

COMSTOCK OIL & GAS HOLDINGS INC

Form S-3ASR

November 09, 2012

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As filed with the Securities and Exchange Commission on November 9, 2012

Registration No. 333-

## SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

### FORM S-3

### REGISTRATION STATEMENT

*UNDER*

*THE SECURITIES ACT OF 1933*

## COMSTOCK RESOURCES, INC.

(and certain subsidiaries identified in the Table of Additional Subsidiary Guarantor Registrants below)

(Exact name of registrant as specified in its charter)

NEVADA  
(State or other jurisdiction of  
incorporation or organization)

5300 Town and Country Blvd., Suite 500

94-1667468  
(I.R.S. Employer  
Identification Number)

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**Frisco, Texas 75034**

**(972) 668-8800**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**M. Jay Allison**

**President and Chief Executive Officer**

**5300 Town and Country Blvd., Suite 500**

**Frisco, Texas 75034**

**(972) 668-8800**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

*Copy to:*

**Jack E. Jacobsen, Esq.**

**Locke Lord LLP**

**2200 Ross Avenue, Suite 2200**

**Dallas, Texas 75201**

**(214) 740-8000**

**Approximate date of commencement of proposed sale to the public:** From time to time after the effective date of this Registration Statement, as determined by market conditions.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended (the Securities Act), other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

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

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

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Securities and Exchange Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Securities Exchange Act of 1934, as amended. (Check one):

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

**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Security	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Shares of Common Stock	(1)	(1)	(1)	(1)
Shares of Preferred Stock	(1)	(1)	(1)	(1)
Debt Securities	(1)	(1)	(1)	(1)
Warrants	(1)	(1)	(1)	(1)
Units	(1)	(1)	(1)	(1)
Guarantees of Debt Securities	(2)	(2)	(2)	(2)
Total	(1)	(1)	(1)	(1)

- (1) There is being registered hereunder an indeterminable number or amount of common stock and preferred stock, principal amount of debt securities, warrants to purchase common stock or debt securities, or units consisting of combinations of any of the foregoing as may from time to time be offered at indeterminate prices and as may be issuable upon conversion, redemption, exchange, exercise or settlement of any securities registered hereunder. In accordance with Rule 456(b) and Rule 457(r) under the Securities Act, the registrant is deferring payment of all of the registration fee.
- (2) Includes certain subsidiaries of Comstock Resources, Inc. identified in the Table of Additional Subsidiary Guarantor Registrants, which may be guarantors of some or all of the debt securities registered hereunder and, as such, have been listed as co-registrants for the purpose of providing guarantees, if any. Pursuant to Rule 457(n) under the Securities Act, no registration fee is payable with respect to any such guarantees.

**TABLE OF ADDITIONAL SUBSIDIARY GUARANTOR REGISTRANTS**

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State or Other Jurisdiction

<b>Exact Name of Additional Registrant as Specified in its Charter</b>	<b>of Incorporation or Organization</b>	<b>I.R.S. Employer Identification No.</b>
Comstock Oil & Gas, LP	Nevada	75-2272352
Comstock Oil & Gas-Louisiana, LLC	Nevada	26-0012430
Comstock Oil & Gas GP, LLC	Nevada	(not applicable)
Comstock Oil & Gas Investments, LLC	Nevada	90-0155903
Comstock Oil & Gas Holdings, Inc.	Nevada	75-2968982

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**PROSPECTUS**

**COMSTOCK RESOURCES, INC.**

**COMMON STOCK**

**PREFERRED STOCK**

**DEBT SECURITIES**

**WARRANTS**

**UNITS**

**GUARANTEES OF DEBT SECURITIES**

We may offer and sell from time to time, in one or more offerings in one or more classes or series:

shares of common stock;  
shares of preferred stock;  
debt securities;  
warrants; and/or  
units consisting of combinations of any of the foregoing.

Our debt securities may be guaranteed by Comstock Oil & Gas, LP, Comstock Oil & Gas-Louisiana, LLC, Comstock Oil & Gas GP, LLC, Comstock Oil & Gas Investments, LLC, or Comstock Oil & Gas Holdings, Inc., each a wholly-owned subsidiary of Comstock Resources, Inc.

