeframe referencing the SIIG/Optek license: “I may  
22 need help on how to slow down one of the discussions we have underway. The time urgency is that  
23 they are targeting a gaming accessory product for this Xmas and thinking in the 200-300k unit range.”<sup>25</sup>

24 <sup>21</sup> PAMT0039816-21.

25 <sup>22</sup> *Id.*

26 <sup>23</sup> PAMT0039756.

27 <sup>24</sup> PAMT0039840.

28 <sup>25</sup> PAMT0039368.

1 Potashner further explained to Stark on May 31, 2013 that, "I have a SIIG license ready to be signed in  
2 the event we don't do the deal plus an announcement on our completion of Disneyland McD plus an  
3 important new patent filing on glass implementation for displays. I am waiting to see if we are a go  
4 before making decisions."<sup>26</sup>

5 39. Contrary to defendants' representations at the injunction stage, there were capable buyers  
6 interested in purchasing Parametric. On April 12, 2013, Potashner described a conversation with an  
7 Amazon executive as follows: "*He declared Amazon is interested in buying the company . . . . He*  
8 *said they are familiar with our technology and believe it will be highly relevant to future products*  
9 *Amazon plans on launching.*"<sup>27</sup>

10 40. The rest of the Parametric Board finally noticed Potashner's stalling efforts three months  
11 later and, on July 6, 2013, Kaplan wrote:

12 Personally I think this has gone on far too long. We need to get on with the business of  
13 running the business. What has been going on since this VTB [Turtle Beach] idea  
14 surfaced? Where are our licensing agreements, where are sales (incremental  
15 improvement due to David), Epsilon, Amazon, The Chinese, McDonalds, The Bear  
16 stores (still in beta mode), Sony, Samsung, etc.? AND WE HAVE SURE BURNED  
17 THROUGH A HELL OF A LOT OF MONEY. . . . It is time for the BOD to step up  
18 and take charge! We have been far too passive in the past. It is good to have a strong  
19 leader but not a dictator.<sup>28</sup>

20 41. While Kaplan's email demonstrated a brief glimpse of spirit, the next day, July 7, 2013,  
21 Kaplan embarked on his above-described personal quest for an additional bonus in connection with the  
22 Merger. After realizing the potential for personal benefit, Kaplan fell in line and never again questioned  
23 Potashner's unreasonable and improper hindrance of Company progress in order to effectuate the  
24 Merger.

25 42. Potashner's behavior did not improve. Before the Board even voted on the Merger,  
26 Potashner gave Turtle Beach "veto rights on all licenses" thus precluding the Company from entering  
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26 PAMT0040576.

27 PAMT0039865.

28 PAMT0061365.

1 into a superior licensing agreement before handing control to Turtle Beach.<sup>29</sup> This conduct had a  
2 directly negative impact on the Merger valuation.

3 **Potashner Delayed Positive Company Announcements**  
4 **Throughout Merger Negotiations in an Attempt to**  
5 **Create a Manipulated Premium on the Merger, Mislead**  
6 **Parametric Stockholders, and Appease Turtle Beach**

7 43. Potashner also concocted a scheme to fix Parametric's stock price and prevent it from  
8 rising even further above the proposed Merger consideration. In early June 2013, Potashner and Barnes  
9 were deciding what to include in a press-release entitled, "Parametric Sound Corporation Provides  
10 Update on Strategic Alternatives."<sup>30</sup> In addition to a vague background about strategic alternatives, the  
11 draft internal press release touted Parametric's execution on its operational plan through the recent  
12 completion of a Hypersound technology installation at McDonald's Disneyland restaurant, which  
13 represented a significant development in the Company's efforts to commercialize and implement its  
14 audio technology.<sup>31</sup> That paragraph existed in the internal draft as follows:

15 The Company's commercial business focuses on the ability to target communication and  
16 create sound zones in various retail sites. *The Company completed the scheduled*  
17 *installation of HyperSound technology at a McDonald's Disneyland restaurant last*  
18 *week and continues to grow its commercial product pipeline.*<sup>32</sup>

19 44. Parametric's stock had been declining between May 28 and June 1, 2013, and this  
20 language would have defended the stock and signaled to the markets that the Company was executing  
21 on its prior promises of commercialization.

22 45. But on May 31, 2013, Potashner asked Turtle Beach, through Stark, if Parametric should  
23 include the language in the press release. Potashner first did so by email: "I have . . . an announcement  
24 on our completion of Disneyland McD . . . I am waiting to see if we are a go before making  
25 decisions."<sup>33</sup> Potashner followed up with a phone call to Stark on June 2, 2013 and informed Barnes of

26 <sup>29</sup> PAMT0060525.

27 <sup>30</sup> See [http://www.parametricsound.com/press\\_release\\_details.php?id=82](http://www.parametricsound.com/press_release_details.php?id=82).

28 <sup>31</sup> PAMT0040591; PAMT0040592.

<sup>32</sup> PAMT0040591; PAMT0040592.

<sup>33</sup> PAMT0040576.



1 the result of that conversation: *"Just spoke to Juergen [Stark] and his preference (and Ken [Fox's])*  
2 *preference is that we don't defend the stock in that premium on deal will look better."*<sup>34</sup> Potashner  
3 complied with Turtle Beach's wishes and deleted the McDonald's Disneyland reference from the final  
4 press release.<sup>35</sup> As a result, Parametric's stock price continued to decline.

5 46. This instance amounted to just one example of Potashner's malfeasance in manipulating  
6 the stockholder vote through misinformation and suppression of Parametric's pre-Merger stock price.  
7 Put differently, Potashner knew that the 80%/20% ratio undervalued Parametric, but attempted to keep  
8 Parametric's pre-Merger-Announcement stock price low so that the stock would not plummet an even  
9 higher percentage when the Merger was announced. For example:

- 10 • May 17, 2013: Potashner outlined for Stark his plan for a post-Merger-Announcement  
11 press strategy: *"I have also been stockpiling announcements that we can roll out to*  
12 *solidify price if there is weakness.* You and I can strategize on whether we want to lay  
13 low or get more aggressive in terms of supporting the stock."<sup>36</sup>
- 14 • May 17, 2013: Potashner to Barnes: "Important we don't show any concerns that stock  
15 might drop. I know how to keep it up using hhi info."<sup>37</sup>
- 16 • May 17, 2013: John Todd to Potashner: *"As I understand they [Turtle Beach] believe*  
17 *the stock will drop once we announce and that this will make the deal less favorable*  
18 *than an IPO. . . . If they [Turtle Beach] have announcements and we have*  
19 *announcements [to release after the Merger announcement] we can not only hold*  
20 *price but significantly improve price."*<sup>38</sup>

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24 <sup>34</sup> PAMT0040595.

25 <sup>35</sup> See [http://www.parametricsound.com/press\\_release\\_details.php?id=82](http://www.parametricsound.com/press_release_details.php?id=82).

26 <sup>36</sup> PAMT0040368.

27 <sup>37</sup> *Id.*

28 <sup>38</sup> PAMT0040339.

- 1       •     May 29, 2013: Potashner took Todd's advice and relayed to Turtle Beach: "I expressed  
2             to Karen that we collectively should not be overly concerned by the stock run up in that  
3             we have choices in terms of where we assign valuation. We have had recent successes  
4             on the commercial and health side and it would be easy to assign substantial values  
5             there. *We also have now accumulated unannounced wins that I plan on delaying*  
6             *announcements on for as long as possible.*"<sup>39</sup>  
7  
8       •     June 9, 2013: Potashner again confirms to Barnes and Todd that he has been delaying  
9             positive announcements: "If I announced deal dead but TB licensee, SIIG license, glass  
10            patent, HHI progress I can hold the stock value and we have a successful secondary."<sup>40</sup>  
11

12       47.     Potashner's disloyal manipulation attempted to make a terrible deal look slightly better  
13     and, in bad faith, the rest of the Board did nothing to stop him.

14     **The Board Conducted the Merger Sale Process in Bad Faith**

15       48.     Potashner met with Turtle Beach's CEO throughout March and April 2013 and ironed  
16     out an early deal on the Merger. Potashner told Stark he was "pleased and energized by your  
17     declaration this morning that you would like to pursue either an acquisition or merger" and Potashner  
18     went on to explain that Parametric was "not in shop the company mode and it would not be my intent in  
19     any form or fashion to attempt to leverage your interest into an auction."<sup>41</sup> Meanwhile, in the words of  
20     Norris, Potashner "blackmailed" his fellow Board members if they did not go along with the deal. On  
21     March 30, 2013, regarding his just-commenced negotiations with Turtle Beach, Potashner states in an  
22     email to fellow Board member Norris: "If the bod costs us this deal I will look for them all to resign or  
23     I will resign." Norris forwards to other board members, writing: "Is this blackmail or what[?]"<sup>42</sup>  
24

25     <sup>39</sup>     PAMT0039617.

26     <sup>40</sup>     PAMT0040658.

27     <sup>41</sup>     PAMT0039756-57.

28     <sup>42</sup>     PAMT0033560-62.

