

DELTA APPAREL, INC
Form S-3/A
December 19, 2016
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As filed with the Securities and Exchange Commission on December 19, 2016

Registration No. 333-214783

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

AMENDMENT NO. 1
TO
FORM S-3
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Delta Apparel, Inc.
(Exact Name of Registrant as Specified in Its Charter)

Georgia
(State or Other Jurisdiction of
Incorporation or Organization)

58-2508794
(I.R.S. Employer
Identification No.)

322 South Main Street

Greenville, South Carolina 29601

(864) 232-5200

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

Deborah H. Merrill

Chief Financial Officer and President, Delta Basics

Delta Apparel, Inc.

322 South Main Street

Greenville, SC 29601

(864) 232-5200

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this Registration Statement.

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, other than securities offered only in connection with dividend or reinvestment plans, please 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 of 1933, please 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 post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration 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 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.

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

Large accelerated filer

Accelerated filer

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

Smaller reporting company

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The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

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

SUBJECT TO COMPLETION, DATED DECEMBER 19, 2016

PRELIMINARY PROSPECTUS

\$150,000,000

Delta Apparel, Inc.

322 South Main Street

Greenville, South Carolina 29601

(864) 232-5200

Common Stock, Preferred Stock, Debt Securities, Warrants and Units

Delta Apparel, Inc. may offer, from time to time, common stock, preferred stock, senior debt securities, subordinated debt securities, warrants or units, which we collectively refer to as the securities. The aggregate initial offering price of the securities that we may issue under this prospectus will not exceed \$150,000,000. We may offer and sell any combination of the securities described in this prospectus in different series, at times, in amounts, at prices and on terms to be determined at or prior to the time of each offering. We will describe in one or more prospectus supplements the securities we are offering and selling, as well as the specific terms of the securities.

You should read this prospectus and any prospectus supplement carefully before you invest in any of our securities. This prospectus may not be used to offer or sell any securities unless accompanied by a prospectus supplement. This prospectus describes some of the general terms that may apply to these securities. The specific terms of any securities to be offered will be described in supplements to this prospectus. The prospectus supplements may also add, update or change information contained in this prospectus. Any statement that we make in this prospectus will be modified or superseded by any inconsistent statement made by us in a prospectus supplement.

Our common stock is listed on the NYSE MKT under the symbol DLA. On December 16, 2016, the last reported sale price for our common stock on the NYSE MKT was \$20.04 per share.

Investing in our securities involves risks. Before making a decision to purchase our securities, you should carefully consider risk factors that will be described in any applicable prospectus supplement and certain of our filings with the Securities and Exchange Commission, as explained under the heading Risk Factors on page 1 of this prospectus.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

The date of this prospectus is December 19, 2016.

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RISK FACTORS

Investing in our securities involves significant risks. Before making an investment decision, you should carefully consider the risks and other information that we include or incorporate by reference in this prospectus and any prospectus supplement. In particular, you should consider the risk factors under the heading "Risk Factors" included in our most recent Annual Report on Form 10-K, as revised or supplemented by our subsequent Quarterly Reports on Form 10-Q or Current Reports on Form 8-K, each of which are on file with the SEC and are incorporated herein by reference, and which may be amended, supplemented or superseded from time to time by other reports we file with the SEC in the future. The risks and uncertainties we have described are not the only ones facing our company. Additional risks and uncertainties not currently known to us or that we currently deem immaterial may also affect our business operations. Additional risk factors may be included in a prospectus supplement relating to a particular offering of securities.

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ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the United States Securities and Exchange Commission, which we refer to as the SEC, utilizing a shelf registration or continuous offering process. Under this shelf registration or continuous offering process, after the SEC declares our registration statement effective, we may sell any combination of the securities described in this prospectus in one or more offerings up to a total amount of \$150,000,000 or the equivalent thereof in one or more foreign currencies, including currency units or composite currencies.

This prospectus provides a general description of the securities that we may offer. Each time we sell securities, we will provide you with a prospectus supplement containing specific information about the terms of the securities being offered. A prospectus supplement may include a discussion of any risk factors in addition to those included or incorporated herein under the heading Risk Factors or other special considerations applicable to those securities or to us. A prospectus supplement may also add, update or change information in this prospectus. If there is any inconsistency between the information in this prospectus and the applicable prospectus supplement, you must rely on the information in the prospectus supplement. You should read both this prospectus and any prospectus supplement together with additional information described under the heading Where You Can Find More Information.

The registration statement containing this prospectus, including exhibits to the registration statement, provides additional information about us and the securities offered under this prospectus. The registration statement can be read at the SEC's website or at the SEC's public reference room mentioned under the heading Where You Can Find More Information.

