

METALS USA INC
Form 10-K/A
April 28, 2005

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 10-K/A

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**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF
1934**

For the fiscal year ended December 31, 2004

Commission File Number 1-13123

METALS USA, INC.

(Exact name of Registrant as Specified in its Charter)

Delaware
(State or other jurisdiction
of incorporation or organization)

76-0533626
(I.R.S. Employer
Identification Number)

One Riverway, Suite 1100
Houston, Texas
(Address of Principal Executive Offices)

77056
(Zip Code)

Registrant's telephone number, including area code: **(713) 965-0990**

Securities registered pursuant to Section 12(b) of the Act: **None**

Securities registered pursuant to Section 12(g) of the Act: **Common Stock, \$.01 par value**

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the Registrant is an accelerated filer (as defined in Exchange Act Rule 12b-2). Yes No

Indicate by check mark whether the Registrant has filed all documents and reports required to be filed by Section 12, 13 or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court. Yes No

Based on the NASDAQ closing price of \$17.88 per share on June 30, 2004, the aggregate market value of the Registrant's outstanding common stock held by non-affiliates, of approximately 13.4 million shares, on such date was \$310.8 million. Based on the NASDAQ closing price of \$24.18 per share on March 1, 2005, the aggregate market value of the Registrant's outstanding common stock held by non-affiliates, of approximately 16.8 million shares, on such date was \$406.2 million. The common stock held by the Registrant's directors, executive officers and persons beneficially owning 10% or more of the shares of common stock, who are the only persons known to the Registrant who may be considered to be its affiliates as defined under Rule 12b-2, is excluded from the figures in this paragraph. There were 20,279,280 shares of outstanding common stock, \$.01 par value, of the Registrant as of March 1, 2005.

DOCUMENTS INCORPORATED BY REFERENCE

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Certain portions of the Registrant's definitive proxy statement, to be filed with the Securities and Exchange Commission pursuant to Regulation 14A not later than 120 days after the close of the Registrant's fiscal year, are incorporated by reference under Part III.

EXPLANATORY NOTE

This Amendment No. 1 to Metals USA, Inc.'s Annual Report on Form 10-K for the fiscal year ended December 31, 2004, which was initially filed on March 9, 2005 (the "Original Filing") is being filed pursuant to an exemptive order issued by the Securities and Exchange Commission (SEC Release No. 34-50754). In accordance with the exemptive order, the Company may include management's annual report on internal control over financial reporting and the related report of the Company's independent registered public accounting firm in an amendment to its Annual Report on Form 10-K not later than forty five days after the prescribed period for filing such Annual Report, which in our case extended the deadline for filing the internal control report until April 30, 2005. In compliance with the exemptive order, the Company is filing this Amendment to update Item 9A "Controls and Procedures to include:

Management's annual report on internal control over financial reporting; and

the Report of our Independent Registered Public Accounting Firm relating to the Company's assessment of internal control over financial reporting and the effectiveness of internal control over financial reporting.

As a result of this Amendment, (1) the certifications pursuant to Section 302 and Section 906 of the Sarbanes-Oxley Act of 2002, filed and furnished, respectively, as exhibits to the original filing, have been re-executed and re-filed as of the date of this Amendment; and (2) a Consent of our Independent Registered Public Accounting Firm dated April 28, 2005 to cover their report related to our internal control over financial reporting is being filed.

The other Items of the Original Filing are unaffected by the changes described above and have not been amended in this Amendment. All information in this Amendment is as of the date of the Original Filing and does not reflect any subsequent information or events occurring after the date of the Original Filing. Accordingly, this Amendment should be read in conjunction with the Company's filings made with the Securities and Exchange Commission subsequent to the filing of the Original Filing, including any amendments to those filings.

FRESH START ACCOUNTING

We applied Fresh-Start Reporting to our consolidated balance sheet as of October 31, 2002 in accordance with Statement of Position No. 90-7, Financial Reporting by Entities in Reorganization Under the Bankruptcy Code as promulgated by the American Institute of Certified Public Accountants (SOP 90-7). Under Fresh-Start Reporting, a new reporting entity is considered to be created and the recorded amounts of assets and liabilities are adjusted to reflect their estimated fair values at the date Fresh-Start Reporting is applied. On October 31, 2002, we emerged from bankruptcy. As a result of the application of Fresh-Start Reporting, our financial information of any date or for periods after November 1, 2002 is not comparable to our historical financial information before November 1, 2002. As a result of the emergence from bankruptcy and for the purpose of presentation, activities subsequent to October 31, 2002 relate to the Successor Company and activities prior to November 1, 2002 relate to the Predecessor Company.

SAFE HARBOR STATEMENT FORWARD-LOOKING STATEMENTS

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This Annual Report on Form 10-K contains statements reflecting assumptions, expectations, projections, intentions or beliefs about future events that are intended as forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. All statements included or incorporated by reference in this Annual Report, other than statements of historical fact, that address activities, events or developments that we expect, believe or anticipate will or may occur in the future are forward-looking statements. These statements appear in a number of places, including Item 1. Business, Item 3. Legal Proceedings and Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations. These statements represent our reasonable judgment on the future based on various factors and using numerous assumptions and are subject to known and unknown risks, uncertainties and other factors that could cause our actual results and financial position to differ materially from those contemplated by the statements. You can identify these statements by the fact that they do not relate strictly to historical or current facts. They use words such as anticipate, believe, estimate, expect, forecast, may, will, should, plan, project and other words of similar meaning. In particular, these include, but are not limited to, statements relating to the following:

- projected operating or financial results, include anticipated cash flows from operations and asset sale proceeds for 2005;
- expectations regarding capital expenditures, interest expense and other payments;
- our beliefs and assumptions relating to our liquidity position, including our ability to adapt to changing market conditions;
- our ability to compete effectively for market share with industry participants;

Any or all of our forward-looking statements may turn out to be wrong. They can be affected by inaccurate assumptions or by known or unknown risks, uncertainties and other factors including, among others:

- supply, demand, prices and other market conditions for steel and other commodities;
- the timing and extent of changes in commodity prices;
- the effects of competition in our business lines;
- the condition of the steel and metal markets generally, which will be affected by interest rates, foreign currency fluctuations and general economic conditions;
- the ability of our counterparties to satisfy their financial commitments;

tariffs and other government regulations relating to our products and services;

operational factors affecting the ongoing commercial operations of our facilities, including catastrophic weather-related damage, regulatory approvals, permit issues, unscheduled blackouts, outages or repairs, unanticipated changes in fuel costs or availability of fuel emission credits or workforce issues;

our ability to operate our businesses efficiently, manage capital expenditures and costs (including general and administrative expenses) tightly and generate earnings and cash flow; and

general political conditions and developments in the United States and in foreign countries whose affairs affect supply, demand and markets for steel, metals and metal products.

In addition, there may be other factors that could cause our actual results to be materially different from the results referenced in the forward-looking statements, some of which are included elsewhere in this Form 10-K, including in Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations - Factors Which May Affect Future Operating Results for risk factors that may affect future performance. Many of these factors will be important in determining our actual future results. Consequently, no forward-looking statement can be guaranteed. Our actual future results may vary materially from those expressed or implied in any forward-looking statements. All forward-looking statements contained in this Form 10-K are qualified in their entirety by this cautionary statement. Forward-looking statements speak only as of the date they are made, and we disclaim any obligation to update any forward-looking statements to reflect events or circumstances after the date of this Form 10-K, except as otherwise required by applicable law.

METALS USA, INC.

PART I

Item 1. Business

Unless otherwise indicated, all references to we, us, our or other similar terms herein are intended to refer to Metals USA, Inc. and all of its subsidiaries. Readers should refer to Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations Factors Which May Affect Future Operating Results for risk factors that may affect future performance.

Overview

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We are a leading provider of value-added processed steel, stainless steel, aluminum, red metals and manufactured metal components. Approximately 88% of our revenues are derived from our metal service center and distribution activities and the remaining portion of our revenues are derived from our Building Products Group that manufactures and distributes products primarily related to the residential home improvement industry. The Predecessor Company was organized as a Delaware corporation on July 3, 1996, and began operations upon completion of an initial public offering on July 11, 1997. On November 14, 2001, the Predecessor Company filed for voluntary protection from its creditors under Chapter 11 of the United States bankruptcy laws. For more information about the bankruptcy filing and the subsequent reorganization, please see Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations Predecessor Company Chapter 11 Proceedings and Reorganization. We began operating the reorganized company in November 2002. Beginning in March 2004, our common stock and warrants are quoted on the NASDAQ National Market under the ticker symbols MUSA and MUSAW, respectively. From June 2003 to March 2004, our common stock and warrants were traded on the American Stock Exchange under the ticker symbols MLT and MLT.WS, respectively.

We have three segments, which are identified by their product groups the Flat Rolled, Plates and Shapes and Building Products Groups. Each of our segments purchases metal from primary producers who generally focus on large volume sales of unprocessed metals in standard configurations and sizes.