1           49. Potashner commandeered Barnes and a financial advisor, Houlihan Lokey Capital, Inc.  
2 ("Houlihan Lokey") and conducted multiple due diligence meetings with Turtle Beach. On April 19,  
3 2013, Potashner came to an agreement on the final terms of a merger with Turtle Beach without  
4 consulting the Board or conducting any real diligence or audit of Turtle Beach's finances. In a meeting  
5 at Turtle Beach's San Diego office, attended by Potashner, Barnes and Todd, Turtle Beach presented a  
6 draft term sheet for a reverse merger (the same format ultimately agreed-upon) whereby Turtle Beach's  
7 holders would own 80.88% of the Company and Parametric would own 19.12% of the Company on a  
8 fully-diluted basis. By April 19, 2013, Stark and Potashner agreed on a term sheet that contemplated a  
9 reverse merger at a 78%/22% split, meaning that Parametric stockholders would receive 22% of the  
10 combined company after the merger.<sup>43</sup> Rather than take the proposal back to the Parametric Board and  
11 engage in further analysis, at the very same meeting, Potashner reached an oral agreement that  
12 Parametric shareholders would only receive 22% of Parametric after the acquisition, while Turtle Beach  
13 shareholders would receive 78% of the Company.<sup>44</sup> Potashner brought the rest of the Board into the  
14 loop at a meeting the next day. In that single telephonic meeting, lasting less than an hour-and-a-half,  
15 the Board agreed to an exclusivity agreement with Turtle Beach.

16           50. After this initial agreement, there was no improvement in the final bid from Turtle  
17 Beach; it actually got worse. By the time the Board signed the Merger Agreement, Parametric  
18 shareholders' post-merger interest had dropped from 22% down to just 20%.

19           51. Over the next two months, the Board continued to allow Potashner and Houlihan Lokey  
20 to negotiate the terms of the Merger and conduct a limited sale process with no real oversight,  
21 supervision or guidance. For example, from April 25, 2013 to June 25, 2013, the Board held just two  
22 telephone conferences, one lasting a mere 28 minutes and the other lasting just 45 minutes. The rest of  
23 the Board requested a copy of the draft-Merger Agreement for the first time on July 1, 2013. A quick  
24 review of Potashner's draft caused Parametric director Robert Kaplan to state that "*I needed this as I*  
25  
26

27 <sup>43</sup> PAMT0049600-07; PAMT0006093-103.

28 <sup>44</sup> *Id.*

1 *feel we have been left in the dark and have had misrepresentations presented to us.*"<sup>45</sup> Despite that  
2 accusation, the Board did nothing to attempt to change the terms of the Break-Up License or exchange  
3 ratio that Potashner had already negotiated with Turtle Beach.

4 52. The Board finally held a substantive discussion on July 1, 2013, and in an email just  
5 before the meeting, Potashner claimed that he had made "good progress" on his HHI discussions with  
6 Turtle Beach and explained that there were "no outstanding issues" related thereto.<sup>46</sup> This update was  
7 false. In reality, Turtle Beach had demanded that Potashner either cancel his HHI stock options or  
8 dissolve HHI altogether and when Potashner refused, Turtle Beach threatened to walk. Turtle Beach  
9 confirmed to another Parametric Board member the same day that "[t]here was no agreement or,  
10 notwithstanding suggestions to the contrary in reports from Mr. Potashner, near-agreement with [Turtle  
11 Beach] regarding resolution of issues regarding HHI or the HHI stock options."<sup>47</sup>

12 53. In light of Potashner's obvious HHI-related conflict, on July 1, 2013, the Board gave its  
13 first of several instructions to Potashner that he immediately cease all discussions with Turtle Beach  
14 regarding HHI.<sup>48</sup> Further breaching his fiduciary duties, Potashner repeatedly and openly flouted this  
15 instruction and the Board did nothing to stop him. And rather than appoint disinterested negotiators, the  
16 Board asked Putterman and Barnes to pick up the HHI-related negotiations with Turtle Beach. Both  
17 had conflicts. Putterman had a consulting agreement with Parametric and Barnes was one of HHI's two  
18 officers, along with Potashner.

19 54. Turtle Beach demanded that the Board cancel the HHI options and dissolve the  
20 subsidiary. There was of course no rational business purpose for continuing to maintain HHI as a  
21 separate entity. In fact, the Company paid for all of HHI's expenses, HHI had secured no separate  
22 financing, and HHI activities had been performed using the Company's resources and Potashner and  
23

24  
25 <sup>45</sup> PAMT0061426.

26 <sup>46</sup> PAMT0000160.

27 <sup>47</sup> *Id.*

28 <sup>48</sup> *Id.*

1 Todd had performed their HHI-related activities pursuant to their employment agreement and  
2 consulting agreement with the Company, respectively.

3 55. The Board proposed a dissolution of HHI to Potashner at a July 5, 2013 Parametric  
4 Board meeting. Potashner did not take the news well, reacting in a manner unbecoming any corporate  
5 fiduciary. The Board's minutes state:

6 Further, if the Board were to dissolve HHI, Mr. Potashner stated that he would call a  
7 special meeting of stockholders for the purpose of replacing the Board. Mr. Potashner  
8 informed the Board that he could obtain proxies for 40% of the Company's outstanding  
9 shares to effectuate such a replacement.<sup>49</sup>

10 56. In other words, if the Board put Parametric shareholders' interests above Potashner's,  
11 then Potashner would see to it that the entire Board was replaced. Potashner's outrageous conduct  
12 caused the Company's founder and President, Norris, to threaten to disassociate from the Company,  
13 indicating that "Potashner's proposed actions would be unacceptable to him and that he would not  
14 continue with the Company if the Board were replaced."<sup>50</sup> In fear of their jobs, the Board immediately  
15 caved and asked Potashner how many Parametric shares he would accept in exchange for his HHI stock  
16 options.<sup>51</sup> The Board then asked the conflicted Barnes to prepare a valuation of HHI in light of the new  
17 information from Turtle Beach. The Board again instructed Potashner to discontinue discussions with  
18 Turtle Beach regarding HHI.<sup>52</sup>

19 57. Despite Potashner's open threat to the Board at the July 5 meeting, statement that he  
20 controls 40% of Parametric's shareholders, Norris's related threat to resign, and the Board's admission  
21 of a conflict, the Board approved a misleading description of that meeting in the Proxy. The entire  
22 description of that tumultuous meeting states:

23 On July 5, 2013, a meeting of the Parametric Board was held with its financial and legal  
24 advisors. At the meeting, the Parametric Board discussed the requirement of Turtle  
25 Beach's lenders that Parametric raise capital prior to the closing of the merger as a  
26 condition of delivering such lender's consent thereto.

27 <sup>49</sup> PAMT0000164.

28 <sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*



1           58. Potashner confided to Wolfe and outlined their litigation plan against the rest of the  
2 Board as follows: "All other choices we face (unilaterally cutting options, limiting license, firing  
3 people, etc) will result in very aggressive claims against individuals and the company that I am  
4 convinced will not only blow up the [Turtle Beach] deal but result in substantial corporate and personal  
5 legal exposures."<sup>53</sup>

6           59. Two days after being instructed again not to do so, on July 7, Potashner continued to  
7 defy the Board and held an in-person meeting with Turtle Beach's CEO to reiterate that HHI should not  
8 be dissolved. Yet again, on July 17 and July 19, Potashner and Barnes met with Turtle Beach to discuss  
9 HHI-related issues. The Board held a conference call on July 20, where Potashner's behavior actually  
10 worsened. On that call, Potashner made a number of additional demands regarding HHI on his own  
11 behalf and on Todd's behalf:

12           A cash payment of \$250,000 in exchange for Todd's agreement not to sue the Board if  
13 Todd's HHI options were canceled;

14           A continuation of Todd's consulting agreements with HHI for another fifteen months so  
15 that he would continue to receive additional cash and options; and

16           Potashner also demanded that he, Barnes, and Todd receive a cash payment "equal to  
17 nine-months salary."<sup>54</sup>

18           60. Potashner then threatened that if his demands were not met, "Todd would sue the  
19 Company and the [Turtle Beach] merger transaction could be derailed in such a case."<sup>55</sup> Potashner also  
20 gave the board a "threat" to resign if the board attempted to cancel his HHI options "prior to or on  
21 signing the DA [Definitive Agreement]."<sup>56</sup> Neither Potashner nor Todd had any legal right to demand  
22 any payment in exchange for cancellation of their HHI options. Their HHI 2013 Equity Incentive Plan  
23 provided that in the event of a "change in control" or other merger by Parametric, the merger agreement

24  
25 <sup>53</sup> PAMT0033294.

26 <sup>54</sup> PAMT0000171.

27 <sup>55</sup> *Id.*

28 <sup>56</sup> *Id.*

1 may provide for all HHI options "cancellation with or without consideration, in all cases without the  
2 consent of the Participant."<sup>57</sup>

3 61. The Board again caved and, without any analysis or careful consideration, immediately  
4 decided to allow Potashner, Wolfe, and Barnes to call Turtle Beach and convey Potashner's demands.  
5 The demands included that Turtle Beach would not shut down or dismantle HHI for six months  
6 following the close of a merger *and* to pay cash payments to Potashner and Todd at 100% of 2013  
7 bonus levels (whether they were entitled to such amounts or not) *and* not to restructure the HHI license  
8 agreement. In return, Potashner and Todd would agree not to sue Parametric, despite their lack of legal  
9 rights under the HHI 2013 Equity Incentive Plan.<sup>58</sup>

10 62. Wolfe, Potashner and Barnes jointly made these demands to Turtle Beach on July 21 and  
11 Potashner surreptitiously called Turtle Beach's CEO later in the day to follow up on the same issues.  
12 Potashner's conversations caused Turtle Beach to state that it would not move forward with any merger  
13 unless all outstanding HHI options were canceled.