We may sell securities to underwriters who will sell the securities to the public on terms fixed at the time of sale. In addition, the securities may be sold by us directly to purchasers or through dealers or agents designated from time to time. If we, directly or through agents, solicit offers to purchase the securities, we reserve the sole right to accept and, together with any agents, to reject, in whole or in part, any of those offers.

Any prospectus supplement will contain the names of the underwriters, dealers or agents, if any, together with the terms of offering, the compensation of those underwriters and the net proceeds to us. Any underwriters, dealers or agents participating in the offering may be deemed underwriters within the meaning of the United States Securities Act of 1933, as amended, which we refer to as the Securities Act.

All references in this prospectus to Delta, the Company, we, us, our Company, the Registrant or our refer Apparel, Inc. together with our domestic wholly-owned subsidiaries, including M.J. Soffe, LLC (Soffe), Junkfood Clothing Company (Junkfood), Salt Life, LLC (f/k/a To The Game, LLC) (Salt Life), Art Gun, LLC (Art Gun), and other international subsidiaries, as appropriate to the context.

Unless otherwise stated, currency amounts in this prospectus and any prospectus supplement are stated in United States Dollars (\$).

When you acquire any securities discussed in this prospectus, you should rely only on the information provided in this prospectus and in the applicable prospectus supplement, including the information incorporated by reference. Reference to a prospectus supplement means the prospectus supplement describing the specific terms of the securities you purchase. The terms used in your prospectus supplement will have the meanings described in this prospectus, unless otherwise specified. No one is authorized to provide you with different information. We are not offering the securities in any jurisdiction where the offer is prohibited. You should not assume that the information in this prospectus, any prospectus supplement, or any document incorporated by

reference, is truthful or complete at any date other than the date mentioned on the cover page of these documents.

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus, any prospectus supplement and/or any other offering material, and the information incorporated by reference in this prospectus, any prospectus supplement and/or any other offering material, contain forward-looking statements intended to qualify for the safe harbor from liability established by the Private Securities Litigation Reform Act of 1995. All statements, other than statements of historical fact, included or incorporated by reference in this prospectus, any prospectus supplement and/or any other offering material, including, without limitation, estimates, projections, outlook, guidance, statements relating to our business plans, strategy, objectives, expected operating results and future financial position, and the assumptions upon which those statements are based are forward-looking statements. These forward-looking statements generally are identified by the words believe, project, expect, anticipate, estimate, forecast, outlook, intend, strategy, plan, may, could, should, will, would, will be, result or the negative thereof or variations thereon or similar terminology generally intended to identify forward-looking statements. We caution that these forward-looking statements are not guarantees of future performance and are largely based on our expectations and are subject to risks, uncertainties and assumptions, including, among others, those we identify under the section entitled Risk Factors in our most recent Annual Report on Form 10-K or Quarterly Report on Form 10-Q and other documents that we file from time to time with the SEC that are incorporated by reference into this prospectus, any prospectus supplement and/or other offering material, which could cause actual results to differ materially from those expressed or implied by such forward-looking statements. Numerous important factors described in this prospectus, any prospectus supplement and/or other offering material, and the information incorporated by reference in this prospectus, any prospectus supplement and/or other offering material, could affect these statements and could cause actual results to differ materially from our expectations. We do not intend to update any of these forward-looking statements or publicly announce the results of any revisions to these forward-looking statements, other than as is required under U.S. federal securities laws.

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DELTA APPAREL, INC.

Delta Apparel, Inc. is an international apparel design, marketing, manufacturing and sourcing company that features a diverse portfolio of lifestyle basic and branded activewear apparel and headwear. We were incorporated in Georgia in 1999 and our headquarters is located at 322 South Main Street, Greenville, South Carolina 29601. Our telephone number is 864-232-5200. Our common stock trades on the NYSE MKT under the symbol DLA .

We specialize in selling casual and athletic products through a variety of distribution channels and distribution tiers, including specialty stores, boutiques, department stores, mid and mass channels, e-retailers and the U.S. military. Our products are also made available direct-to-consumer on our websites at www.saltlife.com, www.soffe.com, www.junkfoodclothing.com, www.coastapparel.com and www.deltaapparel.com. We believe this diversified distribution allows us to capitalize on our strengths to provide casual activewear to consumers purchasing from most types of retailers.

We design and internally manufacture the majority of our products, which allows us to offer a high degree of consistency and quality controls as well as leverage scale efficiencies. One of our strengths is the speed with which we can reach the market from design to delivery. We have manufacturing operations located in the United States, El Salvador, Honduras and Mexico, and use domestic and foreign contractors as additional sources of production. Our distribution facilities are strategically located throughout the United States to better serve our customers with same-day shipping on our catalog products and weekly replenishments to retailers.