This prospectus provides you with a general description of these securities. Each time we will offer and sell them, we will provide their specific terms in a supplement to this prospectus. Such prospectus supplement may add, update, or change information contained in this prospectus. You should read this prospectus and the applicable prospectus supplement, as well as all documents incorporated by reference in this prospectus and any accompanying prospectus supplement, carefully before you invest in our securities. This prospectus may not be used to offer and sell securities, unless accompanied by a prospectus supplement.

We may offer the securities directly, through agents designated from time to time, to or through underwriters or dealers, or through a combination of these methods. If any agents or underwriters are involved in the sale of any of the securities, their names, and any applicable purchase price, fee, commission or discount arrangement between or among them, will be set forth, or will be calculable from the information set forth, in the applicable prospectus supplement. For more information on this topic, please see Plan of Distribution.

Our common stock is traded on the New York Stock Exchange under the symbol CRK.

**Investing in any of our securities involves a high degree of risk. Please see the Risk Factors sections beginning on page 4 of this prospectus, in the applicable prospectus supplement, and in our filings with the Securities and Exchange Commission.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

The date of this prospectus is November 9, 2012

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**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission, or SEC, utilizing what is commonly referred to as a shelf registration process. Under this shelf registration process, we may offer and sell any combination of the securities described in this prospectus in one or more offerings. This prospectus provides you with a general description of the securities we may offer. Each time we offer to sell securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering and the securities offered by us in that offering. The prospectus supplement may also add, update, or change information contained in this prospectus. If there is any inconsistency between the information in this prospectus and a prospectus supplement, you should rely on the information provided in the prospectus supplement. This prospectus does not contain all of the information included in the registration statement. The registration statement filed with the SEC includes exhibits that provide more details about the matters discussed in this prospectus. You should carefully read this prospectus, the related exhibits filed with the SEC, and any prospectus supplement, together with the additional information described below under the heading **Where You Can Find More Information**.

**You should rely only on the information contained, or incorporated by reference, in this prospectus and in any accompanying prospectus supplement. We have not authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not making an offer of the securities covered by this prospectus in any state where the offer is not permitted. You should assume that the information appearing in this prospectus, any prospectus supplement, and any other document incorporated by reference is accurate only as of the date on the front cover of the respective document. Our business, financial condition, results of operations, and prospects may have changed since those dates.**

**Under no circumstances should the delivery of this prospectus to you create any implication that the information contained in this prospectus is correct as of any time after the date of this prospectus.**

Unless otherwise indicated, or unless the context otherwise requires, all references in this prospectus to Comstock, we, us, and our mean Comstock Resources, Inc. and our consolidated subsidiaries. In this prospectus, we sometimes refer to the shares of common stock, shares of preferred stock, debt securities, warrants, and units consisting of combinations of any of the foregoing collectively as the securities.

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**CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS**

The information contained in this prospectus includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the Securities Act ), and Section 21E of the Securities Exchange Act of 1934, as amended (the Exchange Act ). These forward-looking statements are identified by use of terms such as expect, estimate, anticipate, project, plan, intend, believe, may, and similar terms. All statements, other than statements of historical or current facts, included in this prospectus, are forward-looking statements, including statements regarding:

amount and timing of future production of oil and natural gas;

the availability of exploration and development opportunities;

amount, nature, and timing of capital expenditures;

the number of anticipated wells to be drilled after the date hereof;

our financial or operating results;

our cash flow and anticipated liquidity;

operating costs, including lease operating expenses, administrative costs, and other expenses;

finding and development costs;

our business strategy; and

other plans and objectives for future operations.

Any or all of our forward-looking statements in this prospectus may turn out to be incorrect. They can be affected by a number of factors, including, among others:

the risks described in Risk Factors and elsewhere in this prospectus and in any accompanying prospectus supplement;

the volatility of prices and supply of, and demand for, oil and natural gas;

the timing and success of our drilling activities;

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the numerous uncertainties inherent in estimating quantities of oil and natural gas reserves and actual future production rates and associated costs;

our ability to successfully identify, execute, or effectively integrate future acquisitions;

the usual hazards associated with the oil and natural gas industry, including fires, well blowouts, pipe failure, spills, explosions and other unforeseen hazards;

our ability to effectively market our oil and natural gas;

the availability of rigs, equipment, supplies, and personnel;

our ability to discover or acquire additional reserves;

our ability to satisfy future capital requirements;

changes in regulatory requirements;

general economic conditions, the status of the financial markets, and competitive conditions;

our ability to retain key members of our senior management and other key employees; and

hostilities in the Middle East and other sustained military campaigns and acts of terrorism or sabotage that impact the supply of crude oil and natural gas.