14 63. On a July 23 Parametric Board conference call, Wolfe reported on negotiations with  
15 Todd and the Board agreed to pay Todd the full \$250,000 in exchange for an agreement not to sue  
16 Parametric.<sup>59</sup> The Board also indicating a willingness to pay Potashner and Barnes their full 2013 cash  
17 bonuses (whether entitled or not) but deferred the final approval to a Compensation Committee  
18 meeting. On August 2, as the Board finalized its intent to enter into the Merger Agreement, the  
19 "Compensation Committee" met Potashner's cash demands.<sup>60</sup> It agreed to pay his 2013 bonus  
20 payments at the maximum target rate of \$210,000.<sup>61</sup> The Board also agreed to pay Norris and Barnes  
21 their maximum target rates for 2013 of \$81,000.<sup>62</sup>

22  
23 <sup>57</sup> PAMT0000024.

24 <sup>58</sup> PAMT0000171.

25 <sup>59</sup> PAMT0000175.

26 <sup>60</sup> PAMT0000189.

27 <sup>61</sup> *Id.*

28 <sup>62</sup> *Id.*

1     **AS A RESULT OF THE BOARD'S BAD FAITH CONDUCT, SHAREHOLDERS WERE**  
2     **COERCED INTO VOTING IN FAVOR OF THE MERGER BY A PANAPOLY OF**  
3     **UNREASONABLE DEAL PROTECTION PROVISIONS**

4         64.     The Merger Agreement contains a series of deal protection provisions, the most  
5     draconian of which is the "Break-Up License" provision that precluded other bidders and would  
6     penalize Parametric stockholders if they were to vote against the Merger. If Parametric shareholders  
7     had voted against the Merger or Parametric otherwise accepted a better offer, Parametric would have  
8     been forced to provide Turtle Beach with: (1) an *exclusive* (even as to Parametric) worldwide license to  
9     Parametric's HyperSound technology in the "console audio products field" (*i.e.*, gaming applications);  
10    and (2) a *non-exclusive* worldwide license to Parametric's HyperSound technology in the "computer  
11    audio products field." Parametric would have received a 6% royalty on net sales of such products, and  
12    30% from any sublicenses that Turtle Beach negotiates. The term of the Break-Up License was a  
13    minimum of ten years, with a minimum royalty payment of \$2.0 million during the first five years and  
14    \$1.0 million for each year after that (for a total minimum royalty payment of \$7.0 million). If these  
15    minimum royalty payments were not made, Parametric had the right to convert the gaming license to  
16    non-exclusive, but Parametric could not otherwise seek recourse from Turtle Beach for any unpaid  
17    "minimum" royalties. The Merger Agreement also contained a highly unusual combination of a five  
18    business day match-right provision and a 30-day "go-shop" provision.

19         65.     As a result of the combination of these provisions, Parametric's former stockholders  
20    were coerced into voting in favor of the Merger. Had the stockholders voted against the Merger, the  
21    former Parametric stockholders would have been crippled by the one-sided Break-Up License.

22     **The Parametric Board Did Not Rely on its Advisors in**  
23     **Approving the Terms of the Break-Up License**

24         66.     Neither Potashner nor the rest of the Board asked their financial advisors, Holihan Lokey  
25    and Craig-Hallum, to conduct a valuation of the Break-Up License or otherwise analyze its  
26    appropriateness as a deal term.<sup>63</sup> The following excerpt of deposition testimony from Craig-Hallum's

27     <sup>63</sup>     Deposition Transcript of David Wambeke ("Wambeke Tr.") at 157-58; Deposition Transcript of  
28    Kenneth Potashner ("Potashner Tr.") at 78.

1 "person most knowledgeable" regarding the Merger demonstrates the complete lack of involvement of  
2 the Board's advisors regarding the Break-Up License:

3 Q. ... There's also a Breakup License Agreement in the Merger Agreement. Are you  
4 aware of that?

5 A. Yes.

6 Q. Okay. Are you familiar with the terms of that agreement?

7 A. Not specifically, no.

8 Q. Okay. I mean, do you know the scope of IP being licensed in that agreement --  
contemplated to be licensed in that agreement?

9 A. No.

10 Q. Do you have any understanding as to the percentage of royalties contemplated in  
11 that Breakup License Agreement?

12 A. No.

13 Q. Do you have any understanding as to the minimum payments contemplated in that  
Breakup License Agreement?

14 A. No.

15 Q. Okay. Did Craig-Hallum provide any opinion, formal or informal, as to the  
16 appropriateness of that breakup license provision in the Merger Agreement?

17 A. No.

18 Q. Okay. Did Craig-Hallum provide any opinion, formal or informal, as to whether that  
Breakup License Agreement was made at terms that would be considered fair market  
19 value?

20 A. No.

21 Q. Did anyone from Parametric ask your opinion about that provision in any way, shape  
or form?

22 A. No.

23 Q. Did you discuss that particular provision with anyone at Parametric?

24 A. No.<sup>64</sup>

25 67. Potashner and the Board did nothing to value the asset lockup, even though the  
26 Company's CFO recognized that "[a]n exclusive license has a major impact on valuation, etc. so that

27 \_\_\_\_\_  
28 <sup>64</sup> Wambeke Tr. at 157-58.

1 needs evaluation.”<sup>65</sup> In addition, Potashner did not take any real effort to consider the value of the  
2 Break-Up License to Turtle Beach, or any other potential buyer.<sup>66</sup>

3 **Potashner Agreed to the Break-Up License Terms,  
4 Wolfe Had Zero Material Impact on the Negotiations**

5 68. Potashner negotiated the substantive terms of the Break-Up License without Board  
6 involvement. Wolfe, contrary to defendants’ misleading presentation to the Court at the preliminary  
7 injunction stage, did not “take control” of anything.

8 69. The Break-Up License was first conceived during initial discussions between Potashner  
9 and Turtle Beach CEO Juergen Stark (“Stark”) in March 2013.<sup>67</sup> The discussions quickly began to  
10 focus on a purchase of Parametric by Turtle Beach, with Stark requesting the Break-Up License “as an  
11 ‘insurance’ policy to make sure we end up with at least a license in our field of use.”<sup>68</sup> Stark sent  
12 Potashner a draft licensing agreement on April 6, 2013, at 10:36 AM, which included IP for “Gaming  
13 and Computing field of use” with up-front payments and a royalty stream of 5% back to Parametric.<sup>69</sup>

14 70. Potashner continued to negotiate the Break-Up License terms directly with Stark without  
15 Board involvement. By April 19, 2013, Stark and Potashner agreed on a term sheet that noted the  
16 Break-Up License “still needs discussion,” but specifically described an exclusive license for gaming,  
17 exclusive license for “PC audio,” and the same 6% royalty rate and 30% re-license royalty rate that  
18 appeared in the final Merger Agreement.<sup>70</sup>

19 71. Potashner wrote Stark on April 24, 2013, that:

20 I am getting substantial push back from counsel on the exclusive license of the element  
21 of the break up fee.

22 The issue is there is a BOD record that we were not interested in segregating exclusive  
23 gaming from consumer in that several of the potential licensees had presence in both

23 <sup>65</sup> Potashner Depo. Ex. 4.

24 <sup>66</sup> Potashner Tr. at 67-68.

25 <sup>67</sup> Potashner Depo. Ex. 3.

26 <sup>68</sup> Potashner Depo. Ex. 5.

27 <sup>69</sup> PAMT0039748-49.

28 <sup>70</sup> PAMT0049600-07.



1 sectors (ie Sony). We have BOD record that states we would want near full market cap  
2 exclusive full consumer/gaming.

3 Therefore the issuance of an exclusive gaming as breakup is deemed well in excess of  
4 traditional break up fees and thus BOD issue.<sup>71</sup>

5 72. Nonetheless, Potashner conjectured he could gain support for “nonexc gaming and non  
6 exc consumer with buyback right on consumer for \$5M” although that would also be seen as  
7 “expensive (usually breakup fee 2-3% of transaction value).”<sup>72</sup> When Stark balked, Potashner quickly  
8 acquiesced: “I dont like going backwards on negotiation so I want to take a run at getting support of the  
9 exclusivity on gaming at BOD tomorrow. Whatever data you can provide will be appreciated.”<sup>73</sup>

10 73. Potashner was able to overcome resistance from his counsel and convinced the rest of the  
11 Board to agree to the Break-Up License. During a Board telephone conference the next day, April 25,  
12 2013, Potashner requested and received approval for a Break-Up License that would include: (1)  
13 exclusive license for gaming; and (2) a “license (perhaps exclusive)” for PC applications with \$5  
14 million repurchase right.<sup>74</sup> The Board also specifically ceded further negotiations on the matter to  
15 management, and apparently also ratified Potashner’s previous actions.<sup>75</sup>

16 74. Over the next two months, the Board continued to allow Potashner to negotiate the terms  
17 of the Merger yet again with little supervision or involvement. *During this time, Wolfe was not*  
18 *involved in a single discussion with Turtle Beach regarding the Break-Up License.* Potashner – not  
19 Wolfe – finalized the key terms of the Break-Up License. On June 19, 2013, Potashner approved the  
20 key terms of the Break-Up License for inclusion into the Merger Agreement, including:

- 21 • an exclusive license to use the technology for any Console Audio Products;
- 22 • a non-exclusive license to use the technology for any Computer Audio Products;
- 23 • the definition for Console Audio Products;

24 <sup>71</sup> PAMT0040125.

25 <sup>72</sup> *Id.*

26 <sup>73</sup> PAMT0070745-48.

27 <sup>74</sup> PAMT00000122.