We operate on a 52-53 week fiscal year ending on the Saturday closest to September 30. The 2016, 2014 and 2013 fiscal years were 52-week years that ended on October 1, 2016, September 27, 2014 and June 29, 2013, respectively. The 2015 fiscal year was a 53-week year that ended on October 3, 2015. The transition period resulting from the change in our fiscal year was a 13-week quarter that ended on September 28, 2013, to coincide with the change in our fiscal year end. On August 26, 2013, our Board of Directors determined that the Company's fiscal year would begin on the Sunday closest to September 30 of each year and end on the Saturday closest to September 30 of each year.

We operate our business in two distinct segments: branded and basics. Although the two segments are similar in their production processes and regulatory environments, they are distinct in their economic characteristics, products, marketing and distribution methods. Our branded segment is comprised of our business units which are focused on specialized apparel garments and headwear to meet consumer preferences and fashion trends, and includes our Salt Life, Junkfood and Soffe business units as well as The Game business unit prior to its disposition on March 2, 2015. These branded embellished and unembellished products are sold through specialty and boutique shops, upscale and traditional department stores, mid-tier retailers, sporting goods stores, e-retailers and the U.S. military. Products in this segment are marketed under our lifestyle brands of Salt Life®, Junk Food®, Soffe® and Coast®, as well as other labels.

Our basics segment is comprised of our business units primarily focused on garment styles characterized by low fashion risk, and includes our Delta Activewear (which includes Delta Catalog and Fun Tees) and Art Gun business units. We market, distribute and manufacture for sale unembellished knit apparel under the main brands of Delta Pro Weight® and Delta Magnum Weight® for sale to a diversified audience ranging from large licensed screen printers to small independent businesses. We also manufacture private label products for major branded sportswear companies, retailers, corporate industry programs, e-retailers, and sports licensed apparel marketers. Art Gun produces custom private label garments through digital printing. Typically the private label products are sold with value-added services such as hangtags, ticketing, hangers, and embellishment so that they are fully ready for retail.

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The following table shows our consolidated ratio of earnings to fixed charges⁽¹⁾ for the periods⁽²⁾ presented:

Year Ended October 1,	Year Ended October	Year Ended September	Transition Period Ended September	Year Ended June 29, 2013	Year Ended June 30, 2012
2016	3, 2015	27, 2014	28, 2013	2.58	(5)
2.44	2.20	(3)	(4)		

- (1) We have computed the consolidated ratio of earnings to fixed charges by dividing earnings by fixed charges. For purposes of computing these ratios, earnings have been calculated by adding fixed charges to income (loss) from continuing operations before income taxes and before adjustment for income or loss from equity investees (if any), distributed income of equity investees (if any), and our share of losses before income taxes from equity investees for which charges arising from guarantees are included in listed charges (if any), and/or non-controlling interest (if any), and fixed charges have been calculated as the sum of interest expensed and capitalized, amortized premiums, discounts and capitalized expenses related to indebtedness, and an estimate of the interest within rental expense. Currently, we do not have any shares of preferred stock outstanding. We did not have any preferred stock outstanding and we did not pay or accrue any preferred stock dividends during the periods presented above.
- (2) We operate on a 52-53 week fiscal year ending on the Saturday closest to September 30. The transition period resulting from the change in our fiscal year end was a 13-week quarter that ended on September 28, 2013, to coincide with the change in our fiscal year end. On August 26, 2013, our Board of Directors determined that the Company's fiscal year would begin on the Sunday closest to September 30 of each year and end on the Saturday closest to September 30 of each year.
- (3) The ratio was less than 1:1 for the year ended September 27, 2014. The Company would have needed to generate an additional \$7.39 million of earnings to achieve a ratio of 1:1.
- (4) The ratio was less than 1:1 for the three-month transition period ended September 28, 2013. The Company would have needed to generate an additional \$0.5 million of earnings to achieve a ratio of 1:1.
- (5) The ratio was less than 1:1 for the year ended June 30, 2012. The Company would have needed to generate an additional \$10.5 million of earnings to achieve a ratio of 1:1.

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USE OF PROCEEDS

Unless we otherwise specify in any applicable prospectus supplement, we expect to use the net proceeds from our sale of securities for general corporate purposes, which may include repayment of indebtedness, funding future acquisitions, strategic investments, stock repurchases, capital expenditures and working capital. Pending such use, we may temporarily invest net proceeds in short-term, interest bearing, investment-grade securities. We do not have any present plans, and are not engaged in any negotiations, for the use of any such proceeds in any future acquisition. We will disclose any proposal to use the net proceeds from any offering of securities in connection with an acquisition in the prospectus supplement relating to such offering.