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**COMSTOCK RESOURCES, INC.**

We originally incorporated as a Delaware corporation in 1919 under the name *Comstock Tunnel and Drainage Company* for the primary purpose of conducting gold and silver mining operations in and around the Comstock Lode in Nevada. In 1983, we reincorporated under the laws of the State of Nevada. In November 1987, we changed our name to *Comstock Resources, Inc.*

Today, our common stock is listed and traded on the New York Stock Exchange under the symbol CRK, and we are engaged in the acquisition, development, production, and exploration of oil and natural gas. Our executive offices are located at 5300 Town and Country Boulevard, Suite 500, Frisco, Texas 75034, and our telephone number is (972) 668-8800.

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**RISK FACTORS**

Investing in our securities involves a high degree of risk. Before deciding to purchase any of our securities, you should carefully consider the discussion of risks and uncertainties:

under the heading **Risk Factors** contained in our Annual Report on Form 10-K for the fiscal year that ended December 31, 2011, which is incorporated by reference in this prospectus;

under this heading or similar headings, such as **Quantitative and Qualitative Disclosures About Market Risk**, in our subsequently filed quarterly reports on Form 10-Q and annual reports on Form 10-K; and

in any other place in this prospectus, any applicable prospectus supplement as well as in any document that is incorporated by reference in this prospectus.

See the section entitled **Where You Can Find More Information** in this prospectus. The risks and uncertainties we discuss in the documents incorporated by reference in this prospectus are those we currently believe may materially affect Comstock. Additional risks and uncertainties not presently known to us, or that we currently believe are immaterial, also may materially and adversely affect our business, financial condition, and results of operations.

**USE OF PROCEEDS**

Unless otherwise specified in an accompanying prospectus supplement, we expect to use the net proceeds from the sale of the securities offered by this prospectus:

to refinance certain existing indebtedness;

to finance acquisitions and the development and exploration of our properties; and

for general corporate purposes.

We may invest funds not required immediately for these purposes in marketable securities and short-term investments. The precise amount and timing of the application of these proceeds will depend upon our funding requirements and the availability and cost of other funds.

**RATIO OF EARNINGS TO FIXED CHARGES**

The following table sets forth our ratios of earnings to fixed charges on a consolidated basis for the periods shown. You should read these ratios in connection with our consolidated financial statements, including the notes to those statements, incorporated by reference into this prospectus.

	Years Ended December 31,					Nine Months Ended	
	2007	2008	2009	2010	2011	September 30, 2011	September 30, 2012
Ratio of earnings to fixed charges	3.3x	4.4x				1.1x	

The ratios were computed by dividing earnings by fixed charges. **Earnings** consist of income from continuing operations before income taxes plus fixed charges less capitalized interest. **Fixed charges** consists of interest expense, capitalized interest expense, preferred stock dividends, and that portion of non-capitalized rental expense deemed to be the equivalent of interest. For the years ended December 31, 2009, 2010 and 2011 and the nine months ended September 30, 2012, earnings were inadequate to cover fixed charges. The coverage



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deficiency was \$53.9 million, \$37.4 million and \$61.2 million for the years ended December 31, 2009, 2010 and 2011, respectively, and \$57.3 million for the nine months ended September 30, 2012. See the *Computation of Earnings to Fixed Charges Ratio* that is filed as Exhibit 12.1 to the registration statement of which this prospectus is a part.

### **DESCRIPTION OF CAPITAL STOCK**

Our authorized capital stock consists of 75,000,000 shares of common stock, par value \$0.50 per share and 5,000,000 shares of preferred stock, \$10.00 par value per share. At November 2, 2012, we had 48,161,696 shares of common stock and no shares of preferred stock issued and outstanding. At that date, we also had options and warrants outstanding to purchase 157,150 shares of our common stock.

The following is a summary of the key terms and provisions of our equity securities. You should refer to the applicable provisions of our restated articles of incorporation, bylaws, the general corporate law of Nevada, and the documents we have incorporated by reference for a complete statement of the terms and rights of our capital stock.