Our Flat Rolled and Plates and Shapes Groups perform customized, value-added processing services to unimproved steel and other metals required to meet specifications provided by our customers, as well as offering inventory management and just-in-time delivery services. These services enable our customers to reduce material costs, decrease capital required for raw materials inventory and processing equipment and save time, labor, warehouse space and other expenses. The customers of our Flat Rolled and Plates and Shapes Groups are in businesses such as the machining, furniture, transportation equipment, power and process equipment, industrial/commercial construction/fabrication, consumer durables and electrical equipment industries, as well as machinery and equipment manufacturers. Our Building Products Group manufactures higher-value finished building products for distributors and contractors engaged in residential and commercial building products.

Strategy

We are one of the leading providers of higher-value components from processed metals. We have invested substantial capital integrating our operations to maximize operating margins and accelerate sales growth. We are committed to becoming a premier company in both the metals processor/service center and building products industries in the U.S. Our strategy is simply one of providing the best service to our customers, diligent inventory management and prudent risk assessment. Although no longer the central focus of our business plan, we will consider acquisitions that are accretive to earnings and are complementary to our existing mix of products and services.

Segment Information

Each of our product groups is led by an experienced executive and is supported by a professional staff in finance, purchasing and sales and marketing. This product-oriented organizational structure facilitates the efficient advancement of our goals and objectives to achieve operational synergies and focused capital investment. For additional industry segment information, see Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations Results of Operations by Segment and Note 9 to our consolidated financial statements in Item 8. Financial Statements and Supplementary Data.

Metal Processing/Service Center Businesses: Plates and Shapes and Flat Rolled Groups

Overview. Companies operating in the metals industry can be generally characterized as primary metals producers, metals processors/service centers or end-users. Our Plates and Shapes and Flat Rolled Groups are metals processor/service centers. As such, we purchase steel, aluminum, brass, copper and other metals from producing mills and then sell our metal processing services and the metal to our customers, who are generally end-users. We believe that both primary metals producers and end-users are increasingly seeking to have their metals processing and inventory management requirements met by value-added metals processors/service centers like us.

Primary metals producers, which manufacture and sell large volumes of metals in standard sizes and configurations, generally sell only to those large end-users and metals processors/service centers who do not require processing of the products and who can tolerate relatively long lead times. Metal processors/service centers offer services ranging from precision value-added pre-production processing, in accordance with specific customer specifications, to storage and distribution of unprocessed metal products. Generally service centers function as intermediaries between end-users and primary metals producers. End-users, such as contractors and original equipment manufacturers, or OEMs, incorporate the processed metal into a finished product, in some cases with little further modification.

In our Plates and Shapes and Flat Rolled Groups, we engage in pre-production processing of steel, stainless steel, red metals and aluminum and act as an intermediary between primary metals producers and end-users. We purchase metals from primary producers, maintain an inventory of various metals to allow rapid fulfillment of customer orders and perform customized processing services to the specifications provided by end-users and other customers. By providing these services, as well as offering inventory management and just-in-time delivery services, we enable our customers to reduce overall production costs and decrease capital required for raw materials inventory and metals processing equipment. The Plates and Shapes and Flat Rolled Groups contributed approximately 88% of our 2004 net sales and the substantial majority of our 2004 net income.

Plates and Shapes Group. Plates and Shapes consists of 21 facilities throughout the U.S. that maintain an inventory focusing on carbon steel products. With net sales of \$621.0 million in 2004, the Plates and Shapes Group sells carbon steel products such as wide-flange beams, plate, tubing, angles, bars and other structural shapes. These products are available in a number of alloy grades and sizes and generally undergo additional processing prior to customer delivery. This group provides processing services, including cutting, sawing, cambering/leveling, punching, drilling, beveling, surface grinding, bending, shearing, blast and paint, cut-to-length and tee-splitting. Plates and Shapes customers are primarily in the fabrication, construction, machinery and equipment, transportation and energy industries.

Flat Rolled Group. Flat Rolled consists of 12 facilities in the Midwest and southern regions of the U.S. that maintain an inventory of cold rolled and hot rolled steel products and various nonferrous flat rolled products. With net sales of \$723.2 million in 2004, the Flat Rolled Group sells a number of products, including carbon and stainless steel, aluminum, brass and copper in a variety of alloy grades and sizes. Because few end-user customers can handle carbon steel in the form generally shipped by steel mills (sizes less than a quarter of an inch in thickness in continuous coils that typically weigh 40 to 60 thousand pounds each), substantially all of the carbon steel material as well as the nonferrous materials sold by the Flat Rolled Group undergo additional processing prior to customer delivery. Processing services include slitting, precision blanking, leveling, cut-to-length, punching, bending and shearing. Flat Rolled customers are in the electrical manufacturing, fabrication, furniture, appliance manufacturing, machinery and equipment and transportation industries.

Industry Overview. Historically, metal service centers provided few value-added services and were little more than distribution centers, linking metals producers with all but the largest end-users. In the past two decades, however, the metals service center business has evolved significantly, and the most successful metals service centers have added a significant number of, and more sophisticated, processing capabilities, thereby offering an increasingly broad range of value-added services and products both to primary metals producers and end-users. This evolution has resulted from changing trends in the primary metals industry as well as among end-users.

During the past two decades, the trend among primary metals producers has been to focus on their core competency of high-volume production of a relatively limited number of standardized metal products. This change in focus has been driven by metal producers' need to develop and improve efficient, volume-driven production techniques in order to remain competitive. As a result, most of the primary producers have sold their service centers.

Because metal producers generally have left the service center business, most end-users are no longer able to obtain processed products directly from primary metals producers and have recognized the economic advantages associated with outsourcing their customized metals processing and inventory management requirements. Outsourcing permits end-users to reduce total production cost by shifting the responsibility for pre-production processing to value-added metals processors/service centers, whose higher efficiencies in performing these processing services make the ownership and operation of the necessary equipment more financially feasible.

Value-added metals processors/service centers have also benefited from growing customer demand for inventory management and just-in-time delivery services. These supply-chain services, which are not normally available from primary metals producers, enable end-users to reduce input costs, decrease capital required for inventory and equipment and save time, labor and other expenses. In response to customer

expectations, the more sophisticated value-added metals processors/service centers have acquired specialized and expensive equipment to perform customized processing and have installed

sophisticated computer systems to automate order entry, inventory tracking, management sourcing and work-order scheduling. Additionally, some value-added metals processors/service centers have installed electronic data interchange, or EDI, between their computer systems and those of their customers to facilitate order entry, timely delivery and billing. We have EDI capability.

These trends have resulted in value-added metals processors/service centers playing an increasingly important role in all segments of the metals industry. Metals processors/service centers now serve the needs of over 300,000 OEMs, contractors and fabricators nationwide. The necessity for value-added metals processors/service centers to add specialized processing equipment, manage inventory on behalf of their customers and use sophisticated computer systems is requiring industry participants to make substantial capital investments in order to remain competitive. In addition, many customers are seeking to reduce their operating costs by limiting the number of suppliers with whom they do business, often eliminating those suppliers offering limited ranges of products and services. These trends have placed the substantial number of small, owner-operated businesses at a competitive disadvantage because they have limited access to the capital resources necessary to increase their capabilities, or they may be unwilling to justify the investment in equipment. As a result, smaller companies are finding it increasingly difficult to compete as current industry trends continue. Using 2003 industry data, we believe that the metals processor/service center industry is highly fragmented, with as many as 3,000 participants generating about \$50 billion in annual net sales. Due to the present level of metal prices, the size of the industry's net sales would have been significantly higher in 2004, however; comparable industry data is not currently available.

Products and Services. We purchase our raw materials in anticipation of projected customer requirements based on interaction with and feedback from customers, market conditions, historical usage and industry research. Primary producers typically find it more cost effective to focus on large volume production and sale of metals in standard sizes and configurations to large volume purchasers. We process the metals to the precise length, width, shape and surface quality specified by our customers. Our value-added processes include:

Slitting the cutting of coiled metals to specified widths along the length of the coil.

Shearing and cutting to length the cutting of metals into pieces and along the width of a coil to create sheets or plates.

Precision blanking the process in which flat rolled metal is cut into precise two-dimensional shapes.

Laser, flame and plasma cutting the cutting of metals to produce various shapes according to customer-supplied drawings.

Leveling the flattening of metals to uniform tolerances for proper machining.

Sawing the cutting to length of bars, tubular goods and beams.

Tee-splitting the splitting of metal beams.

Plate forming and rolling the forming and bending of plates to cylindrical or required specifications.

Edge trimming a process that removes a specified portion of the outside edges of coiled metal to produce uniform width and round or smooth edges.

Cambering the bending of structural steel to improve load-bearing capabilities.

Metallurgy the analysis and testing of the physical and chemical composition of metals.

Blast and Paint the process of cleaning steel by shot-blasting, then immediately applying a paint or primer.

Our additional capabilities include applications engineering and other value-added processes such as custom machining. Using these capabilities, we use processed metals to manufacture higher-value components.

Once we receive an order, we select the appropriate inventory and schedule it for processing in accordance with the customer's requirements and specified delivery date. Orders are monitored by our computer systems, including, in certain locations, the use of bar coding to aid in and reduce the cost of tracking material. We record the source of all metal shipped to customers. This enables us to identify the source of any metal which may later be shown to not meet industry standards or that fails during or after manufacture. This capability is important to our customers as it allows them to assign responsibility for non-conforming or defective metal to the mill that produced the metal. Many of the products and services we provide can be ordered and tracked through a web-based electronic network that directly connects our computer system to those of our customers.