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DESCRIPTIONS OF SECURITIES WE MAY OFFER

This prospectus contains summary descriptions of the common stock, preferred stock, debt securities, warrants and units that we may offer and sell from time to time. We may issue the debt securities as exchangeable and/or convertible debt securities exchangeable for or convertible into shares of common stock or preferred stock. The preferred stock may also be exchangeable for and/or convertible into shares of common stock or another series of preferred stock. When one or more of these securities are offered in the future, a prospectus supplement will explain the particular terms of the securities and the extent to which these general provisions may apply. These summary descriptions and any summary descriptions in the applicable prospectus supplement do not purport to be complete descriptions of the terms and conditions of each security and are qualified in their entirety by reference to our Articles of Incorporation, as amended, our Bylaws, as amended, and applicable Georgia law and any other documents referenced in such summary descriptions and from which such summary descriptions are derived. If any particular terms of a security described in the applicable prospectus supplement differ from any of the terms described herein, then the terms described herein will be deemed superseded by the terms set forth in that prospectus supplement.

We may issue securities in book-entry form through one or more depositaries named in the applicable prospectus supplement. Each sale of a security in book-entry form will settle in immediately available funds through the applicable depositary, unless otherwise stated. We will issue the securities only in registered form, without coupons, although we may issue the securities in bearer form if so specified in the applicable prospectus supplement. If any securities are to be listed or quoted on a securities exchange or quotation system, the applicable prospectus supplement will say so.

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DESCRIPTION OF CAPITAL STOCK

General

We are authorized to issue up to 15,000,000 shares of common stock, par value \$0.01 per share, of which 7,579,255 shares were issued and outstanding as of November 15, 2016. We are also authorized to issue up to 2,000,000 shares of preferred stock, par value \$0.01 per share. No shares of preferred stock were outstanding as of November 15, 2016.

Common Stock

The holders of our common stock are entitled to one vote per share on all matters to be voted upon by our shareholders. Subject to any preferences that may be applicable to any preferred stock issued in the future, the holders of our common stock are entitled to receive ratably any dividends that may be declared from time to time by our board of directors out of funds legally available for that purpose. In the event of our liquidation, dissolution or winding up, the holders of our common stock are entitled to share ratably in all assets remaining after the payment of liabilities, subject to the prior distribution rights of any preferred stock. Our common stock has no preemptive or conversion rights. There are no redemption or sinking fund provisions applicable to our common stock.

Preferred Stock

We are authorized to issue 2,000,000 shares of blank check preferred stock, which may be issued from time to time in one or more classes and in one or more series within a class upon authorization by our board of directors. Our board of directors, without further approval of the shareholders, is authorized to fix the preferences, limitations and relative rights of the shares of each class or series within a class.

If we offer preferred stock, we will file the terms of the preferred stock with the SEC, and the prospectus supplement and/or other offering material relating to that offering will include a description of the specific terms of the offering, including any of the following applicable 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; and

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

It is not possible to state the actual effect of the issuance of any shares of preferred stock upon the rights of holders of our common stock until our board of directors determines the specific rights of the holders of the preferred stock.

However, these effects might include:

decreasing the amount of earnings and assets available for distribution to holders of common stock;

restricting dividends on common stock;

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diluting the voting power of common stock;

impairing the liquidation rights of common stock; and

delaying, deferring or preventing a change in control of our Company.

Anti-Takeover Provisions

We are governed by the Georgia Business Corporation Code. Our Articles of Incorporation (as amended), Bylaws (as amended) and the Georgia Business Corporation Code contain provisions that may delay, prevent or make more difficult an attempt by a third party to acquire control of the Company by means of a tender offer, proxy contest or other similar transaction involving control of the Company, even if viewed favorably by shareholders and/or should the offer include a substantial premium over the market price of our common stock at that time. In addition, these provisions may have the effect of assisting our management to remain in office and place it in a better position to resist changes that shareholders may want to make if dissatisfied with the conduct of our business. These provisions include the following:

Articles of Incorporation

Our Articles of Incorporation, as amended:

authorize the issuance by our board of directors of our authorized but unissued shares of blank check preferred stock in one or more classes and in one or more series within any such class without shareholder approval, with such rights, powers and privileges as the board of directors deems appropriate;

require the unanimous written consent of our shareholders for them to take action without a meeting of shareholders; and

expressly permit the board of directors, when evaluating any transaction involving control of the Company, to consider not only the consideration being offered in relation to the then current market price for the Company's capital stock but also in relation to the then current value of the Company in a freely negotiated transaction and to the board's estimated future value of the Company (including the unrealized value of its properties and assets) as an independent going concern, as well as other factors the board of directors deems relevant, such as the interests of employees, customers, suppliers and creditors of the Company and its subsidiaries, and the communities in which its facilities are located.