28 <sup>75</sup> *Id.*

- 1 • the definition for Computer Audio Products;
- 2 • the initial 5-year term of each license;
- 3 • Turtle Beach's ability to extend the license if it pays \$2 million in annual revenue; and
- 4 • the 6% royalty rates.<sup>76</sup>

5 75. After that point, the attorneys for both sides simply refined definitions ("Console Audio  
6 Products Field," "Computer Audio Products Field," and "Products") and worked out non-substantive  
7 issues, while Wolfe sat back as a pedestrian cc'd on emails. Indeed, the core terms finalized by  
8 Potashner on June 19, 2013 remained in the drafts circulated throughout July 2013 and survived into the  
9 final Merger Agreement and Break-Up License.<sup>77</sup> Wolfe only participated in a single conference call  
10 with Turtle Beach and counsel on July 24, 2013, which had already been pre-negotiated by Stark and  
11 Potashner "before we engage the lawyers tomorrow."<sup>78</sup>

12 76. *Wolfe never ceded control to Potashner on Break-Up License negotiations.* As late as  
13 July 31, 2013, two days before the Board voted on the Merger, Stark attempted to re-trade on the prior  
14 6% license deal and Potashner responded directly before even informing Wolfe.<sup>79</sup> Potashner stated, "I  
15 am not open to creating a precedence for a dual royalty structure. The other license deals I have  
16 negotiated are consistent at 6% or higher. I have not signed them but SIIG is an example."<sup>80</sup> The  
17 attorneys continued to scriben the final Break-Up License and on August 1, 2013, Parametric counsel  
18 John Hentrich forwarded a near final version to Barnes and Potashner at 5:25 p.m. but left Wolfe out of  
19 the approval discussion until later that evening when Potashner provided his final comments.<sup>81</sup>  
20 Throughout negotiations, Wolfe did not offer a single substantive comment on any Break-Up License  
21 term.

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22 <sup>76</sup> PAMT0040772.

23 <sup>77</sup> See, e.g., PAMT0065129; PAMT0065220; PAMT0069830.

24 <sup>78</sup> PAMT0057667.

25 <sup>79</sup> PAMT0057413.

26 <sup>80</sup> *Id.*

27 <sup>81</sup> See, e.g., PAMT0066252; PAMT0066296; PAMT0066298.

1 **The Parametric Board Did Not Negotiate the Break-Up License at Fair Market Value**

2 77. Parametric licensed “crown jewel” intellectual property at less than fair market value and  
3 its terms did not reflect Parametric’s existing licensing strategy. Parametric’s IP commanded higher  
4 royalties in other licensing agreements. *In fact, all of Parametric’s then-existing licensing agreements*  
5 *existed at a 15% royalty rate, much higher than the paltry 6% rate contained in the Break-Up*  
6 *License.* For example, Parametric signed a deal with Epsilon to license HyperSound’s automotive  
7 applications for \$1 million for development of a new device and a *15% royalty* for revenue over \$6.67  
8 million.<sup>82</sup> Parametric also licensed HyperSound’s health care application to its subsidiary HHI for 15%  
9 of revenue.<sup>83</sup> Given that the latter was an interested transaction with Potashner, the Board must concede  
10 that the 15% royalty was purportedly made on fair terms.

11 78. Potashner confirmed these facts when he admitted to Stark that the Break-Up License’s  
12 royalty, then at 5.5%, was “well below the other deals I am working on within the licensing realm.”<sup>84</sup>  
13 Potashner also stated: *“I am also willing to have a break up consideration that results in you*  
14 *achieving a gaming license at well below market value. . . .* As a demonstration of my conviction  
15 towards closing a deal I will offer up gaming in the context of a breakup fee.”<sup>85</sup>

16 79. The Break-Up License sacrificed a key component to Parametric’s business model.  
17 Parametric’s March 2013 investor presentation identified its “Licensing strategy” as a key “Capital  
18 Light Business Model” that could generate “Recurring Revenue Streams.”<sup>86</sup> The same presentation  
19 touted Parametric’s “Strong IP Portfolio” and explained that “Strong IP supports licensing for volume  
20 markets.”<sup>87</sup> Similarly, Parametric’s 2012 investor presentation touts “Gaming Consoles/Computers” as  
21

22 <sup>82</sup> PAMT0007031.

23 <sup>83</sup> Parametric Sound Corp., Quarterly Report (Form 10-Q), at 14 (May 2, 2013), *available at*:  
24 [http://www.sec.gov/Archives/edgar/data/1493761/000101968713001603/pamt\\_10q-033113.htm](http://www.sec.gov/Archives/edgar/data/1493761/000101968713001603/pamt_10q-033113.htm).

25 <sup>84</sup> PAMT0039816.

26 <sup>85</sup> *Id.*; PAMT0039756.

27 <sup>86</sup> PAMT0000313-35.

28 <sup>87</sup> *Id.* at 319.

1 part of its 2012-2013 "IP Strategy – Partner and License" and planned a lucrative entry into a \$68  
2 billion annual video gaming market.<sup>88</sup>

3 **The Break-Up License Was Impermissibly Coercive**  
4 **and Impaired the Shareholder Franchise**

5 80. After analyzing the deal protection provisions in the Merger Agreement, Professor  
6 Guhan Subramanian, the H. Douglas Weaver Professor of Business Law at the Harvard Business  
7 School and the Joseph Flom Professor of Law and Business at the Harvard Law School and the first  
8 person in the history of Harvard University to hold tenured appointments at both HBS and HLS,  
9 concluded as follows:

10 I reach the following conclusions in my assessment of the Turtle Beach-Parametric deal:

11 (1) Asset lockups such as the Break-Up Fee License Agreement are extremely unusual  
12 in the modern M&A marketplace;

13 (2) The particular combination of the 5-Day Match Right and the 30-Day Go-Shop  
14 Provision is also not typical among comparable transactions;

15 (3) *The Break-Up Fee License Agreement is a very potent asset lockup, because it*  
16 *represents a large fraction of the overall value of Parametric, other bidders cannot*  
17 *keep the HyperSound technology out of Turtle Beach's hands by bidding, and the*  
18 *evidence suggests that it was granted at less than fair market value;*

19 (4) The combination of the 5-Day Match Right and the 30-Day Go Shop Provision puts  
20 additional "furniture against the door," creating no clear pathway for success for a third-  
21 party bidder; and

22 (5) While the Break-Up Fee License Agreement and the Match Right/Go-Shop  
23 Provision each have a deterrent effect on their own, *it is my opinion that the combined*  
24 *effect of these three provisions is highly likely to deter other bidders.* This conclusion  
25 becomes stronger to the extent that the Break-Up Fee License Agreement was struck at  
26 less than fair market value.<sup>89</sup>

27 81. The Break-Up License coerced Parametric's shareholders to vote in favor of the Merger.  
28 If shareholders would have voted against the Merger, the Break-Up License would have effectuated and  
Parametric would have been crippled, having just licensed away its crucial intellectual property. This  
acted as a coercive penalty for a "no" vote. Professor Subramanian explained this scenario as follows:

26 <sup>88</sup> Parametric Sound Corp., Investor Presentation (Form 8-K), at 5-7 (Aug. 29, 2012), available at:  
27 [http://www.sec.gov/Archives/edgar/data/1493761/000101968712003041/parametric\\_8k-ex9901.htm](http://www.sec.gov/Archives/edgar/data/1493761/000101968712003041/parametric_8k-ex9901.htm).

28 <sup>89</sup> Subramanian Decl., ¶14.

1 [A]n asset lockup struck at less than fair market value reduces the stand-alone value of  
2 the company in the event of a negative shareholder vote, because the acquirer will  
3 exercise the option and siphon value out of the company. Foreseeing this, shareholders  
4 may vote for the deal even if they believe it is below fair value.<sup>90</sup>

5 82. Professor Subramanian also concluded that even if struck at fair market value, the Break-  
6 Up License would preclude alternate bidders:

7 In the present matter, the Break-Up Fee License Agreement has the effect of eliminating  
8 any value a third-party bidder might perceive in keeping the HyperSound technology  
9 out of Turtle Beach's hands. In contrast, if Turtle Beach completes the acquisition it can  
10 keep the HyperSound technology out of competitors' hands. Therefore, the asset lockup  
11 has the effect of putting a "wedge" between Turtle Beach's willingness to pay and other  
12 bidders' willingness to pay for Parametric.<sup>91</sup>

13 83. Because the Break-Up License was not struck at fair market value here, it involves an  
14 increasingly negative impact to Parametric shareholders:

15 Of course, if the Break-Up Fee License Agreement is struck at less than fair market  
16 value, then bidder deterrence becomes even more severe. Value would be siphoned out  
17 of the company at the moment Turtle Beach exercised its options under the Break-Up  
18 Fee License Agreement. Foreseeing this siphoning, other bidders would be deterred  
19 from bidding, or would bid less for Parametric. Bidder deterrence would increase  
20 beyond the baseline level documented above.<sup>92</sup>

#### 21 **The Go-Shop Was a Sham**

22 84. While the Merger Agreement contained a provision allowing Parametric to contact  
23 parties within 30 days of the signing of the Merger Agreement, the "go-shop" was a sham. Indeed,  
24 when Parametric's attorneys drafted a paragraph about the go-shop paragraph in the Merger's press  
25 release, Stark echoed all defendants' distaste for a higher offer: "*You're not looking for an alternative*  
26 *and neither are we.*"<sup>93</sup> Contrary to defendants' earlier representations, Houlihan Lokey did not contact  
27 all potential acquirers during the go-shop. Rather, Potashner referred at least one serious contact  
28 directly to Stark and Turtle Beach. Stark would then swat them away in order to usurp the interest  
post-Merger.