The substantial portion of our orders are filled within 24-48 hours. This is accomplished through our inventory management programs, which permit us to deliver processed metals in accordance with the just-in-time inventory programs of our customers. We are required to carry sufficient inventory of raw materials to meet the short lead-time and just-in-time delivery requirements of our customers.

While we ship products throughout the U.S., most of our customers are located within a 250-mile radius of our facilities, thus enabling an efficient delivery system capable of handling a large number of short lead-time orders. We transport most of our products directly to our customers either with our own trucks for short-distance and/or multi-stop deliveries or through common or contract trucking companies.

We have quality control systems to ensure product quality and traceability throughout processing. Quality controls include periodic supplier audits, customer approved quality standards, inspection criteria and metals source traceability. A total of 20 of our metal processing/service center facilities have International Standards Organization, or ISO, 9002 certification. In addition to our metal processing/service center facilities that are ISO certified, one location in our Building Products Group is ISO certified.

Building Products Group

Recent Developments. On August 13, 2004, E. L. (Tom) Thompson retired from the company as president of the Building Products Group. Robert C. McPherson III was appointed to replace Mr. Thompson as Senior Vice President and President, Building Products Group. Mr. McPherson has been with Metals USA since March 2003, in the capacity of Senior Vice President, Business Development. Prior to that, Mr. McPherson worked for California Steel Industries, Inc. in Fontana, CA for 13 years, in a number of executive positions.

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Although historically profitable, we are working diligently to improve the overall level of profitability of the Building Products business. We have reduced our ongoing costs of operations by about \$2.0 million dollars annually, through a combination of reducing one whole layer of management and the elimination of eleven redundant or unprofitable sales locations. As a result of these actions, we

expensed approximately \$5.0 million during the third and fourth quarters of 2004. These actions were the last major cost element of our 2004 initiative to improve the Building Products Group's profitability in 2005.

Overview. Building Products had net sales of \$183.0 million in 2004 and currently has 18 operating locations and 26 sales and distribution centers throughout the southeast, southwest and western regions of the U.S. The Building Products Group sells a number of finished products that are both inexpensive and energy efficient, including sunrooms, roofing products, awnings and solariums for use in residential applications and large area covered canopies, awnings and covered walkways for commercial uses. Approximately 95% of the Building Products Group sales are attributable to the residential home markets; the remaining sales are attributable to commercial applications. Building Products customers are predominantly in the construction, wholesale trade and building material industries. The Building Products Group contributed approximately 12% of our 2004 net sales and a disproportionately smaller percentage of our 2004 net income.

Industry Overview. The residential remodeling industry is estimated to be \$170 billion annually by the National Association of the Remodeling Industry, or NARI. Over the last ten years, the industry has experienced accelerated growth due to a number of different factors, including demographic changes, rising disposable incomes, aging American homes and increased rates of home ownership. The increase in disposable incomes has been reflected in the increase in home ownership since the middle of the century. In 1990, over 64% of the population had built some type of home equity as opposed to 55% in 1950. The increase in home ownership among middle-aged Americans is extremely important for the building products industry, as this generation spends twice as much on remodeling projects as any other. Industry sources, such as the NARI, believe that by the time Americans enter their peak earning years, they have grown comfortable with their neighborhoods and their children's schools and would rather remodel their current home than purchase a new home. Among the most popular remodeling projects are windows and doors, siding, kitchens, bathrooms, sunrooms and roofing. Our Building Products Group manufactures and distributes windows and doors, sunrooms and roofing products through a network of independent distributors and home improvement contractors.

The aging of the domestic home supply is also expected to bolster remodeling sales in the near future. It is estimated that 85 million American homes are over 20 years old and are prime candidates for reconstruction and remodeling. Although new housing trends have grown steadily over the past few years, new homes generally account for less than 2% of the domestic home supply in any given year. As Americans look to improve and add value to their homes, more and more will turn to remodeling as a cost-efficient alternative to new housing construction. The NARI reports that new homeowners tend to remodel their homes within the first 16-24 months of moving in, but more importantly, as the younger population reaches middle age, they are likely to make more expensive purchases. Individuals age 35-44 spend twice as much on remodeling than any other age group in the country. Further, advancements in quality and a broader range of price-offerings in home improvement products are making consumers feel more comfortable about making significant remodeling decisions as opposed to purchasing a new home. All of these demographic trends are expected to benefit the continued growth of the building products industry.

Sources of Supply

In recent years, steel, aluminum, copper and other metals production in the U.S. has fluctuated from period to period as mills attempt to match production to projected demand. Periodically, this has resulted in shortages of, or increased ordering lead times for, some products, as well as fluctuations in price. Typically, metals producers announce price changes with sufficient advance notice to allow us to order additional products prior to the effective date of a price increase, or to defer purchases until a price decrease becomes effective. Our purchasing decisions are based on our forecast of the availability of metal products, ordering lead times and pricing, as well as our prediction of customer demand for specific products.

We obtain the overwhelming majority of our raw materials from domestic suppliers, which include Nucor Corp., U.S. Steel, AK Steel, Gerdau Ameristeel, International Steel Group, Alcoa Inc., Bayou Steel, Chaparral Steel and IPSCO Steel. Although we have historically purchased approximately 10% to 15% of our raw material supplies from foreign producers, domestic suppliers have always been and we believe will continue to be our principal source of raw material.

Although most forms of steel and aluminum produced by mills can be obtained from a number of integrated mills or mini-mills, both domestically and internationally, there are a few products that are available from only a limited number of producers. Since most metals are shipped freight-on-board and the transportation of metals is a significant cost factor, we seek to purchase metals, to the extent possible, from the nearest mill, but will use a more distant mill when it offers a lower delivered price.

Ferrous metal producers have been undergoing rapid consolidation over the past three years. U.S. Steel, Nucor Corp. and International Steel Group have acquired several of their domestic competitors, and international integrated producers have merged and consolidated operations. Furthermore, it has been announced that Mittal Steel has agreed to purchase International Steel Group, which would create the largest steel producer in the world. The result of this trend will be fewer integrated producers from which we can purchase our raw materials. While we believe that global consolidation of the steel industry is beneficial to the steel industry as a whole, we are unable to predict what impact this consolidation may have on our operations.

Sales and Marketing; Customers

Our sales and marketing focus is on the identification of OEMs and other metals end-users that could achieve significant cost savings through the use of our inventory management, processing, just-in-time delivery and other services. We use a variety of methods to identify potential customers, including the use of databases, telemarketing, direct mail and participation in manufacturers trade shows. Customer referrals and the knowledge of our sales force about regional end-users also result in the identification of potential customers. Once a potential customer is identified, our outside salespeople assume responsibility for visiting the appropriate contact, typically the purchasing manager or manager of operations.

We employ a sales force consisting of inside and outside salespeople. Inside salespeople are primarily responsible for maintaining customer relationships, receiving and soliciting individual orders and responding to service and other inquiries by customers. Increasingly, these inside salespeople have been given responsibility for telemarketing to potential customers. Our outside sales force is primarily responsible for identifying potential customers and calling on them to explain our services. The sales force is trained and knowledgeable about the characteristics and applications of various metals, as well as the manufacturing methods employed by our customers.

Nearly all sales are on a negotiated price basis. In some cases, sales are the result of a competitive bid process where a customer provides a list of products, along with requirements, to us and several competitors and we submit a bid on each product. We have a diverse customer base, with no single customer accounting for more than 2% of our revenues in 2004 and 2003, and 1% in 2002.

Competition

We are engaged in a highly fragmented and competitive industry. Competition is based on price, product quality, service, and timeliness of delivery and geographic proximity. We compete with a large number of other metals processors/service centers on a national, regional and local basis, some of which may have greater financial resources. Principal national competitors include Ryerson Tull, Inc. (NYSE:RT) and Reliance Steel & Aluminum Co, (NYSE:RS). We also compete to a lesser extent with primary metals producers, who typically sell directly to very large customers requiring regular shipments of large volumes of metals. Numerous smaller metals processors/service centers compete locally.

Historically, we believe that we have been able to compete effectively because of our significant number of locations, geographic dispersion, knowledgeable and trained sales force, integrated computer systems, modern equipment, broad-based inventory, combined purchasing volume and operational economies of scale. Furthermore, we believe our liquidity and overall financial position affords us a good platform with which to compete with our peers in the industry.

Government Regulation and Environmental Matters

Our operations are subject to a number of federal, state and local regulations relating to the protection of the environment and to workplace health and safety. In particular, our operations are subject to extensive federal, state and local laws and regulations governing waste disposal, air and water emissions, the handling of hazardous substances, environmental protection, remediation, workplace exposure and other matters. Hazardous materials we use in our operations include general commercial lubricants and cleaning solvents.