Bylaws

Our Bylaws, as amended:

require action of the holders of a majority of shares outstanding and entitled to vote at such meeting, for the shareholders to call a special meeting of the shareholders;

prohibit the conduct of any business at a special meeting of shareholders other than the business specified in the notice of the meeting;

require the unanimous written consent of our shareholders for them to take action without a meeting of shareholders;

require shareholders to provide advance notice to us of any shareholder nominations for directors at an annual or special meeting of shareholders or to bring any proposal of other business before an annual meeting of shareholders;

allow the board of directors to vary the number of directors between two and fifteen and authorize our board of directors to fill vacant directorships;

allow our board of directors to alter, amend or repeal our Bylaws and adopt new bylaws; and

elect for the Company to be covered by the business combination provisions of the Georgia Business Corporation Code described below.

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Georgia Law

We have elected in our Bylaws to be governed by the business combination provisions of the Georgia Business Corporation Code (Sections 14-2-1131 through 14-2-1133), which could be viewed as having the effect of discouraging an attempt to obtain control of the Company; however we have not elected in our Bylaws to be governed by the fair price provisions of the Georgia Business Corporation Code (Sections 14-2-1110 through 14-2-1113), so the fair price provisions are not applicable to an attempt to obtain control of the Company. The business combination provision generally would prohibit us from engaging in various business combination transactions with any interested shareholder (defined generally as a beneficial owner of 10% or more of our outstanding common stock) for a period of five years after the date of the transaction in which the person became an interested shareholder unless specified board of directors and shareholder approval conditions are met.

Trading

Our common stock is listed on the NYSE MKT under the symbol DLA.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is American Stock Transfer & Trust Company, LLC. The transfer agent's address is 6201 1st Avenue, Brooklyn, New York 11219, and its telephone number is (800) 937-5449.

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DESCRIPTION OF DEBT SECURITIES

We summarize below some of the provisions that will apply to the debt securities unless the applicable prospectus supplement provides otherwise. This summary may not contain all information that is important to you. The complete terms of the debt securities will be contained in the applicable notes, indenture and indenture supplement. The notes, indenture and indenture supplement are or will be included or incorporated by reference as exhibits to the registration statement of which this prospectus is a part. You should read the provisions of the notes, indenture and indenture supplement. You should also read the prospectus supplement, which will contain additional information and which may update or change some of the information below.

General

We will issue any senior notes under a senior indenture which we will enter into with the trustee named in the senior indenture. We will issue any subordinated notes under a subordinated indenture which we will enter into with the trustee named in the subordinated indenture. We have filed forms of these documents as exhibits to the registration statement of which this prospectus is a part. We use the term `indentures` to refer to both the senior indenture and the subordinated indenture. The indentures will be qualified under the Trust Indenture Act of 1939, as amended. We use the term `trustee` to refer to either the senior trustee or the subordinated trustee, as applicable.

The following summaries of material provisions of the senior notes, the subordinated notes and the indentures are subject to, and qualified in their entirety by reference to, all the provisions of the indenture applicable to a particular series of debt securities. We urge you to read the applicable prospectus supplement or free writing prospectus that is related to the debt securities that we sell under this prospectus, as well as the complete indentures, and any supplements thereto, that contain the terms of the debt securities. Except as we may otherwise indicate, the terms of the senior indenture and the subordinated indenture are identical in all material respects.

We may issue, from time to time, debt securities, in one or more series, that will consist of either our senior debt (`senior debt securities`), our senior subordinated debt (`senior subordinated debt securities`), our subordinated debt (`subordinated debt securities`) or our junior subordinated debt (`junior subordinated debt securities` and, together with the senior subordinated debt securities and the subordinated debt securities, the `subordinated securities`). Debt securities, whether senior, senior subordinated, subordinated or junior subordinated, may be issued as convertible debt securities or exchangeable debt securities.

The indentures in the forms initially filed as exhibits to the registration statement of which this prospectus is a part do not limit the amount of debt securities that we may issue, including senior debt securities, senior subordinated debt securities, subordinated debt securities and junior subordinated debt securities, and do not limit us from issuing any other debt, including secured and unsecured debt. We may issue debt securities up to an aggregate principal amount as we may authorize from time to time which securities may be in any currency or currency unit designated by us. The terms of each series of debt securities will be established by or pursuant to (a) a supplemental indenture, (b) a resolution of our board of directors, or (c) an officers' certificate pursuant to authority granted under a resolution of our board of directors. The prospectus supplement will describe the terms of any debt securities being offered, including:

the title of the debt securities;

the limit, if any, upon the aggregate principal amount or issue price of the securities of a series;

the ranking of the specific series of debt securities relative to our and our subsidiaries' other outstanding indebtedness;

the price or prices at which the debt securities will be issued;

the designation, aggregate principal amount and authorized denominations of the debt securities;