90 Subramanian Decl., ¶57.

91 *Id.*, ¶33.

92 *Id.*, ¶46.

93 PAMT0056829.



1           85.     On August 12, 2013, one week into the go-shop period, Motorola Mobility's Senior Vice  
2 President and General Counsel, Scott Offer, contacted Parametric's Vice President of Sales and  
3 Marketing, Todd Savitt, to "re-engage" Parametric if Parametric "so desire[d]" because "*Motorola*  
4 *wanted to own [Parametric's] IP.*"<sup>94</sup> Even though Motorola was on the "Go Shop Buyers List,"  
5 Potashner and Houlihan Lokey did not directly respond regarding this monumental indication of  
6 interest, rather, Potashner inappropriately leaked the contact to Stark and Turtle Beach.<sup>95</sup> After being  
7 forwarded the email, Stark responded that evening: "What exactly is the situation with Motorola?  
8 Please give me complete update."<sup>96</sup> Potashner emailed back hours later: "I wont connect with him till  
9 you and I speak first."<sup>97</sup> Then on August 15, 2013, according to Parametric's "Recap of Licensing/Co-  
10 Development Engagements with Motorola Mobility," Stark spoke directly with Motorola but "[Scott]  
11 Offer responds that Motorola is not interested at this time."<sup>98</sup> Motorola's interest in owning  
12 Parametric's IP lapsed based on the highly improper combination of Potashner's leak and Stark's direct  
13 contact with Motorola during the go-shop.

14           86.     In addition, Potashner contacted Amazon during the go-shop and attempted to block it  
15 from making an offer for Parametric or its gaming licenses (despite Amazon's above-referenced interest  
16 in purchasing Parametric as a whole). Amazon personnel wrote to Potashner on August 13, 2013,  
17 "Ken, Quick question, in our conversation you mentioned that you would be able to license the PAMT  
18 technology, custom build and install units per certain specs. How is the ability to do this affected by the  
19 fact that Turtle Beach will likely own 80% of the company? Will they agree to do this?"<sup>99</sup> Potashner  
20 responded regarding Stark/Turtle beach: "*Yes. He and I are aligned . . . I need to assure you aren't*  
21  
22

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23 <sup>94</sup> PAMT0060361.

24 <sup>95</sup> PAMT0038812.

25 <sup>96</sup> PAMT0060361.

26 <sup>97</sup> PAMT0060541.

27 <sup>98</sup> PAMT0052416.

28 <sup>99</sup> PAMT0041742.

1 *taking the technology into the video gaming world but barring that we should be ok.*<sup>100</sup> Potashner  
2 made it clear to any go-shop participant that the deck was already stacked – Potashner and Turtle Beach  
3 were “aligned” and no go-shop participants were allowed to compete with Turtle Beach in the “video  
4 gaming world.”<sup>101</sup>

5 87. The go-shop contained several additional structural problems. *First*, the Break-Up  
6 License applied fully during the go-shop, which precluded bids as discussed above. *Second*, the five  
7 day business match-right provision also carried a potent effect during the go-shop. Professor  
8 Subramanian also concluded:

9 The 5-Day Match Right allows Turtle Beach to slow down, and potentially run out the  
10 clock on, a potential third-party bid. A third-party bidder would have to conduct its due  
11 diligence, make a formal offer, wait for the Parametric board to consider the offer (in  
12 consultation with its bankers and lawyers), all with the possibility that Turtle Beach will  
13 match on the last day of the Go-Shop Period so that its offer is no longer a Superior  
14 Proposal. In order ensure a last look after a potential Turtle Beach match, a third-party  
15 bidder would have to make a written Acquisition Proposal within 15-20 calendar days.  
16 In my opinion, this is an exceedingly compressed timeframe – one that is infeasible, as  
17 a practical matter, for most potential bidders to meet.

18 88. After analyzing data supporting the unusual combination of the respective lengths of  
19 these two provisions, Professor Subramanian concluded:

20 This data indicates that the combination of the Match Right/Go-Shop Provision in the  
21 Turtle Beach-Parametric deal were not typical; in my opinion, they put up significant  
22 barriers to the possibility of a Superior Proposal.

23 89. *Third*, the go-shop was further limited in that under the terms of the Merger Agreement,  
24 Parametric was not permitted to engage in licensing discussions and thus could not present a superior  
25 licensing agreement to Parametric’s shareholders.

26 90. *Fourth*, the Parametric Board permitted Houlihan Lokey, a conflicted financial advisor,  
27 to run the “go shop.” Houlihan Lokey had no incentive to actually find an alternate bidder during the  
28 go-shop process, and every incentive not to. Houlihan Lokey’s engagement fee had already been  
curtailed significantly when it was forced to rebate \$300,000 to pay for the Craig-Hallum fairness  
opinion fee after it was discovered that Houlihan Lokey had represented Turtle Beach in its private sales

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100 *Id.*

101 *Id.*

1 process in 2011 and was thus conflicted.<sup>102</sup> And Houlihan Lokey was forced to forego any interest in  
2 providing debt or equity financing to the combined company post-close after Turtle Beach demanded  
3 that its engagement letter be amended so that Houlihan Lokey's placement role would not survive the  
4 merger.<sup>103</sup> Thus Houlihan Lokey's only chance to sweeten their take from the process was to get a  
5 piece of the \$5 million financing that Parametric was obligated to provide for the merger, which  
6 Houlihan Lokey believed it would be entitled to if the financing was debt instead of equity.<sup>104</sup> That  
7 would only happen if Turtle Beach was the buyer, because only Turtle Beach needed the financing so it  
8 wouldn't trip its debt covenants. Indeed, so desperate was Houlihan Lokey to secure any extra payout  
9 from the process that, after the conclusion of the go-shop process when it became clear that  
10 Parametric's \$5 million in financing would come from an equity source and not a debt source (which  
11 effectively cut off Houlihan Lokey's ability to secure a debt placement fee), Houlihan Lokey sought a  
12 conflict waiver from the Board so that it could act as debt placement agent for Turtle Beach.<sup>105</sup> This  
13 effort, which would have put Houlihan Lokey on both sides of the transaction, was actually approved by  
14 the Board but misfired when Turtle Beach declined to engage Houlihan Lokey for this role.

15 **PARAMETRIC SHAREHOLDERS WERE DAMAGED BECAUSE THE MERGER**  
16 **OFFERED A GROSSLY INADEQUATE VALUATION FOR THEIR SHARES**

17 91. The Board announced the Merger after the market closed on August 5, 2013.  
18 Parametric's shares immediately tanked. Parametric's stock closed at \$17.69 per share on August 5  
19 then closed at just \$14.08 per share on August 6, representing a 20% drop in shareholder value.  
20 Parametric shares dipped to post-announcement low of \$10.46 on December 11, 2013 and ultimately  
21 stood at \$14.19 on January 15, 2014, the day the Merger closed.  
22  
23  
24

25 <sup>102</sup> Deposition Transcript of Daniel Hoverman ("Hoverman Tr.") at 110-111, 154.

26 <sup>103</sup> *Id.* at 213-214.

27 <sup>104</sup> *Id.* at 220-221.

28 <sup>105</sup> *Id.* at 216-220.

1 **The Board Acted in Bad Faith When it Consciously**  
2 **Disregarded a Known Component of Parametric's**  
3 **Standalone Value – the SIIG/Optek Soundbar Project**

4 92. The Board acted in bad faith when it consciously disregarded a known component of  
5 Parametric's standalone value when it engaged and/or permitted Potashner to engage, in the following  
6 activity: (a) Potashner sat on Optek Electronics offer to pay Parametric a 9% royalty to "aggressive[ly]  
7 rollout" Hypersound technology in hundreds of thousands of Optek soundbars and headphones destined  
8 for Costco Wholesale Corporation ("Costco") shelves in time for the 2013 Christmas shopping season;  
9 (b) the Board approved the Merger based on Craig-Hallum analysis the Board knew excluded potential  
10 Optek revenue (or any licensing revenue for that matter); and (c) Potashner encouraged Turtle Beach  
11 CEO Stark to negotiate with Optek for Turtle Beach's benefit two weeks into the Go-Shop process and  
12 months before shareholders voted on the Merger.

13 93. Parametric began exploring the hypersound "soundbar" application in May 2012 and  
14 created a prototype unit that fall.<sup>106</sup> The Shanghai Industrial Investment Group (SIIG)'s Amercian trade  
15 representative, Optek Electronics, distributes soundbars and other audio equipment through CostCo  
16 under the TV Ears brand. Potashner visited the SIIG facilities in China in late November 2012 and  
17 Potashner, Barnes, and Norris conducted a "technical call with SIIG scientists" and the Board reached a  
18 consensus that "it made business sense to continue discussions to pursue a wide range of possible  
19 relationships" with SIIG.<sup>107</sup>

20 94. By January 19, 2013, Potashner stated that SIIG/Optek was considering a significant  
21 order for soundbars: "We are getting initial requests for volume. One of the largest players who would  
22 use it to improve their video gaming products asked whether we can support a 200k-300k order for this  
23 year. I'm at the phase where I want to explore Asian manufacturing partnerships . . . [our technology]  
24 will also scale into soundbar and other solutions in short order."<sup>108</sup> On February 22, 2013 Potashner  
25 authorized a draft press release announcing Parametric and Optek entered into a Memorandum of

26 <sup>106</sup> PAMT0032661.

27 <sup>107</sup> PAMT0000006.