We believe that we are in substantial compliance with all such laws and do not currently anticipate that we will be required to expend any substantial amounts in the foreseeable future in order to meet current environmental or workplace health and safety requirements. However, some of the properties we own or lease are located in areas with a history of heavy industrial use, and are on or near sites listed on the Comprehensive Environmental Response, Compensation, and Liability Act, or CERCLA, National Priority List. We have a number of properties located in or near industrial or light industrial use areas; accordingly, these properties may have been contaminated by pollutants which would have migrated from neighboring facilities or have been deposited by prior occupants. Furthermore, we are not aware of any notices from authoritative agencies with respect to clean-up/remediation claims for contamination at the leased properties. However, we may be notified of such claims with respect to our existing leased or owned properties in the future.

Although no environmental claims have been made against us and we have not been named as a potentially responsible party by the Environmental Protection Agency or any other party, it is possible that we could be identified by the Environmental Protection Agency, a state agency or one or more third parties as a potentially responsible party under CERCLA or under analogous state laws. If so, we could incur substantial litigation costs to prove that we are not responsible for the environmental damage.

Management Information Systems

Both the Plates and Shapes Group and Flat Rolled Group service centers use a system marketed and distributed specifically for the service center industry. During 2003, we completed a similar common-platform initiative in the Building Products Group. Some of our subsidiaries currently use EDI, through which they offer customers a paperless process with respect to order entry, shipment tracking, billing, remittance processing and other routine activities. Additionally, several of our subsidiaries also use computer-aided drafting systems to directly interface with computer-controlled metal processing equipment, resulting in more efficient use of material and time.

We believe investment in uniform management information systems and computer-aided manufacturing technology permits us to respond quickly and proactively to our customers' needs and service expectations. These systems are able to share data regarding inventory status, order backlog, and other critical operational information on a real-time basis.

Employees

We employ approximately 2,500 persons. As of December 31, 2004, approximately 300 employees (12%) at various sites were members of unions: the United Steelworkers of America; the Sheet Metals Workers Union; the International Association of Bridge, Structural, and Ornamental Ironworkers of America; the International Brotherhood of Teamsters; and the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers. Our relationship with these unions generally has been satisfactory, but occasional work stoppages have occurred. Within the last five years, one work stoppage occurred at one facility, which involved approximately 30 employees and lasted approximately 30 days. We are currently a party to 9 collective bargaining agreements, which expire at various times. Collective bargaining agreements for all of our union employees expire in each of the next three years. Historically, we have succeeded in negotiating new collective bargaining agreements without a strike.

From time to time, there are shortages of qualified operators of metals processing equipment. In addition, during periods of low unemployment, turnover among less-skilled workers can be relatively high. We believe that our relations with our employees are good.

Vehicles

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We operate a fleet of owned or leased trucks and trailers, as well as forklifts and support vehicles. We believe these vehicles are generally well maintained and adequate for our current operations.

Risk Management and Insurance

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The primary risks in our operations are bodily injury, property damage and vehicle liability. We maintain general and vehicle liability insurance and liability insurance for bodily injury and property damage and workers' compensation coverage, which we consider sufficient to protect us against a catastrophic loss due to claims associated with these risks.

Safety

Our goal is to provide an accident-free workplace. We are committed to continuing and improving upon each facility's focus and emphasis on safety in the workplace. We currently have a number of safety programs in place, which include regular weekly or monthly field safety meetings and training sessions to teach proper safe work procedures. We have developed a comprehensive best practices safety program to be implemented throughout our operations to ensure that all employees comply with our safety standards, as well as those established by our insurance carriers, and federal, state and local laws and regulations. This program is led by the corporate office, with the assistance of each of our product group presidents, executive officers and industry consultants with expertise in workplace safety. Furthermore, we pay bonuses based on an employee's or a team's safety record.

Financial Information about Segments

For information regarding revenues from external customers, measures of profit or loss and total assets for the last three years for each segment, see Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations Results of Operations by Segment and Note 9 to our consolidated financial statements in Item 8. Financial Statements and Supplementary Data.

Patents and Trademarks

We own several U.S. patents, trademarks, service marks and copyrights. Certain of the trademarks and patents are registered with the U.S. Patent and Trademark Office, and, in some cases, with trademark offices of foreign countries. We consider other information owned by us to be trade secrets. We protect our trade secrets by, among other things, entering into confidentiality agreements with our employees and implementing security measures to restrict access to such information. We believe that our safeguards provide adequate protection to our proprietary rights. While we consider all of our intellectual property to be important, we do not consider any single intellectual property right to be essential to our operations as a whole.

Seasonal Aspects, Renegotiation and Backlog

There is a slight decrease in our business during the winter months because of inclement weather conditions and the impact on the construction industry. No material portion of our business is subject to renegotiation of profits or termination of contracts at the election of the government. Because of the just-in-time delivery policy and the short lead-time nature of our business, we do not believe the information on backlog of orders is material to an understanding of our business.

Foreign Operations

Substantially all of our business is domestic. We do not derive any material revenue from foreign countries and do not have long-term assets or customer relationships outside of the U.S. We have no foreign operations.

Research and Development

We do not incur material expenses in research and development activities but do participate in various research and development programs. We address research and development requirements and product enhancement by maintaining a staff of technical support, quality assurance and engineering personnel.

Predecessor Company Chapter 11 Proceedings and Reorganization

In November 2001, the Predecessor Company sought protection under the U.S. bankruptcy laws. We emerged from bankruptcy on October 31, 2002. Under the reorganization plan approved by the bankruptcy court, the Predecessor Company divested certain assets resulting in proceeds of approximately \$90.1 million during 2002, re-valued its remaining assets, cancelled old common stock, issued new common stock and warrants, and entered into our current revolving credit facility. For more information about the Predecessor Company's bankruptcy filing and our subsequent reorganization, please see Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations Predecessor Company Chapter 11 Proceedings and Reorganization as well as the notes to our consolidated financial statements in Item 8. Financial Statements and Supplementary Data.

Certain Relationships

Three of our nine directors (including our chairman) are directors of Metal Management, Inc. (NASDAQ: MTLM). Moreover, our chairman is also the chief executive officer of Metal Management. Metal Management purchases scrap metal from us at one of our metals processing/service centers. This relationship with Metal Management began with the Predecessor Company well before the two companies shared common directors. However, as a result of the director overlap, our board of directors decided to implement specified procedures to avoid the appearance of, and to protect against, conflicts of interest relating to business transactions involving Metal Management. Sales of scrap to Metal Management for the years ended December 31, 2004 and 2003, the periods from November 1, 2002 through December 31, 2002 and from January 1, 2002 through October 31, 2002 were \$2.0 million, \$0.9 million, \$0.2 million, and \$0.5 million, respectively, and were transacted at prevailing market rates.

Available Information

Our internet address is www.metalsusa.com. On our internet website we make available, free of charge, our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and any amendments to those reports, as soon as reasonably practicable after we

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electronically file such information with, or furnish it to, the SEC. Our SEC reports can be accessed through the investor relations section of our internet website. The information found on our internet website is not a part of this or any other report we file with or furnish to the SEC.

Item 2. Properties

As of December 31, 2004, we operated twenty-one (21) metals processing facilities in the Plates and Shapes Group and twelve (12) facilities in the Flat Rolled Group. These facilities are used to receive, warehouse, process and ship metals. These facilities use various metals processing and materials handling machinery and equipment. Our Building Products Group operates eighteen (18) facilities where we process metals into various building products and twenty-six (26) sales and distribution centers. During 2004, nine (9) Building Products locations were closed and two (2) locations were merged. We continue to serve the marketing areas of the closed facilities with our existing sales force by expanding the responsible territories of our other facilities, and through the use of common carrier for product delivery.

Many of our facilities are capable of being used at higher capacities, if necessary. We believe that our facilities will be adequate for the expected needs of our existing businesses over the next several years. Our facilities, sales and distribution centers and administrative offices are located and described as follows:

OPERATING FACILITIES AS OF DECEMBER 31, 2004

	Location	Square Footage	Owned/Leased
Plates and Shapes Group:			
Northeast Plates and Shapes	Baltimore, Maryland	65,000	Leased
	Seekonk, Massachusetts	115,000	Owned
	Newark, New Jersey (2)	81,000	Leased
	Langhorne, Pennsylvania	235,000	Leased
	Philadelphia, Pennsylvania	85,000	Owned
South Central Plates and Shapes	York, Pennsylvania (2)	109,000	Leased
	Enid, Oklahoma	112,000	Leased
	Muskogee, Oklahoma (1)	229,000	Owned
	Cedar Hill, Texas	104,000	Owned
Mid Atlantic Plates and Shapes	Ambridge, Pennsylvania	200,000	Leased
	Canton, Ohio	110,000	Owned
	Greenville, Kentucky	56,000	Owned
	Greensboro, North Carolina	115,000	Owned
	Leetsdale, Pennsylvania	114,000	Leased
Southeast Plates and Shapes	Wilmington, North Carolina	178,000	Leased
	Mobile, Alabama	246,000	Owned
	Jacksonville, Florida	60,000	Owned
	Oakwood, Georgia	206,000	Owned
	Waggaman, Louisiana	295,000	Owned