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the issue date or dates of the series and the maturity date of the series;

whether the securities will be issued at par or at a premium over or a discount from their face amount;

the interest rate, if any, and the method for calculating the interest rate and basis upon which interest shall be calculated;

the right, if any, to extend interest payment periods and the duration of the extension;

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

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

the currency of denomination of the securities;

the place where we will pay principal, premium, if any, and interest, if any, and the place where the debt securities may be presented for transfer;

if payments of principal of, premium, if any, on or interest, if any, on the debt securities will be made in one or more currencies or currency units other than that or those in which the debt securities are denominated, the manner in which the exchange rate with respect to these payments will be determined;

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 or certificates;

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

the portion of principal amount of the debt securities payable upon declaration of acceleration of the maturity date, if other than the principal amount;

the currency or currencies, if other than the currency of the United States, in which principal and interest will be paid;

the dates on which premium, if any, will be paid;

any addition to or change in the Events of Default described in this prospectus or in the indenture with respect to the debt securities and any change in the acceleration provisions described in this prospectus or in the indenture with respect to the debt securities;

any addition to or change in the covenants described in the prospectus or in the indenture with respect to the debt securities;

our right, if any, to defer payment of interest and the maximum length of this deferral period; and

other specific terms, including any additional events of default or covenants.

We may issue debt securities at a discount below their stated principal amount. Even if we do not issue the debt securities below their stated principal amount, for United States federal income tax purposes the debt securities may be deemed to have been issued with a discount because of certain interest payment characteristics. We will describe in any applicable prospectus supplement the material United States federal income tax considerations applicable to debt securities issued at a discount or deemed to be issued at a discount, and will describe any special material United States federal income tax considerations that may be applicable to the particular debt securities.

The debt securities will represent our general obligations. We are a legal entity separate and distinct from our subsidiaries; however, a material portion of our assets is owned by our consolidated subsidiaries. Our right to participate in any distribution of assets of any subsidiary upon the subsidiary's liquidation or reorganization or

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otherwise is subject to the prior claims of creditors of the subsidiary, except to the extent we may ourselves be recognized as a creditor of that subsidiary. Accordingly, the debt securities will be effectively subordinated to all existing and future liabilities of our subsidiaries, and holders of the debt securities should look only to our assets for payments on the debt securities.

Senior Debt

Senior debt securities will rank equally and pari passu with all of our other unsecured and unsubordinated debt from time to time outstanding.

Subordinated Debt

The subordinated debt securities will be subordinate and junior in priority of payment to certain of our other indebtedness to the extent described in a prospectus supplement or free writing prospectus, and the subordinated indenture filed as an exhibit to the registration statement of which this prospectus is a part may be modified by a supplemental indenture to reflect such subordination provisions.

Conversion or Exchange Rights

Debt securities may be convertible into or exchangeable for our other securities or property. The terms and conditions of conversion or exchange will be set forth in the supplemental indenture, board resolution or officers' certificate related to that series of debt securities and will be described in the relevant prospectus supplement. The terms will include, among others, the following:

the conversion or exchange price;

the conversion or exchange period;

provisions regarding the ability of us or the holder to convert or exchange the debt securities;

events requiring adjustment to the conversion or exchange price; and

provisions affecting conversion or exchange in the event of our redemption of the debt securities.

Merger, Consolidation or Sale of Assets

The indentures in the forms initially filed as exhibits to the registration statement of which this prospectus is a part prohibit us from merging into or consolidating with any other person or selling, leasing or conveying substantially all of our assets and the assets of our subsidiaries, taken as a whole, to any person, unless:

either we are the continuing corporation or the successor corporation or the person which acquires by sale, lease or conveyance substantially all our or our subsidiaries' assets is a corporation organized under the laws of the United States, any state thereof, or the District of Columbia, and expressly assumes the due and punctual payment of the principal of, and premium, if any, and interest, if any, on all the debt securities and the performance of every covenant of the indenture to be performed or observed by us, by supplemental indenture satisfactory to the trustee, executed and delivered to the trustee by such corporation;

immediately after giving effect to such transactions, no Event of Default defined in the indentures and described under the caption "Events of Default and Remedies" below, or event which, after notice or lapse of time or both, would become an Event of Default, has happened and is continuing; and

we have delivered to the trustee an officers' certificate and an opinion of counsel each stating that such transaction and such supplemental indenture comply with the indenture provisions relating to merger, consolidation and sale of assets.