28 <sup>108</sup> PAMT0039019.

1 Understanding ("MOU") defining four "key areas of focus" to include: "a licensing agreement, a  
2 manufacturing agreement, a joint product development agreement, and the establishment of a joint  
3 venture to address the Chinese market."<sup>109</sup> Parametric distributed a press release regarding the MOU on  
4 March 4, 2013.

5 95. On March 6, 2013, just two days after Parametric disclosed Optek's interest in  
6 Hypersound technology, Turtle Beach began wooing Potashner with talk of a merger.<sup>110</sup> By March 29,  
7 Stark was worried Optek would encroach on Turtle Beach's license for a "gaming segment" and that  
8 they would "need to determine how to fence this off from [Consumer Electronics] (which would be  
9 challenging)."<sup>111</sup> Barnes suggested later that day, "One thought is to keep [Turtle Beach's Consumer  
10 Electronics license] exclusive to North America only. Then we can do China or sell it to SIIG."<sup>112</sup>  
11 Potashner had already informed Optek managing director Alan Hsieh that Turtle Beach was a priority:  
12 "Turtle Beach is requesting that soundbars be part of the licensing discussion . . . we can still go  
13 forward but it will need to be carved out into different applications for soundbars. ie Turtle Beach for  
14 gaming and [Optek] for general consumer and Hearing products."<sup>113</sup>

15 96. Rather than continue to negotiate an Optek soundbar, Potashner leaked details of the  
16 Optek licensing offer to Stark. On April 7, 2013 Potashner wrote to Stark, "I also have a license  
17 proposal on my desk by TV Ears wanting to move product into Costco (US largest distributor of  
18 hearing aids) asap." Two days later, on April 9, Potashner told Stark Optek had proposed a license for  
19 an "exclusive relationship on soundbars as well as headphones utilizing our IP. The proposed royalty  
20 rate is 9% for the initial volume tranche and they have support from Costco from a shelf space  
21 perspective. They want to move quickly with an aggressive rollout."<sup>114</sup> The same day, Potashner went a

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22 <sup>109</sup> PAMT0042238.

23 <sup>110</sup> PAMT0039311.

24 <sup>111</sup> PAMT0039624.

25 <sup>112</sup> *Id.*

26 <sup>113</sup> PAMT0039523.

27 <sup>114</sup> PAMT0034497.



1 step further and put Stark in touch with Optek's Alan Hsieh to "support a diligence call from you on  
2 product commercialization"<sup>115</sup> which Stark, Hsieh and Potashner held on April 16 utilizing Parametric's  
3 estimated material costs for soundbar production.<sup>116</sup> Potashner reported it was a "good call," which  
4 "went well," so well that "Juergan . . . has convinced himself that *the technology can be readily*  
5 *productized so he didn't need a second opinion.*"<sup>117</sup> The day after Optek/Turtle Beach call, Potashner  
6 told Stark he was "fine with the need to get a soundbar out now concept as long as there is commitment  
7 to the broader vision."<sup>118</sup>

8 97. Meanwhile, Turtle Beach had already recognized the value of soundbar production,  
9 focusing on Parametric's estimated cost of sound bar materials on April 24, 2013 and citing  
10 Parametric's estimated costs for a soundbar in negotiation.<sup>119</sup> In fact, two of the top items in the "Post  
11 Acquisition Gameplan" involved a gaming soundbar and to "Set up product sourcing similar to VTB  
12 model with Chinese partner."<sup>120</sup> Potashner and Stark continued to discuss SIIG/Optek in June and July  
13 2013<sup>121</sup> but quietly shelved the project until after board approved the merger. Potashner even passed  
14 on authority to Stark to approve or reject the SIIG/Optek licensing agreement two weeks before the  
15 Parametric Board's Merger vote.<sup>122</sup>

16 98. The Board voted on the merger while failing to value the revenue to be received from the  
17 Optek soundbar issue. The projections on which Craig-Hallum based its "fairness opinion" included no  
18 revenue from Optek, and egregiously, no licensing revenue at all, even though Barnes admitted that "we  
19  
20

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21 <sup>115</sup> PAMT0039841.

22 <sup>116</sup> PAMT0049515.

23 <sup>117</sup> PAMT0040004; PAMT0040011; PAMT0040011.

24 <sup>118</sup> PAMT0040005.

25 <sup>119</sup> PAMT0060441; PAMT0040151.

26 <sup>120</sup> PAMT0049604.

27 <sup>121</sup> PAMT0058676.

28 <sup>122</sup> PAMT0060525.

1 fully expect” that revenue stream.<sup>123</sup> Digital signage and HHI were the only sources of revenue  
2 included in the final projections.<sup>124</sup> The Board knew, or should have known, that the SIIG/Optek  
3 soundbar was an existing project likely to generate revenue, but acted in bad faith when it approved the  
4 Merger based on flawed financial projections with a gaping omission.

5 99. In addition, Kaplan’s July 2013 frustration with Potashner’s lack of progress further  
6 demonstrated that the Board was woefully uninformed on the Optek issue: “The longer this goes on the  
7 more difficult it becomes and the messier. Personally I think this has gone on far too long. What has  
8 been going on since this VTB idea surfaced? Where are our licensing agreements... The Chinese . . .”<sup>125</sup>  
9 Kaplan never followed up on the issue.

10 100. After the parties has announced the Merger and in the middle of the so-called “go shop”  
11 period, Potashner coordinated meetings with Hsieh of Optek and Stark for September 12, 2013. By  
12 August 18, still during the Go-Shop, Parametric’s VP of Business Development, Steve Thesing, was  
13 “working on the SIIG MOU to frame licensing and manufacturing terms for the Hypersound soundbar”  
14 and passed on Hsieh’s request for Turtle Beach financials or a credit check to “establish a credit  
15 line.”<sup>126</sup> On September 12, 2013, Hsieh, Stark, and Potashner met for lunch in Irvine.<sup>127</sup> On September  
16 24, Hsieh and Stark coordinated Stark’s October tour of Optek’s China facilities so that the post-Merger  
17 Turtle Beach-controlled entity would reap the primary benefits, rather than Parametric’s stockholders  
18 pursuant to the Merger.<sup>128</sup>

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23 <sup>123</sup> PAMT0044589; PAMT0053793.

24 <sup>124</sup> PAMT0044589.

25 <sup>125</sup> PAMT0061365.

26 <sup>126</sup> PAMT0055322.

27 <sup>127</sup> PAMT0042177; PAMT0042089.

28 <sup>128</sup> PAMT0054438.

1 **The Board Did Not Appropriately Consider Turtle Beach's**  
2 **Distressed Financial Picture or Parametric's Standalone**  
3 **Value When Voting on the Merger**

4 101. Parametric shareholders were reduced from full majority ownership to less than a 20%  
5 ownership in a larger, but distressed company. Turtle Beach's EBITDA estimates were rapidly  
6 declining, in 2012 it experienced \$47.8 million in annual EBITDA, in June 2013 it estimated 2013  
7 EBITDA at \$40.6 million, and in August 2013 it lowered expected 2013 EBITDA to just \$36.0 million.  
8 Turtle Beach indicated its estimates would be revised even lower in the coming months. Turtle Beach's  
9 profitability collapse in 2013 also tripped its debt covenants, as the Proxy indicates that "Turtle Beach  
10 was not in compliance with the fixed charge coverage ratio as of June 30, 2013 and December 31, 2012  
11 and obtained waivers of the compliance issues from its lenders." As a result, Turtle Beach's lenders  
12 required Parametric to complete a stock offering prior to close of the Merger, which will even further  
13 dilute Parametric's public shareholders. Turtle Beach was unable to find additional third-party lenders  
14 and on August 30, 2013, it issued Subordinated Notes to its owner, the Stripes Group, and its CEO, at  
15 highly unfavorable rates. "The Subordinated Notes bear interest at a rate of (i) 10% per annum for the  
16 first year and (ii) 20% per annum for all periods thereafter. Interest shall accrue quarterly. Principal and  
17 interest on the Subordinated Notes is due at maturity. The Subordinated Notes mature on the one year  
18 anniversary of the later of (i) the term loan maturity date of August 22, 2015 or (ii) the revolving line of  
19 credit termination date of August 22, 2015." These terms advantage Turtle Beach's owners and  
20 insiders, but will harm Parametric shareholders upon close of the Merger.

21 102. After receiving Turtle Beach's second quarter 2013 financials two days before the  
22 Merger vote, Barnes remarked to Potashner: "*Proxy may not be pretty. Going to have some selling to*  
23 *do.*"<sup>129</sup>

24 103. The Merger drastically undervalues the Company, does not adequately reflect the  
25 Company's fair value and does not adequately compensate the Company's shareholders for the  
26 Company's incredible potential, including the value of the Company's HyperSound (HSS(r))  
27 technology. Turtle Beach was a company that had revenues of approximately \$205 million in 2012. As

28 <sup>129</sup> PAMT0057372.

1 one analyst explained: "Comparable companies such as Skullcandy (SKUL) or Logitech (LOGI), while  
2 profitable, trade at deeply discounted valuations. Since all we know about Turtle Beach are its revenues,  
3 the one metric that concerns us is price/sales. Skullcandy trades at a price/sales of 0.56, and Logitech  
4 trades at a price/sales of 0.53."