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	Location	Square Footage	Owned/Leased
Plates and Shapes Group (continued):			
	Columbus, Mississippi	45,000	Owned
Southwest Plates and Shapes	Hayward, California	64,000	Leased
Flat Rolled Group:			
	Madison, Illinois	150,000	Owned
	Jeffersonville, Indiana (1)	90,000	Owned
	Randleman, North Carolina	150,000	Owned
	Springfield, Ohio	110,000	Owned
	Wooster, Ohio	140,000	Owned
	Chattanooga, Tennessee	60,000	Owned
	Germantown, Wisconsin	90,000	Owned
	Horicon, Wisconsin	120,000	Leased
	Wichita, Kansas	40,000	Leased
	Liberty, Missouri	84,000	Leased
	Northbrook, Illinois	187,000	Owned
	Walker, Michigan	50,000	Owned
Building Products Group:			
Service Centers			
	Phoenix, Arizona	111,000	Leased
	Brea, California	44,000	Leased
	Buena Park, California	73,000	Leased
	Corona, California	38,000	Leased
	Ontario, California	29,000	Leased
	Rancho Cordova, California	41,000	Leased
	Groveland, Florida	247,000	Leased
	Leesburg, Florida	61,000	Leased
	Pensacola, Florida	48,000	Leased
	Stone Mountain, Georgia	60,000	Leased
	Kansas City, Missouri	58,000	Leased
	Las Vegas, Nevada	133,000	Leased
	Irmo, South Carolina	38,000	Leased
	Houston, Texas	285,000	Owned
	Houston, Texas	220,000	Leased
	Mesquite, Texas	200,000	Leased
	Mesquite, Texas	55,000	Leased
	Kent, Washington	57,000	Leased
Sales and Distribution Centers			
	Birmingham, Alabama	12,000	Leased
	Tucson, Arizona	9,000	Leased
	Cerritos, California	20,000	Leased
	Hayward, California	25,000	Leased
	San Diego, California	8,000	Leased
	Clearwater, Florida	20,000	Leased
	Fort Myers, Florida	18,000	Leased
	Holly Hill, Florida	10,000	Leased
	Jacksonville, Florida	17,000	Leased
	Lakeland, Florida	24,000	Leased

	Location	Square Footage	Owned/Leased
Building Products Group (continued):			
	West Melbourne, Florida	18,000	Leased
	Duluth, Georgia	5,000	Leased
	Louisville, Kentucky	11,000	Leased
	Jackson, Mississippi	25,000	Leased
	Overland, Missouri	14,000	Leased
	Greensboro, North Carolina	15,000	Leased
	Oklahoma City, Oklahoma	40,000	Leased
	Harrisburg, Pennsylvania	12,000	Leased
	Memphis, Tennessee	20,000	Leased
	Nashville, Tennessee	15,000	Leased
	Dallas, Texas	36,000	Leased
	Longview, Texas	15,000	Leased
	San Antonio, Texas	20,000	Leased
	Weslaco, Texas	21,000	Leased
	Salt Lake City, Utah	23,000	Leased
	Virginia Beach, Virginia	10,000	Leased
Administrative Locations:			
Corporate Headquarters	Houston, Texas	13,200	Leased
Southeast Plates and Shapes	Mobile, Alabama	16,000	Owned
Northeast Plates and Shapes	Pittsburgh, Pennsylvania	3,700	Leased
i-Solutions	Ft. Washington, Pennsylvania	4,300	Leased

-
- (1) These facilities are subject to liens with respect to specific debt obligations, including Industrial Revenue Bonds.
- (2) We are under contract to purchase these facilities.

Item 3. *Legal Proceedings*

This section contains statements that constitute forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. See disclosure presented on the inside of the front cover of this report for cautionary information with respect to such forward-looking statements.

We are involved in a variety of claims, lawsuits and other disputes arising in the ordinary course of business. We believe the resolution of these matters and the incurrence of their related costs and expenses should not have a material adverse effect on our consolidated financial position, results of operations or liquidity.

Item 4. *Submission of Matters to a Vote of Security Holders*

None.

PART II

Item 5. Market for Registrant's Common Equity and Related Stockholder Matters

Beginning in March 2004, our common stock and warrants are quoted on the NASDAQ National Market under the ticker symbols MUSA and MUSAW, respectively. From June 2003 to March 2004, our common stock and warrants were traded on the American Stock Exchange under the ticker symbols MLT and MLT.WS, respectively. From March 2003 until June 2003, our common stock traded on the OTC Bulletin Board under the symbol MTL.S. From November 1, 2002 until March 2003, our common stock traded on a when issued basis under the symbol MTL.SV.

The following table sets forth the high and low prices for our common stock and warrants as reported by the NASDAQ, AMEX or by the OTC Bulletin Board, as applicable for each calendar quarter during the periods indicated.

	Common Stock(1)		Warrants	
	High	Low	High	Low
2002:				
November 1 to December 31	\$ 5.00	\$ 3.05	\$	\$
2003:				
January 1 to March 31	\$ 4.40	\$ 2.25	\$	\$
April 1 to June 30	\$ 4.45	\$ 2.45	\$ 0.50	\$ 0.10
July 1 to September 30	\$ 7.20	\$ 4.01	\$ 0.69	\$ 0.13
October 1 to December 31	\$ 10.49	\$ 6.28	\$ 1.90	\$ 0.45
2004:				
January 1 to March 31	\$ 14.37	\$ 9.45	\$ 3.50	\$ 1.23
April 1 to June 30	\$ 18.17	\$ 11.50	\$ 4.80	\$ 1.91
July 1 to September 30	\$ 18.48	\$ 14.12	\$ 4.75	\$ 2.70
October 1 to December 31	\$ 20.15	\$ 15.56	\$ 5.20	\$ 3.20
2005:				
January 1 to March 1	\$ 24.99	\$ 16.55	\$ 9.30	\$ 3.71

(1) On October 31, 2002, pursuant to the reorganization plan approved by the court in our bankruptcy proceedings, all shares of the Predecessor Company's common stock were cancelled and we issued 20,000,000 shares of new common stock. Accordingly, information relating to the Predecessor Company's old common stock is not comparable to, or meaningful with respect to, the performance or trading history of our new common stock. See Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations Predecessor Company Chapter 11 Proceedings and Reorganization as well as the notes to our consolidated financial statements in Item 8. Financial Statements and Supplementary Data.

As of March 1, 2005, there were 20,279,280 outstanding shares of our common stock, held by approximately 2,000 shareholders of record. We currently do not anticipate paying dividends on our common stock. Our revolving credit facility currently restricts our ability to pay dividends. For information regarding these restrictions, see Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations Liquidity and Capital Resources Financing Activities and Note 5 to our consolidated financial statements in Item 8. Financial Statements and Supplementary Data. Any determination to declare or pay dividends out of funds legally available for that purpose will be at the discretion of our board of directors and will depend on future earnings, results of operations, financial condition, capital requirements and other factors the board of directors deems relevant, as well as the restrictions in our revolving credit facility and any other applicable contractual restrictions.

Plan Category	Number of shares to be issued upon exercise of outstanding options and grants (a)	Weighted-average exercise price of outstanding options (b)	Number of shares remaining available for future issuance under equity compensation plans (excluding shares reflected in column (a)) (c)
Equity compensation plans approved by common stockholders	1,130,207	\$ 9.42	760,223
Equity compensation plans not approved by common stockholders			
Total	1,130,207	\$ 9.42	760,223

Item 6. Selected Financial Data

The following selected financial data is derived from our consolidated financial statements for the years ended December 31, 2004 and 2003, and for the periods before and after our emergence from bankruptcy proceedings on October 31, 2002. As a result of our emergence from bankruptcy and for the purpose of presentation, activities subsequent to October 31, 2002 relate to the Successor Company and activities prior to November 1, 2002 relate to the Predecessor Company. With respect to periods relating to the Predecessor Company, the consolidated financial statements and related selected financial data have been reclassified for the effects of Statement of Financial Accounting Standards No. 144 (SFAS No. 144), Accounting for Impairment or Disposal of Long-Lived Assets which requires divestitures be excluded from results of operations for all periods presented.

In addition, the consolidated financial statements for 2001 and 2002 were prepared in accordance with the AICPA's SOP 90-7. The consolidated statements of operations information for the period from November 1, 2002 through December 31, 2002 and the consolidated balance sheet information at December 31, 2002 reflect our financial position and operating results after application of our Reorganization Plan and the application of the principles of Fresh-Start Reporting in accordance with the provisions of SOP 90-7. Accordingly, such financial information is not comparable to our historical financial information prior to November 1, 2002.

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This financial data should be read in conjunction with Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations included in this report. The selected financial data for the fiscal years ended 2000 through 2001 reflects our historical consolidated financial statements reclassified for the effects of SFAS No. 144.