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The indentures in the forms initially filed as exhibits to the registration statement of which this prospectus is a part provide that upon any consolidation or merger with or into any other person or any sale, conveyance, lease, or other transfer of all or substantially all of our or our subsidiaries' assets to any person, the successor person shall succeed, and be substituted for, us under the indenture and each series of outstanding debt securities, and we shall be relieved of all obligations under the indenture and each series of outstanding debt securities to the extent we were the predecessor person.

Events of Default and Remedies

When we use the term "Event of Default" in the indentures in the forms initially filed as exhibits to the registration statement of which this prospectus is a part with respect to the debt securities of any series, we in general mean:

1. default in paying interest on the debt securities when it becomes due and the default continues for a period of 30 days or more;
2. default in paying principal of, or premium, if any, on, the debt securities when due;
3. default is made in the payment of any sinking or purchase fund or analogous obligation when the same becomes due, and such default continues for 30 days or more;
4. default in the performance, or breach, of any covenant or warranty in the indenture (other than defaults specified in clause (1), (2) or (3) above) and the default or breach continues for a period of 60 days or more after we receive written notice of such default from the trustee or we and the trustee receive notice of such default from the holders of at least 25% in aggregate principal amount of the outstanding debt securities of the series;
5. certain events of bankruptcy, insolvency, reorganization, administration or similar proceedings with respect to us have occurred; and
6. any other Events of Default provided with respect to debt securities of that series that are set forth in the applicable prospectus supplement accompanying this prospectus.

No Event of Default with respect to a particular series of debt securities (except as to certain events of bankruptcy, insolvency or reorganization) necessarily constitutes an Event of Default with respect to any other series of debt securities. Unless otherwise provided by the terms of an applicable series of debt securities, if an Event of Default under the indentures in the forms initially filed as exhibits to the registration statement of which this prospectus is a part occurs with respect to the debt securities of any series and is continuing, then the trustee or the holders of not less than 51% of the aggregate principal amount of the outstanding debt securities of that series may by written notice require us to repay immediately the entire principal amount of the outstanding debt securities of that series (or such lesser amount as may be provided in the terms of the securities), together with all accrued and unpaid interest and premium, if any. In the case of an Event of Default resulting from certain events of bankruptcy, insolvency or reorganization, the principal (or such specified amount) of and accrued and unpaid interest, if any, on all outstanding

debt securities will become and be immediately due and payable without any declaration or other act on the part of the trustee or any holder of outstanding debt securities. We refer you to the prospectus supplement relating to any series of debt securities that are discount securities for the particular provisions relating to acceleration of a portion of the principal amount of such discount securities upon the occurrence of an Event of Default.

After a declaration of acceleration, the holders of a majority in aggregate principal amount of outstanding debt securities of any series may rescind this accelerated payment requirement if all existing Events of Default, except for nonpayment of the principal on the debt securities of that series that has become due solely as a result of the accelerated payment requirement, have been cured or waived and if the rescission of acceleration would not conflict with any judgment or decree. The holders of a majority in aggregate principal amount of the outstanding debt securities of any series also have the right to waive past defaults, except a default in paying principal or interest on any outstanding debt security, or in respect of a covenant or a provision that cannot be modified or amended without the consent of all holders of the debt securities of that series.

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The indentures in the forms initially filed as exhibits to the registration statement of which this prospectus is a part provide that no holder of any debt security issued under the indenture may seek to institute a proceeding with respect to the indenture unless such holder has previously given written notice to the trustee of a continuing Event of Default, the holders of not less than 51% in aggregate principal amount of the outstanding debt securities of the series have made a written request to the trustee to institute proceedings in respect of the Event of Default, the holder or holders have offered reasonable indemnity to the trustee and the trustee has failed to institute such proceeding within 60 days after it received this notice. In addition, within this 60-day period the trustee must not have received directions inconsistent with this written request by holders of a majority in aggregate principal amount of the outstanding debt securities of that series. These limitations do not apply, however, to a suit instituted by a holder of a debt security for the enforcement of the payment of principal, interest or any premium on or after the due dates for such payment.

The indentures in the forms initially filed as exhibits to the registration statement of which this prospectus is a part provide that during the existence of an Event of Default actually known to a responsible officer of the trustee, the trustee is required to exercise the rights and powers vested in it under the applicable indenture and use the same degree of care and skill in its exercise as a prudent person would under the circumstances in the conduct of that person's own affairs. If an Event of Default has occurred and is continuing, the trustee is not under any obligation to exercise any of its rights or powers at the request or direction of any of the holders unless the holders have offered to the trustee security or indemnity reasonably satisfactory to the trustee. Subject to certain provisions, the holders of a majority in aggregate principal amount of the outstanding debt securities of any series have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee, or exercising any trust, or power conferred on the trustee.