#### **Common Stock**

*Voting Rights.* Each holder of common stock is entitled to one vote per share. Subject to the rights, if any, of the holders of any series of preferred stock pursuant to applicable law or the provision of the certificate of designation creating that series, all voting rights are vested in the holders of shares of common stock. Holders of shares of common stock have no right to cumulate votes in the election of directors, thus, the holders of a majority of the shares of common stock can elect all of the members of the board of directors standing for election.

*Dividends.* Dividends may be paid to the holders of common stock when, as, and if declared by the board of directors out of funds legally available for their payment, subject to the rights of the holders of preferred stock, if any. We have never declared a cash dividend on our common stock and intend to continue our policy of using retained earnings for expansion of our business.

*Rights upon Liquidation.* In the event of our voluntary or involuntary liquidation, dissolution, or winding up, the holders of common stock will be entitled to share equally, in proportion to the number of shares of common stock held by them, in any of our assets available for distribution after the payment in full of all debts and distributions and after the holders of all series of outstanding preferred stock, if any, have received their liquidation preferences in full.

*Non-Assessable.* All outstanding shares of common stock are fully paid and non-assessable. Any additional common stock we offer and issue under this prospectus, and any related prospectus supplement, will also be fully paid and non-assessable.

*No Preemptive Rights.* Holders of common stock are not entitled to preemptive purchase rights in future offerings of our common stock. Although our restated articles of incorporation do not specifically deny preemptive rights, pursuant to the general corporate law of Nevada, our stockholders do not have preemptive rights with respect to shares that are registered under Section 12 of the Exchange Act and our common stock is so registered.

*Listing.* Our outstanding shares of common stock are listed on the New York Stock Exchange ( NYSE ) under the symbol CRK. Any additional common stock we issue will also be listed on the NYSE and any other exchange on which our common stock will then be traded.

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### **Preferred Stock**

Our board of directors can, without approval of our stockholders, issue one or more series of preferred stock and determine the number of shares of each series and the rights, preferences, and limitations of each series. The following description of the terms of the preferred stock sets forth certain general terms and provisions of our authorized preferred stock. If we offer preferred stock, a more specific description will be filed with the SEC, and the designations and rights of such preferred stock will be described in a prospectus supplement, including the following terms:

the series, the number of shares offered, and the liquidation value of the preferred stock;

the price at which the preferred stock will be issued;

the dividend rate, the dates on which the dividends will be payable, and other terms relating to the payment of dividends on the preferred stock;

the liquidation preference of the preferred stock;

the voting rights of the preferred stock;

whether the preferred stock is redeemable, or subject to a sinking fund, and the terms of any such redemption or sinking fund;

whether the preferred stock is convertible, or exchangeable for any other securities, and the terms of any such conversion or exchange; and

any additional rights, preferences, qualifications, limitations, and restrictions of the preferred stock.

The description of the terms of the preferred stock that will be set forth in an applicable prospectus supplement will not be complete and will be subject to and qualified in its entirety by reference to the certificate of designation relating to the applicable series of preferred stock. The registration statement, of which this prospectus forms a part, will include the certificate of designation as an exhibit or incorporate it by reference.

Undesignated preferred stock may enable our board of directors to render more difficult or to discourage an attempt to obtain control of us by means of a tender offer, proxy contest, merger, or otherwise and to thereby protect the continuity of our management. The issuance of shares of preferred stock may adversely affect the rights of the holders of our common stock. For example, any preferred stock issued may:

rank prior to our common stock as to dividend rights, liquidation preference, or both;

have full or limited voting rights; and

be convertible into shares of common stock.

As a result, the issuance of shares of preferred stock may:



discourage bids for our common stock; or

otherwise adversely affect the market price of our common stock or any then existing preferred stock. Any preferred stock will, when issued, be fully paid and non-assessable.

**Anti-Takeover Provisions**

Our restated articles of incorporation and amended bylaws and the general corporate law of Nevada include certain provisions which may have the effect of delaying or deterring a change in control or in our management or encouraging persons considering unsolicited tender offers or other unilateral takeover proposals to negotiate with our board of directors rather than pursue non-negotiated takeover attempts. These provisions include a classified board of directors, authorized blank check preferred stock, restrictions on business combinations, and the availability of authorized but unissued common stock. Please see Preferred Stock above.

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Our bylaws contain provisions dividing the board of directors into classes with only one class standing for election each year. A staggered board of directors makes it more difficult for stockholders to change the majority of the directors and instead promotes a continuity of existing management.