5 104. The analyst continued: "The main way that Turtle Beach would earn a higher valuation  
6 multiple, would be for it to be much more profitable than either Skullcandy or Logitech. But that's not  
7 likely – Turtle Beach is even accruing dividends on its preferred, and that's not the move of a hugely  
8 profitable enterprise. So we can reasonably expect Turtle Beach to trade at a valuation that's close to its  
9 comparables. Something between 0.50 times sales and, to be generous, 1.00 times sale. That would  
10 mean that the new Parametric Sound would trade with a market capitalization of somewhere between  
11 \$102.5 million and \$205 million. But remember, present [Parametric] shareholders will have just 20%  
12 of this new company. This would give them a value of between \$20.5 and \$41 million. And therein lies  
13 the problem – [Parametric] presently trades with a market capitalization of \$118.1 million, so if Turtle  
14 Beach happens to converge to the valuation of its comparables, then the downside for present  
15 [Parametric] shareholders will be somewhere between 65% and 82%. In short, this merger has the  
16 potential to be *disastrous* for [Parametric] shareholders." The analyst concluded: "So the one thing  
17 that's likely to happen is for [Parametric] shareholders to lose and lose big." That is exactly what  
18 happened here.

19 105. Ultimately, on August 2, 2013, the conflicted Craig-Hallum gave a fairness opinion that  
20 the Per Share Exchange Ratio was fair, based on a materially flawed analysis that was skewed in order  
21 to make an unfair deal look fair. Craig-Hallum was using the fairness opinion, for which it was paid  
22 just \$200,000, as an opportunity to pitch a more lucrative role in obtaining fees of \$500,000 to \$700,000  
23 in fees on an additional equity financing.<sup>130</sup> In March 2013, Craig-Hallum pitched for a role an equity  
24 offering by Parametric and, days after providing the fairness opinion in August 2013, Rick Hartfiel,  
25 Director of Investment Banking at Craig-Hallum, recommended a \$10 million offering "at around a 15-

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27  
28 <sup>130</sup> PAMT0038785.

1 20% discount to market.”<sup>131</sup> In fact, Craig-Hallum’s representative admitted at deposition that it was  
2 “pitching its participation in [an] equity offering” during the August 2013 timeframe.<sup>132</sup> There was no  
3 ethical wall to separate the bankers involved in the fairness opinion and those individuals  
4 simultaneously pitching the more lucrative work.<sup>133</sup>

5 106. The Merger valuation did not reflect that before the Merger’s announcement, Parametric  
6 had been working on commercializing its HyperSound (HSS(r)) technology since its introduction, and  
7 expected that this technology would be used in three multibillion dollar market sectors: (i) consumer  
8 markets, including computers, video gaming, televisions, home audio, electronic gaming, health care,  
9 movies and cinema and mobile devices; (ii) commercial markets, including digital signage, kiosks and  
10 retails stores; and (iii) health care, including out of ear solution for hearing impaired individuals. The  
11 Company had worked with various companies in selling and implementing its technologies, including  
12 with McDonald’s, Fujitsu, Ingram Micro, Build-A-Bear Workshop, Epsilon Electronics, and Softbank  
13 Corporation. The Company had also been successful in clinical results favorably comparing  
14 HyperSound (HSS(r)) technology with conventional audio for persons with mild to severe hearing loss.  
15 In addition to its new technology, Parametric had a substantial body of intellectual property, including  
16 24 U.S. and two foreign patents issued, and 12 pending patents.

17 107. On February 7, 2013, the Company announced its financial results for its first fiscal  
18 quarter ended December 31, 2012, including: (i) revenue of \$109,000 during the first quarter of fiscal  
19 2013, as compared to \$65,000 during the same period last year, and \$75,000 for the preceding quarter,  
20 reflecting growth in digital signage product sales; and (ii) gross profit of \$55,000, compared to \$40,000  
21 for the comparable prior year quarter and \$25,000 for the preceding quarter.

22 108. On March 25, 2013, the Company provided outlook for fiscal year 2013. The Company  
23 announced that it was expecting to be cash flow positive from operations for 2014 from its core digital  
24 signage and licensing business. “We have been able to advance strategic licensing discussions and we

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26 <sup>131</sup> Wambeke Tr. at 122-123 and Ex. 2; PAMT0047470; PAMT0046980.

27 <sup>132</sup> Wambeke Tr. at 118.

28 <sup>133</sup> Wambeke Tr. at 119-120, 122-123, 125-126.



1 have achieved success on several recent digital signage pilot projects that we expect will translate to  
2 high volume customer orders late in 2013 and in 2014. As a result, we anticipate that we will be  
3 operating cash flow positive in 2014,” said defendant Potashner. “The possible volumes associated  
4 with product rollouts have exceeded our internal projections for digital signage. We expect the  
5 investments we are making in 2013 to build this business for 2014 growth will result in quarterly  
6 performance for the balance of 2013 consistent with prior communications.”

7 109. Defendant Potashner continued: “Further strengthening our outlook for 2014 is important  
8 progress on the licensing front, as we are now in negotiations with several market leading prospects in  
9 key market verticals. We expect the combination of product sales and future IP license revenue should  
10 result in strong future growth. We are very pleased with our accomplishments in both areas.”

11 **Potashner, Wolfe and Todd’s Past History of**  
12 **Threats, Litigation and Fraud**

13 110. Potashner’s threats to the Parametric Board were very real, as fellow-board member  
14 Wolfe was fully aware. Potashner was successful on similar threats to displace all of his co-board  
15 members at an entity named SonicBlue in 2002 when that board did not meet Potashner’s personal  
16 compensation demands. While serving as SonicBlue’s CEO concurrently with CTO Wolfe and Vice  
17 President Todd, Potashner demanded SonicBlue’s board resign if they did not immediately repay over  
18 \$500,000 in loans. SonicBlue had also loaned Potashner \$261,232 and Wolfe \$76,280 at 5.75%  
19 interest to invest in RioPort, Inc., a private company SonicBlue partially owned, similar to Parametric’s  
20 subsidiary HHI. When SonicBlue’s board later voted to convert their loans (but not Potashner’s and  
21 Wolfe’s) to non-recourse, Potashner publically demanded the board pay up or resign. On August 9,  
22 2002, the *San Jose Mercury News* reported that “Potashner said the board voted to remove him after he  
23 told the Mercury News Thursday morning that he planned to call for the resignation of three of Sonic-  
24 Blue’s five board members if they refused to repay their loans early.”

25 111. On September 18, 2002, Potashner “initiated proceedings” against SonicBlue, claiming  
26 SonicBlue owed him \$1,984,000 pursuant to an employment agreement set to expire October 30, 2002  
27 because SonicBlue allegedly terminated Potashner without cause. On December 6, 2002, Potashner  
28 released his claims and paid the \$310,677 balance on his RioPort loan in exchange for over \$1 million—

1 \$410,677.83 cash and \$600,000 to be paid in 2003. On March 21, 2003, after the press noted that  
2 "Potashner had managed to embroil his company in noisy legal battles with investors, employees,  
3 competitors, the government of Taiwan, the recording industry, and 29 film and broadcasting  
4 companies," SonicBlue finally declared Chapter 11 bankruptcy which, according to *Forbes*, brought  
5 "the story of an interesting and innovative company to a close."

6 112. Former SonicBlue executives Wolfe and Todd also left SonicBlue on similar terms  
7 shortly before SonicBlue declared bankruptcy. The same month Todd left that company, SonicBlue  
8 agreed to forgive its interest-free loan of \$150,000 loan to Todd. SonicBlue also agreed to forgive an  
9 additional \$150,000 loan granted Todd in May 2001, if SonicBlue terminated Todd "without cause."  
10 As a result of Potashner's threats, SonicBlue agreed to pay Wolfe a ten-month salary if SonicBlue  
11 involuntarily terminated Wolfe in October 2002.

12 113. Todd has been found liable to the SEC for securities fraud. When hiring Todd, issuing  
13 Todd valuable stock options, then demanding a \$250,000 payment from Todd in exchange for a release,  
14 Potashner likely neglected to inform the rest of the Parametric Board that in 2012 the Southern District  
15 of California entered final judgment after the Ninth Circuit found substantial evidence in the trial  
16 record to support a unanimous 2007 jury verdict concluding Todd "unlawfully misrepresented  
17 Gateway's financial condition in the third quarter of 2000 in order to meet financial analysts' earnings  
18 and revenue expectations" while CFO at Gateway, Inc. In conjunction with the adverse judgment, Todd  
19 (i) consented to a 10-year bar from acting as an officer in a public company; (ii) disgorged \$165,000  
20 plus \$138,162.24 in prejudgment interest; and (iii) paid a \$110,000 penalty. In light of Todd's past  
21 securities fraud, he is not even permitted to run a franchise in the State of California. California's  
22 Department of Corporations recently found Todd's fraud liability verdict material when BevMax  
23 Franchising LLC, of which Todd is President, applied for a franchise license but "*failed to disclose the*  
24 *imposition of penalties against Todd for violating multiple provisions of the federal securities laws.*"  
25 In denying BevMax's franchise application, the Department specifically noted "*the involvement of*  
26 *Todd in the sale or management of the BevMax franchise in this State would create unreasonable*  
27 *risk to prospective franchisees.*" Parametric similarly failed to disclose these facts to its shareholders.  
28

1 **The Materially Misleading Proxy**

2 114. Defendants obtained a majority vote of uninformed Parametric shareholders on  
3 December 27, 2013. Shareholders were coerced into voting for the Merger as a result of an  
4 undervalued Break-Up License and the Proxy, filed on December 3, 2013, left shareholders woefully  
5 uninformed about multiple issues described herein. These issues include: (a) the value of the  
6 SIIG/Optek project; (b) the Board's attempts to angle for personal payments in the hours leading up to,  
7 and during, the final Merger vote; (c) the Board's actions in stalling other potential acquirers and  
8 licensing discussions; (d) the Company announcements the Board chose not to announce during Merger  
9 negotiations and their intention that it would make "the premium on the deal look better"; (e) the detail  
10 behind Potashner's threats to the rest of the Board; and (f) and the fact that the Board's financial  
11 advisors did not provide any opinion, informal or otherwise, on the terms of the Break-Up License.  
12 These issues go to the heart of the shareholders' decision whether to vote in favor of the merger and in  
13 the absence of their disclosure, the shareholder vote could not have been fully informed.