	(in millions, except per share amounts)					
	Successor Company			Predecessor Company		
	Year Ended December 31, 2004	Year Ended December 31, 2003	Period From November 1, 2002 thru December 31, 2002	Period From January 1, 2002 thru October 31, 2002	Years Ended December 31, 2001 2000	
Statements of Operations						
Data:						
Net sales	\$ 1,509.8	\$ 963.2	\$ 128.7	\$ 833.3	\$ 1,243.0	\$ 1,585.6
Cost of sales	1,080.1	731.6	98.7	639.0	953.3	1,210.5
Gross profit	429.7	231.6	30.0	194.3	289.7	375.1
Operating expenses	256.0	215.2	30.9	197.1	296.2	320.8
Asset impairments and integration				(0.2)	384.0	
Operating income (loss)	173.7	16.4	(0.9)	(2.6)	(390.5)	54.3
Interest expense	8.4	5.7	1.3	15.8	49.6	50.5
Other (income) expense, net	(2.5)	(2.0)	0.1	(1.1)	1.8	(1.6)
Fresh-start/gain on reorganization				(80.9)		
Reorganization expenses				28.3	19.4	
Income (loss) before taxes and discontinued operations	167.8	12.7	(2.3)	35.3	(461.3)	5.4
Provision (benefit) for taxes	63.3	5.1		(15.4)	(52.9)	3.9
Income (loss) before discontinued operations	104.5	7.6	(2.3)	50.7	(408.4)	1.5
Discontinued operations, net		(0.1)	(1.0)	0.6	(0.7)	10.2
Net income (loss)	\$ 104.5	\$ 7.5	\$ (3.3)	\$ 51.3	\$ (409.1)	\$ 11.7
Income (loss) per share:						
Income (loss) per share basic:						
From continuing operations	\$ 5.17	\$ 0.38	\$ (0.11)	\$ 1.39	\$ (11.19)	\$ 0.04
From discontinued operations		(0.01)	(0.05)	0.02	(0.02)	0.28
Total	\$ 5.17	\$ 0.37	\$ (0.16)	\$ 1.41	\$ (11.21)	\$ 0.32
Income (loss) per share diluted:						
From continuing operations	\$ 5.05	\$ 0.37	\$ (0.11)	\$ 1.39	\$ (11.19)	\$ 0.04
From discontinued operations			(0.05)	0.02	(0.02)	0.28
Total	\$ 5.05	\$ 0.37	\$ (0.16)	\$ 1.41	\$ (11.21)	\$ 0.32
Number of common shares used in the per share calculations:						
Basic	20.2	20.2	20.2			
				whether and under what circumstances the debt securities being offered are convertible into common stock or other securities of		

ours, as the
case may be,
including the
conversion
price or rate
and the manner
or calculation
thereof;

the
circumstances,
if any,
specified in the
applicable
prospectus
supplement,
under which
beneficial
owners of
interests in the
global security
may obtain
definitive debt
securities and
the manner in
which
payments on a
permanent
global debt
security will be
made if any
debt securities
are issuable in
temporary or
permanent
global form;

any provisions
granting special
rights to
holders of
securities upon
the occurrence
of such events
as specified in
the applicable
prospectus
supplement;

if the debt
securities of
such series are
to be issuable
in definitive
form only upon
receipt of
certain
certificates or

other documents or satisfaction of other conditions, then the form and/or terms of such certificates, documents or conditions;

the name of the applicable trustee and the nature of any material relationship with us or any of our affiliates, and the percentage of debt securities of the class necessary to require the trustee to take action;

any deletions from, modifications of or additions to our events of default or covenants with regard to such debt securities and any change in the right of any trustee or any of the holders to declare the principal amount of any of such debt securities due and payable;

applicable CUSIP numbers; and

any other terms of such debt securities not

inconsistent
with the
provisions of
the applicable
indenture.

We may
issue debt
securities that
provide for less
than the entire
principal
amount thereof
to be payable
upon
declaration of
acceleration of
the maturity of
the debt
securities. We
refer to any
such debt
securities
throughout this
prospectus as
"original issue
discount
securities." The
applicable
prospectus
supplement
will describe
the United
States federal
income tax
consequences
and other
relevant
considerations
applicable to
original issue
discount
securities.

We also
may issue
indexed debt
securities.
Payments of
principal of,
and premium
and interest on,
indexed debt
securities are
determined
with reference
to the rate of
exchange
between the
currency or
currency unit in
which the debt

security is
denominated
and any other
currency or
currency unit
specified by us,
to the
relationship
between two or
more
currencies or
currency units
or by other
similar
methods or
formulas
specified in the
prospectus
supplement.

Except as
described under
" Merger,
Consolidation
or Sale of
Assets" or as
may be set
forth in any
prospectus
supplement, the
debt securities
will not contain
any provisions
that (i) would
limit our ability
to incur
indebtedness or
(ii) would
afford holders
of debt
securities
protection in
the event of
(a) a highly
leveraged or
similar
transaction
involving us, or
(b) a change of
control or
reorganization,
restructuring,
merger or
similar
transaction
involving us
that may
adversely affect
the holders of
the debt
securities. In
the future, we

may enter into transactions, such as the sale of all or substantially all of our assets or a merger or consolidation, that may have an adverse effect on our ability to service our indebtedness, including the debt securities, by, among other things, substantially reducing or eliminating our assets.

Our governing instruments do not define the term "substantially all" as it relates to the sale of assets. Additionally, Delaware cases interpreting the term "substantially all" rely upon the facts and

Table of
Contents

circumstances of each particular case. Consequently, to determine whether a sale of "substantially all" of our assets has occurred, a holder of debt securities must review the financial and other information that we have disclosed to the public.

We will provide you with more information in the applicable prospectus supplement regarding any deletions, modifications, or additions to the events of default or covenants that are described below, including any addition of a covenant or other provision providing event risk or similar protection.

Payment

Unless we give you different information in the applicable prospectus supplement, the principal of, and any premium or make-whole

amount, and interest on, any series of the debt securities will be payable at the corporate trust office of the trustee. We will provide you with the address of the trustee in the applicable prospectus supplement. We may also pay interest by mailing a check to the address of the person entitled to it as it appears in the applicable register for the debt securities or by wire transfer of funds to that person at an account maintained within the United States.

All monies that we pay to a paying agent or a trustee for the payment of the principal of, and any premium or make-whole amount, or interest on, any debt security will be repaid to us if unclaimed at the end of two years after the obligation underlying payment becomes due and payable. After funds have been returned to us, the holder of the debt

security may look only to us for payment, without payment of interest for the period which we hold the funds.

***Denomination,
Interest,
Registration
and Transfer***

Unless otherwise described in the applicable prospectus supplement, the debt securities of any series will be issuable in denominations of \$1,000 and integral multiples of \$1,000.

Subject to the limitations imposed upon debt securities that are evidenced by a computerized entry in the records of a depository company rather than by physical delivery of a note, a holder of debt securities of any series may:

exchange them for any authorized denomination of other debt securities

of
the
same
series
and
of
a
like
aggregate
principal
amount
and
kind
upon
surrender
of
such
debt
securities
at
the
corporate
trust
office
of
the
applicable
trustee
or
at
the
office
of
any
transfer
agent
that
we
designate
for
such
purpose;
and

surrender
them
for
registration
of
transfer
or
exchange
at
the
corporate
trust
office
of
the
applicable

trustee
or
at
the
office
of
any
transfer
agent
that
we
designate
for
such
purpose.

Every debt security surrendered for registration of transfer or exchange must be duly endorsed or accompanied by a written instrument of transfer satisfactory to the applicable trustee or transfer agent. Payment of a service charge will not be required for any registration of transfer or exchange of any debt securities, but we or the trustee may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith. If in addition to the applicable trustee, the applicable prospectus supplement refers to any transfer agent initially designated by

us for any series of debt securities, we may at any time rescind the designation of any such transfer agent or approve a change in the location through which any such transfer agent acts, except that we will be required to maintain a transfer agent in each place of payment for such series. We may at any time designate additional transfer agents for any series of debt securities.

Neither we, nor any trustee, will be required to:

issue, register the transfer of or exchange debt securities of any series during a period beginning at the opening of business 15 days before the day that

the
notice
of
redemption
of
any
debt

Table of
Contents

securities
selected
for
redemption
is
mailed
and
ending
at
the
close
of
business
on
the
day
of
such
mailing;

register
the
transfer
of
or
exchange
any
debt
security,
or
portion
thereof,
so
selected
for
redemption,
in
whole
or
in
part,
except
the
unredeemed
portion
of
any
debt
security
being
redeemed
in
part;
and

issue,
register
the
transfer
of
or
exchange
any
debt
security
that
has
been
surrendered
for
repayment
at
the
option
of
the
holder,
except
the
portion,
if
any,
of
such
debt
security
not
to
be
so
repaid.

***Merger,
Consolidation
or Sale of
Assets***

The
indentures
provide that we
may, without
the consent of
the holders of
any outstanding
debt securities,
(i) consolidate
with, (ii) sell,
lease or convey
all or
substantially all
of our assets to,
or (iii) merge
with or into,
any other entity
provided that:

either
we
are
the
continuing
entity,
or
the
successor
entity,
if
other
than
us,
assumes
the
obligations
(a) to
pay
the
principal
of,
and
any
premium
or
make-whole
amount,
and
interest
on,
all
of
the
debt
securities
and
(b) to
duly
perform
and
observe
all
of
the
covenants
and
conditions
contained
in
each
indenture;

after
giving
effect
to
the
transaction,

there
is
no
event
of
default
under
the
indentures
and
no
event
which,
after
notice
or
the
lapse
of
time,
or
both,
would
become
such
an
event
of
default,
occurs
and
continues;
and

an
officers'
certificate
and
legal
opinion
covering
such
conditions
are
delivered
to
each
applicable
trustee.