*Combinations with Interested Stockholders Statute.* Sections 78.411 to 78.444 of the Nevada Revised Statutes (N.R.S.), which apply to any Nevada corporation subject to the reporting requirements of Section 12 of the Exchange Act, including us, prohibits an interested stockholder from entering into a combination with the corporation for two years, unless certain conditions are met. A combination includes:

any merger of the corporation or any subsidiary of the corporation with an interested stockholder, or any other entity, whether or not itself an interested stockholder, which is, or after and as a result of the merger would be, an affiliate or associate of an interested stockholder;

any sale, lease, exchange, mortgage, pledge, transfer, or other disposition in one transaction, or a series of transactions, to or with an interested stockholder or any affiliate or associate of an interested stockholder, of assets of the corporation or any subsidiary:

- (i) having an aggregate market value equal to more than 5% of the aggregate market value of the corporation's assets;
- (ii) having an aggregate market value equal to more than 5% of the aggregate market value of all outstanding voting shares of the corporation; or
- (iii) representing more than 10% of the earning power or net income, determined on a consolidated basis, of the corporation; or

the issuance or transfer by the corporation or any subsidiary, of any shares of the corporation or any subsidiary to an interested stockholder or any affiliate or associate of an interested stockholder, having an aggregate market value equal to 5% or more of the aggregate market value of all of the outstanding voting shares of the corporation, except under the exercise of warrants or rights to purchase shares offered, or a dividend or distribution paid or made, pro rata to all stockholders of the resident domestic corporation;

the adoption of any plan, or proposal for the liquidation or dissolution of the corporation, under any agreement, arrangement or understanding, with the interested stockholder; or

any receipt by an interested stockholder or any affiliate or associate of an interested stockholder, except proportionately as a stockholder of the corporation, of the benefit of any loan, advance, guarantee, pledge or other financial assistance or any tax credit or other tax advantage provided by or through the corporation.

An interested stockholder is a person who is:

directly or indirectly, the beneficial owner of 10% or more of the voting power of the outstanding voting shares of the corporation; or

an affiliate or associate of the corporation, which at any time within two years immediately before the date in question was the beneficial owner, directly or indirectly, of 10% or more of the voting power of the then outstanding shares of the corporation.

A corporation to which the Combinations with Interested Stockholders Statute applies may not engage in a combination within two years after the interested stockholder acquired its shares, unless (i) the combination or the transaction by which the person first became an interested

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stockholder is approved by the board of directors before the person first became an interested stockholder, or (ii)(a) the combination is approved by the board of directors and (b) at or after that time, the combination is approved at an annual or special meeting of the stockholders, and not by written consent, by the affirmative vote of the stockholders representing at least sixty percent (60%) of the outstanding voting power of the corporation not beneficially owned by the interested

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stockholder or the affiliates or associates of the interested stockholder. If this approval is not obtained, the combination may be consummated after the two year period expires if either (i)(a) the combination was approved by the board of directors before such person first became an interested stockholder, (b) the transaction by which the person first became an interested stockholder was approved by the board of directors before the person first became an interested stockholder, or (c) the combination is approved at an annual or special meeting of the stockholders held no earlier than two years after the date that the person first became an interested stockholder, and not by written consent, by the affirmative vote of the holders of stock representing a majority of the outstanding voting power of the corporation not beneficially owned by the interested stockholder or any affiliate or associate of the interested stockholder, or (ii) the aggregate amount of cash and the market value of consideration other than cash to be received by holders of shares of common stock and holders of any other class or series of shares meets the minimum requirements set forth in the statute, and prior to the completion of the combination, except in limited circumstances, the interested stockholder has not become the beneficial owner of additional voting shares of the corporation.

*Acquisition of Controlling Interest Statute.* In addition, Nevada's Acquisition of Controlling Interest Statute, prohibits an acquiror, under certain circumstances, from voting shares of a target corporation's stock after crossing certain threshold ownership percentages, unless the acquiror obtains the approval of the target corporation's stockholders. Sections 78.378 to 78.3793 of the N.R.S. only apply to Nevada corporations with at least 200 stockholders, including at least 100 record stockholders who are Nevada residents, that do business directly or indirectly in Nevada and whose articles of incorporation or bylaws in effect 10 days following the acquisition of a controlling interest by an acquiror do not prohibit its application.