The indentures in the forms initially filed as exhibits to the registration statement of which this prospectus is a part provide that the trustee will, within 90 days after receiving notice of any default, give notice of the default to the holders of the debt securities of that series, unless the default was already cured or waived. In the case of a default specified in clause (4) above describing Events of Default, no notice of default to the holders of the debt securities of that series will be given until 60 days after the occurrence of the Event of Default.

The indentures in the forms initially filed as exhibits to the registration statement of which this prospectus is a part require us, within 120 days after the end of our fiscal year, to furnish to the trustee a statement as to knowledge of compliance with the indenture. The indentures in the forms initially filed as exhibits to the registration statement of which this prospectus is a part provide that the trustee may withhold notice to the holders of debt securities of any series of any Event of Default (except in payment of any principal, interest or any premium when due on any debt securities of that series) with respect to debt securities of that series if it in good faith determines that withholding notice is in the interest of the holders of those debt securities.

Modification and Waiver

In general, the indentures in the forms initially filed as exhibits to the registration statement of which this prospectus is a part may be amended or modified without the consent of any holder of debt securities in order to:

evidence a successor to the trustee;

cure ambiguities, defects or inconsistencies;

provide for the assumption of our obligations in the case of a merger or consolidation or transfer of all or substantially all of our assets that complies with the covenant described under Merger, Consolidation or Sale of Assets ;

make any change that would provide any additional rights or benefits to the holders of the debt securities of a series;

secure the debt securities of a series;

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establish the form or forms of debt securities of any series;

add additional Events of Default with respect to the debt securities of any series;

add additional provisions as may be expressly permitted by the Trust Indenture Act;

maintain the qualification of the indenture under the Trust Indenture Act; or

make any change that does not adversely affect in any material respect the interests of any holder of the debt securities of a series.

The indentures in the forms initially filed as exhibits to the registration statement of which this prospectus is a part provide that other amendments and modifications of the indenture or the debt securities issued may be made with the consent of the holders of not less than a majority in aggregate principal amount of the outstanding debt securities of each series affected by the amendment or modification. However, in general, no modification or amendment may, without the consent of the holder of each outstanding debt security affected:

change the maturity date or the stated payment date of any payment of premium or interest payable on the debt securities;

reduce the principal amount, or extend the fixed maturity, of the debt securities;

change the method of computing the amount of principal or any interest of any debt security;

change or waive the redemption or repayment provisions of the debt securities;

change the currency in which principal, any premium or interest is paid or the place of payment;

reduce the percentage in principal amount outstanding of debt securities of any series which must consent to an amendment, supplement or waiver or consent to take any action;

impair the right to institute suit for the enforcement of any payment on the debt securities;

waive a payment default with respect to the debt securities;

reduce the interest rate or extend the time for payment of interest on the debt securities; or

adversely affect the ranking or priority of the debt securities of any series.

Satisfaction, Discharge and Covenant Defeasance

The indentures in the forms initially filed as exhibits to the registration statement of which this prospectus is a part provide that we may terminate our obligations under the indenture with respect to the outstanding debt securities of any series, when:

either:

all debt securities of any series issued that have been authenticated and delivered have been delivered to the trustee for cancellation; or

all the debt securities of any series issued that have not been delivered to the trustee for cancellation have become due and payable, will become due and payable within one year, or are to be called for redemption within one year and we have made arrangements satisfactory to the trustee for the giving of notice of redemption by such trustee in our name and at our expense, and in each case, we have irrevocably deposited or caused to be deposited with the trustee sufficient funds to pay and discharge the entire indebtedness on the series of debt securities; and

we have paid or caused to be paid all other sums then due and payable under the indenture; and

we have delivered to the trustee an officers certificate and an opinion of counsel, each stating that all conditions precedent under the indenture relating to the satisfaction and discharge of the indenture have been complied with.

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The indentures in the forms initially filed as exhibits to the registration statement of which this prospectus is a part provide that we may elect to have our obligations under the indenture discharged with respect to the outstanding debt securities of any series (legal defeasance). Legal defeasance means that we will be deemed to have paid and discharged the entire indebtedness represented by the outstanding debt securities of such series under the indenture, except for:

the rights of holders of the debt securities to receive principal, interest and any premium when due;

our obligations with respect to the debt securities concerning issuing temporary debt securities, registration of transfer of debt securities, mutilated, destroyed, lost or stolen debt securities and the maintenance of an office or agency for payment for security payments held in trust;

the rights, powers, trusts, duties and immunities of the trustee; and

the defeasance provisions of the indenture.

In addition, the indentures in the forms initially filed as exhibits to the registration statement, of which this prospectus is a part, provide that we may elect to have our o