Covenants

Existence. Except
as described
under " Merger,
Consolidation
or Sale of
Assets," the
indentures

require us to do or cause to be done all things necessary to preserve and keep in full force and effect our existence, rights and franchises. However, the indentures do not require us to preserve any right or franchise if we determine that any right or franchise is no longer desirable in the conduct of our business.

Payment of taxes and other claims. The indentures require us to pay, discharge or cause to be paid or discharged, before they become delinquent (i) all taxes, assessments and governmental charges levied or imposed on us, and (ii) all lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien upon our property. However, we will not be required to pay, discharge or cause to be paid or discharged any such tax, assessment,

charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings.

Provision of financial information. The indentures require us to (i) within 15 days of each of the respective dates by which we are required to file our annual reports, quarterly reports and other documents with the SEC, file with the trustee copies of the annual report, quarterly report and other documents that we file with the SEC under Section 13 or 15(d) of the Exchange Act, (ii) file with the trustee and the SEC any additional information, documents and reports regarding compliance by us with the conditions and covenants of the indentures, as required, (iii) within 30 days after the filing with the trustee, mail to all holders of debt securities, as their names and addresses appear in the

applicable register for such debt securities, without cost to such holders, summaries of any documents and reports required to be filed by us pursuant to (i) and (ii) above, and (iv) supply, promptly upon written request and payment of the reasonable cost of duplication and delivery, copies of such documents to any prospective holder.

Additional covenants. The applicable prospectus supplement will set forth any our additional covenants relating to any series of debt securities.

Table of
Contents

*Events of
Default, Notice
and Waiver*

Unless the applicable prospectus supplement states otherwise, when we refer to "events of default" as defined in the indentures with respect to any series of debt securities, we mean:

default in the payment of any installment of interest on any debt security of such series continuing for 30 days;

default in the payment of principal of, or any premium or make-whole amount on, any

debt
security
of
such
series
for
five
business
days
at
its
stated
maturity;

default
in
making
any
sinking
fund
payment
as
required
for
any
debt
security
of
such
series
for
five
business
days;

default
in
the
performance
or
breach
of
any
covenant
or
warranty
in
the
debt
securities
or
in
the
indenture
by
us
continuing
for

60 days
after
written
notice
as
provided
in
the
applicable
indenture,
but
not
of
a
covenant
added
to
the
indenture
solely
for
the
benefit
of
a
series
of
debt
securities
issued
thereunder
other
than
such
series;

a
default
under
any
bond,
debenture,
note,
mortgage,
indenture
or
instrument:

(i) having
an
aggregate
principal
amount
of
at
least
\$30,000,000;
or

(ii)

under
which
there
may
be
issued,
secured
or
evidenced
any
existing
or
later
created
indebtedness
for
money
borrowed
by
us,
if
we
are
directly
responsible
or
liable
as
obligor
or
guarantor,

if the default
results in the
indebtedness
becoming or
being declared
due and
payable prior to
the date it
otherwise
would have,
without such
indebtedness
having been
discharged, or
such
acceleration
having been
rescinded or
annulled,
within 30 days
after notice to
the issuing
company
specifying such
default. Such
notice shall be
given to us by
the trustee, or
to us and the

trustee by the holders of at least 10% in principal amount of the outstanding debt securities of that series. The written notice shall specify such default and require us to cause such indebtedness to be discharged or cause such acceleration to be rescinded or annulled and shall state that such notice is a "Notice of Default" under such indenture;

bankruptcy, insolvency or reorganization, or court appointment of a receiver, liquidator or trustee of us; and

any other event of default provided with respect to a particular series of debt securities.

If an event of default occurs and is continuing with respect to debt securities of any series outstanding, then the applicable trustee or the holders of 25% or more in principal amount of the debt securities of that series will have the right to declare the principal amount of all the debt securities of that series to be due and payable. If the debt securities of that series are original issue discount securities or indexed securities, then the applicable trustee or the holders of 25% or more in principal amount of the debt securities of that series will have the right to declare the portion of the principal amount as may be specified in the terms thereof to be due and payable. However, at any time after such a declaration of acceleration has been made, but before a judgment or decree for payment of the money due has

been obtained
by the
applicable
trustee, the
holders of at
least a majority
in principal
amount of
outstanding
debt securities
of such series
or of all debt
securities then
outstanding
under the
applicable
indenture may
rescind and
annul such
declaration and
its
consequences
if:

we
have
deposited
with
the
applicable
trustee
all
required
payments
of
the
principal,
any
premium
or
make-whole
amount,
interest
and,
to
the
extent
permitted
by
law,
interest
on
overdue
installment
of
interest,
plus
applicable
fees,
expenses,
disbursements

and
advances
of
the
applicable
trustee;
and

Table of
Contents

all
events
of
default,
other
than
the
non-payment
of
accelerated
principal,
or
a
specified
portion
thereof,
and
any
premium
or
make-whole
amount,
have
been
cured
or
waived.

The
indentures also
provide that the
holders of at
least a majority
in principal
amount of the
outstanding
debt securities
of any series or
of all debt
securities then
outstanding
under the
applicable
indenture may,
on behalf of all
holders, waive
any past default
with respect to
such series and
its
consequences,
except a
default:

in
the

payment
of
the
principal,
any
premium
or
make-whole
amount,
or
interest;

in
respect
of
a
covenant
or
provision
contained
in
the
applicable
indenture
that
cannot
be
modified
or
amended
without
the
consent
of
the
holders
of
the
outstanding
debt
security
that
is
affected
by
the
default;
or

in
respect
of
a
covenant
or
provision
for
the

benefit
or
protection
of
the
trustee,
without
its
express
written
consent.

The
indentures
require each
trustee to give
notice to the
holders of debt
securities
within 90 days
of a default
unless such
default has
been cured or
waived.

However, the
trustee may
withhold notice
if specified
persons of such
trustee consider
such
withholding to
be in the
interest of the
holders of debt
securities. The
trustee may not
withhold notice
of a default in
the payment of
principal, any
premium or
interest on any
debt security of
such series or
in the payment
of any sinking
fund
installment in
respect of any
debt security of
such series.

The
indentures
provide that
holders of debt
securities of
any series may
not institute
any

proceedings, judicial or otherwise, with respect to such indenture or for any remedy under the indenture, unless the trustee fails to act for a period of 60 days after the trustee has received a written request to institute proceedings in respect of an event of default from the holders of 25% or more in principal amount of the outstanding debt securities of such series, as well as an offer of indemnity reasonably satisfactory to the trustee. However, this provision will not prevent any holder of debt securities from instituting suit for the enforcement of payment of the principal of, and any premium or make-whole amount, and interest on, such debt securities at the respective due dates thereof.

The indentures provide that, subject to provisions in each indenture relating to its duties in the case of a

default, a trustee has no obligation to exercise any of its rights or powers at the request or direction of any holders of any series of debt securities then outstanding under the indenture, unless the holders have offered to the trustee reasonable security or indemnity. The holders of at least a majority in principal amount of the outstanding debt securities of any series or of all debt securities then outstanding under an indenture shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the applicable trustee, or of exercising any trust or power conferred upon such trustee. However, a trustee may refuse to follow any direction which:

is
in
conflict
with
any
law
or
the

applicable
indenture;

may
involve
the
trustee
in
personal
liability;
or

may
be
unduly
prejudicial
to
the
holders
of
debt
securities
of
the
series
not
joining
the
proceeding.

Within
120 days after
the close of
each fiscal
year, we will
be required to
deliver to each
trustee a
certificate,
signed by one
of our several
specified
officers, stating
whether or not
that officer has
knowledge of
any default
under the
applicable
indenture. If
the officer has
knowledge of
any default, the
notice must
specify the
nature and
status of the

default.

Table of Contents

Modification of the Indentures

The indentures provide that modifications and amendments may be made only with the consent of the affected holders of a majority in principal amount of all outstanding debt securities issued under that indenture. However, no such modification or amendment may, without the consent of the holders of the debt securities affected by the modification or amendment:

change the stated maturity of the principal of, or any premium or make-whole amount on, or any installment of principal of or

interest
on,
any
such
debt
security;

reduce
the
principal
amount
of,
the
rate
or
amount
of
interest
on,
or
any
premium
or
make-whole
amount
payable
on
redemption
of,
any
such
debt
security;

reduce
the
amount
of
principal
of
an
original
issue
discount
security
that
would
be
due
and
payable
upon
declaration
of
acceleration
of
the
maturity

thereof
or
would
be
provable
in
bankruptcy,
or
adversely
affect
any
right
of
repayment
of
the
holder
of
any
such
debt
security;

change
the
place
of
payment
or
the
coin
or
currency
for
payment
of
principal
of,
or
any
premium
or
make-whole
amount,
or
interest
on,
any
such
debt
security;

impair
the
right
to
institute
suit

for
the
enforcement
of
any
payment
on
or
with
respect
to
any
such
debt
security;

reduce
the
percentage
in
principal
amount
of
any
outstanding
debt
securities
necessary
to
modify
or
amend
the
applicable
indenture
with
respect
to
such
debt
securities,
to
waive
compliance
with
particular
provisions
thereof
or
defaults
and
consequences
thereunder
or
to
reduce
the
quorum
or
voting

requirements
set
forth
in
the
applicable
indenture;
and

modify
any
of
the
foregoing
provisions
or
any
of
the
provisions
relating
to
the
waiver
of
particular
past
defaults
or
covenants,
except
to
increase
the
required
percentage
to
effect
such
action
or
to
provide
that
some
of
the
other
provisions
may
not
be
modified
or
waived
without
the
consent
of
the

holder
of
such
debt
security.