We do not intend to do business in Nevada within the meaning of the Acquisition of Controlling Interest Statute. Therefore, we believe it is unlikely that this statute will apply to us. The statute specifies three thresholds:

at least one-fifth but less than one-third;

at least one-third but less than a majority; and

a majority or more, of the outstanding voting power. Once an acquiror crosses one of these thresholds, shares which it acquired in the transaction taking it over the threshold (or within ninety days preceding the date thereof) become control shares which could be deprived of the right to vote until a majority of the disinterested stockholders restore that right.

A special stockholders' meeting may be called at the request of the acquiror to consider the voting rights of the acquiror's shares. If the acquiror requests a special meeting and gives an undertaking to pay the expenses of said meeting, then the meeting must take place no earlier than 30 days (unless the acquiror requests that the meeting be held sooner) and no more than 50 days (unless the acquiror agrees to a later date) after the delivery by the acquiror to the corporation of an information statement which sets forth the range of voting power that the acquiror has acquired or proposes to acquire and certain other information concerning the acquiror and the proposed control share acquisition.

If no such request for a stockholders' meeting is made, consideration of the voting rights of the acquiror's shares must be taken at the next special or annual stockholders' meeting. If the stockholders fail to restore voting rights to the acquiror, or if the acquiror fails to timely deliver an information statement to the corporation, then the corporation may, if so provided in its articles or bylaws, call certain of the acquiror's shares for redemption at the average price paid for the control shares by the acquiror.

Our articles of incorporation and bylaws do not currently permit us to redeem an acquiror's shares under these circumstances. The Acquisition of Controlling Interest Statute also provides that in the event the stockholders restore full voting rights to a holder of control shares that owns a majority of the voting stock, then all other stockholders who do not vote in favor of restoring voting rights to the control shares may demand payment for the fair value of their shares (which is generally equal to the highest price paid by the acquiror in the transaction subjecting the acquiror to this statute).

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### **Transfer Agent and Registrar**

The transfer agent and registrar for our common stock is American Stock Transfer & Trust Company.

### **DESCRIPTION OF DEBT SECURITIES**

This section describes the general terms and provisions of the debt securities which may be offered by us from time to time. The applicable prospectus supplement will describe the specific terms of the debt securities offered by such supplement.

We may issue debt securities either separately, or together with, or upon the conversion of, or in exchange for, other securities. The debt securities are to be either our senior obligations issued in one or more series and referred to herein as the senior debt securities, or our subordinated obligations issued in one or more series and referred to herein as the subordinated debt securities. The debt securities will be our general obligations. Each series of debt securities will be issued under an indenture agreement between us and an independent third party, usually a bank or trust company, known as a trustee, who will be legally obligated to carry out the terms of the indenture. We may issue the debt securities offered hereby under one or more indentures, as one or as separate series, as specified in the applicable prospectus supplement(s).

This summary of certain terms and provisions of the debt securities and indenture is based on the indenture entered into between us and The Bank of New York Mellon Trust Company, N.A., as trustee. A copy of such indenture, as supplemented, which has been filed as Exhibit 4.1 to our Current Report on Form 8-K filed with the SEC on October 14, 2009, is incorporated herein by reference. That indenture is subject to and governed by the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act"). You should refer to that indenture, as supplemented, for a complete statement of the terms and rights of our debt securities.

### **General**

The indenture may not limit the amount of debt securities which we may issue. We may issue debt securities up to an aggregate principal amount as we may authorize from time to time. The applicable prospectus supplement will describe the terms of any debt securities being offered, including:

the title and aggregate principal amount;

the date(s) when principal is payable;

the interest rate, if any, and the method for calculating the interest rate;

the interest payment dates and the record dates for the interest payments;

the places where the principal and interest will be payable;

any mandatory or optional redemption or repurchase terms or prepayment, conversion, sinking fund or exchangeability or convertibility provisions;

whether such debt securities will be senior debt securities or subordinated debt securities and, if subordinated debt securities, the subordination provisions and the applicable definition of senior indebtedness;

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additional provisions, if any, relating to the defeasance and covenant defeasance of the debt securities;

if other than denominations of \$1,000 or multiples of \$1,000, the denominations the debt securities will be issued in;

whether the debt securities will be issued in the form of global securities, as discussed below, or certificates;

any applicable material federal tax consequences;

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