14 115. Defendants also deprived plaintiffs and the stockholder class of their rights to appraisal.  
15 Nevada Revised Statute Section 78.3793 provides dissenting shareholders the right to "dissent in  
16 accordance with the provisions of NRS 92A.300 to 92A.500, inclusive, and obtain payment of the fair  
17 value of his or her shares" unless the acquired company has "otherwise provided in the articles of  
18 incorporation or the bylaws of the issuing corporation in effect on the 10th day following the acquisition  
19 of a controlling interest." But on August 2, 2013, the Parametric Board voted to amend Parametric's  
20 bylaws so that "the provisions of Nevada Revised Statutes Sections 78.378 to 78.3783, inclusive, shall  
21 not apply to the Corporation or to the acquisition of a controlling interest by existing or future  
22 stockholders."<sup>134</sup> This definition included the Merger and Parametric shareholders were thus left  
23 without rights to appraisal for their shares in connection with the Merger.

24 **CLASS ACTION ALLEGATIONS**

25 116. Plaintiffs bring this action individually and as a class action on behalf of all holders of  
26 Parametric stock harmed by defendants' actions described below (the "Class"). Excluded from the

27 \_\_\_\_\_  
28 <sup>134</sup> PAMT0000189.

1 Class are defendants herein and any person, firm, trust, corporation, or other entity related to or  
2 affiliated with any defendant.

3 117. This action is properly maintainable as a class action.

4 118. The Class is so numerous that joinder of all members is impracticable. According to  
5 Parametric's SEC filings, there were approximately 6.7 million shares of Parametric common stock  
6 outstanding as of April 30, 2013, held by hundreds if not thousands of shareholders geographically  
7 dispersed across the country.

8 119. There are questions of law and fact which are common to the Class and which  
9 predominate over questions affecting any individual Class member. The common questions include,  
10 *inter alia*, the following:

11 (a) whether the Individual Defendants have breached their fiduciary duties of  
12 undivided loyalty or independence with respect to plaintiffs and the other members of the Class in  
13 connection with the Merger;

14 (b) whether the Individual Defendants engaged in self-dealing in connection with the  
15 Merger;

16 (c) whether the Individual Defendants unjustly enriched themselves and other  
17 insiders or affiliates of Parametric;

18 (d) whether the Individual Defendants have breached any of their other fiduciary  
19 duties to plaintiffs and the other members of the Class in connection with the Merger, including the  
20 duties of good faith, diligence, honesty and fair dealing;

21 (e) whether the Defendants, in bad faith and for improper motives, usurped a  
22 corporate opportunity belonging to Parametric; and

23 (f) whether the defendants, in bad faith and for improper motives, have impeded or  
24 erected barriers to discourage other offers for the Company or its assets.

25 120. Plaintiffs' claims are typical of the claims of the other members of the Class and  
26 plaintiffs do not have any interests adverse to the Class.

27 121. Plaintiffs are adequate representatives of the Class, have retained competent counsel  
28 experienced in litigation of this nature, and will fairly and adequately protect the interests of the Class.

1           122.   Plaintiffs anticipate that there will be no difficulty in the management of this litigation.  
2   A class action is superior to other available methods for the fair and efficient adjudication of this  
3   controversy.

4            123. Defendants have acted on grounds generally applicable to the Class with respect to the  
5 matters complained of herein, thereby making appropriate the relief sought herein with respect to the  
6 Class as a whole.

**FIRST CAUSE OF ACTION**

## For Breach of Fiduciary Duties Against All Defendants

124. Plaintiffs repeat and reallege each allegation set forth herein.

11 125. The Individual Defendants have violated fiduciary duties of loyalty, good faith, and  
12 honesty owed under Nevada law to the public shareholders of Parametric and have acted to put their  
personal interests ahead of the interests of Parametric shareholders.

126. By the acts, transactions and courses of conduct alleged herein, defendants, individually  
and acting as a part of a common plan, advanced their interests at the expense of plaintiffs and other  
members of the Class.

17 127. The Individual Defendants have violated their fiduciary duties by entering into a transaction without regard to the fairness of the transaction to Parametric's shareholders.

128. As demonstrated by the allegations above, the Individual Defendants breached their duties of loyalty, good faith, and honesty owed to the shareholders of Parametric because, among other reasons:

- 22 (a) they failed to properly value Parametric in connection with the Merger;
- 23 (b) they ignored or did not protect against the numerous conflicts of interest resulting
- 24 from their own interrelationships or connection with the Merger;
- 25 (c) they acted in bad faith when approving the Merger;
- 26 (d) they acted in their own self interests to the harm of Parametric stockholders when
- 27 approving the Merger; and
- (e) they acted dishonestly in connection with approving the Merger.



1 129. The Individual Defendants engaged in self-dealing, did not act in good faith toward  
2 plaintiffs and the other members of the Class, and have breached and breached their fiduciary duties to  
3 the members of the Class.

4 **SECOND CAUSE OF ACTION**

5 **For Aiding and Abetting Breaches of Fiduciary Duty**  
6 **Against Defendants Parametric and Turtle Beach**

7 130. Plaintiffs repeat and reallege every allegation set forth herein.

8 131. Defendants Parametric and Turtle Beach aided and abetted the Individual Defendants in  
9 breaching their fiduciary duties owed to the public shareholders of Parametric, including plaintiffs and  
10 the members of the Class.

11 132. The Individual Defendants owed to plaintiffs and the members of the Class certain  
12 fiduciary duties as fully set out herein.

13 133. By committing the acts alleged herein, the Individual Defendants breached their  
14 fiduciary duties owed to plaintiffs and the members of the Class.

15 134. Parametric and Turtle Beach colluded in or aided and abetted the Individual Defendants'  
16 breaches of fiduciary duties, and were active and knowing participants in the Individual Defendants'  
17 breaches of fiduciary duties owed to plaintiffs and the members of the Class.

18 **PRAYER FOR RELIEF**

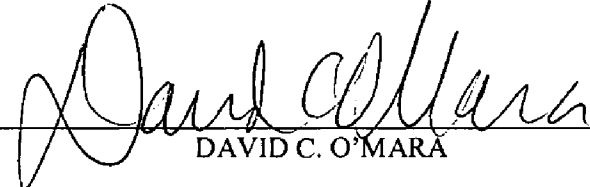
19 WHEREFORE, plaintiffs demand judgment in their favor and in favor of the Class and against  
20 all defendants as follows:

- 21 A. Declaring that this action is properly maintainable as a class action;
- 22 B. Declaring and decreeing that the Merger Agreement was unlawfully entered into and that  
23 the Merger was consummated in breach of the fiduciary duties of the Individual Defendants;
- 24 C. Awarding damages to plaintiffs and the Class, including pre-and post-judgment interest;
- 25 D. Awarding plaintiffs the costs of this action, including a reasonable allowance for the fees  
26 and expenses of plaintiffs' attorneys and experts; and
- 27
- 28

1 E. Granting Plaintiffs and the other members of the Class such further relief as the Court  
2 deems just and proper.

3 DATED: February \_\_, 2013

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I hereby certify under penalties of perjury that on this date I served a true and correct copy of the foregoing document by:

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-46-

DECL OF O'MARA IN SUPP OF BOYTIM AND OAKES' MOT TO INTERVENE, REQ TO VACATE THE PRIOR  
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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

PARAMETRIC SOUND CORPORATION,  
VTB HOLDINGS, INC., KENNETH  
POTASHNER; ELWOOD NORRIS; SETH  
PUTTERMAN; ROBERT KAPLAN;  
ANDREW WOLFE; and JAMES HONORE

Petitioners,

v.

THE EIGHTH JUDICIAL DISTRICT  
COURT, in and for the County of Clark,  
State of Nevada, and THE ELIZABETH  
GONZALEZ, District Judge

Respondents,

and

VITIE RAKAUSKAS, individually and on  
behalf of all others similarly situated, and  
Intervening Plaintiffs RAYMOND BOYTIM  
and GRANT OAKES,

Real parties in interest.

Case No.

Electronically Filed  
Oct 14 2014 03:23 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

District Court No. A-13-686890-B

Dept. No. XI

**PETITION**

**From the Eighth Judicial District Court  
The Honorable Elizabeth Gonzalez**

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**PETITIONERS' APPENDIX**

**VOLUME I**

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## ALPHABETICAL INDEX

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Defendants Turtle Beach Corporation and VTB Holdings, Inc.'s Motion to Dismiss Plaintiffs' Third Amended Class Action Complaint	06/20/2014	III	PA503 – PA523
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## **CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On October 14, 2014, I caused to be served a true and correct copy of the foregoing **PETITIONERS' APPENDIX VOLUME I** by the method indicated:

- ☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).

- ☒ **BY EMAIL:** by emailing a PDF of the document(s) listed above to the email addresses of the individual(s) listed below:

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- ☐ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.



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Honorable Elizabeth Gonzalez  
Eight Judicial District Court  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89155



**BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case and the following list:

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