The
holders of a
majority in
aggregate
principal
amount of the
outstanding
debt securities
of each series
may, on behalf
of all holders of
debt securities
of that series,
waive, insofar
as that series is
concerned, our
compliance
with material
restrictive
covenants of
the applicable
indenture.

We and
our respective
trustee may
make
modifications
and
amendments of
an indenture
without the
consent of any
holder of debt
securities for
any of the
following
purposes:

to
evidence
the
succession
of
another
person
to
us
as
obligor
under
such
indenture;

to
add
to
our
covenants
for
the
benefit
of
the
holders
of
all
or
any
series
of
debt
securities
or
to
surrender
any
right
or
power
conferred
upon
us
in
such
indenture;

to
add
events
of
default
for
the
benefit
of
the
holders
of
all
or
any
series
of
debt
securities;

to
add
or

change
any
provisions
of
an
indenture
(i) to
change
or
eliminate
restrictions
on
the
payment
of
principal
of,
or
premium
or
make-whole
amount,
or
interest
on,
debt
securities
in
bearer
form,
or
(ii) to
permit
or
facilitate
the
issuance
of
debt
securities
in
uncertificated
form,
provided
that
such
action
shall
not
adversely
affect
the
interests
of
the
holders
of
the
debt
securities
of
any

series
in
any
material
respect;

to
change
or
eliminate
any
provisions
of
an
indenture,
provided
that
any
such
change
or
elimination
shall
become
effective
only
when
there
are
no
debt
securities
outstanding
of
any
series
created
prior
thereto
which
are
entitled
to
the
benefit
of
such
provision;

to
secure
the
debt
securities;

Table of
Contents

to
establish
the
form
or
terms
of
debt
securities
of
any
series;

to
provide
for
the
acceptance
of
appointment
by
a
successor
trustee
or
facilitate
the
administration
of
the
trusts
under
an
indenture
by
more
than
one
trustee;

to
cure
any
ambiguity,
defect
or
inconsistency
in
an
indenture,
provided
that
such

action
shall
not
adversely
affect
the
interests
of
holders
of
debt
securities
of
any
series
issued
under
such
indenture;
and

to
supplement
any
of
the
provisions
of
an
indenture
to
the
extent
necessary
to
permit
or
facilitate
defeasance
and
discharge
of
any
series
of
such
debt
securities,
provided
that
such
action
shall
not
adversely
affect
the
interests
of
the

holders
of
the
outstanding
debt
securities
of
any
series.

Voting

The
indentures
provide that in
determining
whether the
holders of the
requisite
principal
amount of
outstanding
debt securities
of a series have
given any
request,
demand,
authorization,
direction,
notice, consent
or waiver under
the indentures
or whether a
quorum is
present at a
meeting of
holders of debt
securities:

the
principal
amount
of
an
original
issue
discount
security
that
shall
be
deemed
to
be
outstanding
shall
be
the
amount
of

the
principal
thereof
that
would
be
due
and
payable
as
of
the
date
of
such
determination
upon
declaration
of
acceleration
of
the
maturity
thereof;

the
principal
amount
of
any
debt
security
denominated
in
a
foreign
currency
that
shall
be
deemed
outstanding
shall
be
the
United
States
dollar
equivalent,
determined
on
the
issue
date
for
such
debt
security,
of
the

principal amount or, in the case of an original issue discount security, the United States dollar equivalent on the issue date of such debt security of the amount determined as provided in the preceding bullet point;

the principal amount of an indexed security that shall be deemed outstanding shall be the principal face amount of such indexed security at

original
issuance,
unless
otherwise
provided
for
such
indexed
security
under
such
indenture;
and

debt
securities
owned
by
us
or
any
other
obligor
upon
the
debt
securities
or
by
any
affiliate
of
ours
or
of
such
other
obligor
shall
be
disregarded.

The
indentures
contain
provisions for
convening
meetings of the
holders of debt
securities of a
series. A
meeting will be
permitted to be
called at any
time by the
applicable
trustee, and
also, upon
request, by us
or the holders

of at least 25% in principal amount of the outstanding debt securities of such series, in any such case upon notice given as provided in such indenture. Except for any consent that must be given by the holder of each debt security affected by the modifications and amendments of an indenture described above, any resolution presented at a meeting or adjourned meeting duly reconvened at which a quorum is present may be adopted by the affirmative vote of the holders of a majority of the aggregate principal amount of the outstanding debt securities of that series represented at such meeting.

Notwithstanding the preceding paragraph, except as referred to above, any resolution relating to a request, demand, authorization, direction, notice, consent, waiver or other action that may

be made, given or taken by the holders of a specified percentage, which is less than a majority of the aggregate principal amount of the outstanding debt securities of a series, may be adopted at a meeting or adjourned meeting duly reconvened at which a quorum is present by the affirmative vote of such specified percentage.

Table of
Contents

Any resolution passed or decision taken at any properly held meeting of holders of debt securities of any series will be binding on all holders of such series. The quorum at any meeting called to adopt a resolution, and at any reconvened meeting, will be persons holding or representing a majority in principal amount of the outstanding debt securities of a series. However, if any action is to be taken relating to a consent or waiver which may be given by the holders of at least a specified percentage in principal amount of the outstanding debt securities of a series, the persons holding such percentage will constitute a quorum.

Notwithstanding the foregoing provisions, the indentures provide that if any action is to be taken at a meeting with respect to any

request,
demand,
authorization,
direction,
notice, consent,
waiver or other
action that such
indenture
expressly
provides may
be made, given
or taken by the
holders of a
specified
percentage in
principal
amount of all
outstanding
debt securities
affected by
such action, or
of the holders
of such series
and one or
more additional
series:

there
shall
be
no
minimum
quorum
requirement
for
such
meeting;
and

the
principal
amount
of
the
outstanding
debt
securities
of
such
series
that
vote
in
favor
of
such
request,
demand,
authorization,

direction,
notice,
consent,
waiver
or
other
action
shall
be
taken
account
in
determining
whether
such
request,
demand,
authorization,
direction,
notice,
consent,
waiver
or
other
action
has
been
made,
given
or
taken
under
such
indenture.

Subordination

Unless
otherwise
provided in the
applicable
prospectus
supplement,
subordinated
debt securities
will be subject
to the
following
subordination
provisions.

Upon any
distribution to
our creditors in
a liquidation,
dissolution or
reorganization,
the payment of
the principal of
and interest on
any

subordinated
debt securities
will be
subordinated to
the extent
provided in the
applicable
indenture in
right of
payment to the
prior payment
in full of all
senior debt.
However, our
obligation to
make payments
of the principal
of and interest
on such
subordinated
debt securities
otherwise will
not be affected.
No payment of
principal or
interest will be
permitted to be
made on
subordinated
debt securities
at any time if a
default on
senior debt
exists that
permits the
holders of such
senior debt to
accelerate its
maturity and
the default is
the subject of
judicial
proceedings or
we receive
notice of the
default. After
all senior debt
is paid in full
and until the
subordinated
debt securities
are paid in full,
holders of
subordinated
debt securities
will be
subrogated to
the rights of
holders of
senior debt to
the extent that
distributions

otherwise payable to holders of subordinated debt securities have been applied to the payment of senior debt. The subordinated indenture will not restrict the amount of senior debt or other indebtedness of ours. As a result of these subordination provisions, in the event of a distribution of assets upon insolvency, holders of subordinated debt securities may recover less, ratably, than our general creditors.

The term "senior debt" will be defined in the applicable indenture as the principal of and interest on, or substantially similar payments to be made by us in respect of, other outstanding indebtedness, whether outstanding at the date of execution of the applicable indenture or subsequently incurred, created or assumed. The prospectus supplement

may include a description of additional terms implementing the subordination feature.

No restrictions will be included in any indenture relating to subordinated debt securities upon the creation of additional senior debt.

If this prospectus is being delivered in connection with the offering of a series of subordinated debt securities, the accompanying prospectus supplement or the information incorporated in this prospectus by reference will set forth the approximate amount of senior debt outstanding as of the end of our most recent fiscal quarter.

Table of
Contents

***Discharge,
Defeasance
and Covenant
Defeasance***

Unless otherwise indicated in the applicable prospectus supplement, the indentures allow us to discharge our obligations to holders of any series of debt securities issued under any indenture when:

- either
 - (i) all securities of such series have already been delivered to the applicable trustee for cancellation;
 - or
 - (ii) all securities of such series have not already been delivered to the applicable trustee for cancellation
- but
- (a) have

become
due
and
payable,
(b) will
become
due
and
payable
within
one
year,
or
(c) if
redeemable
at
our
option,
are
to
be
redeemed
within
one
year,
and
we
have
irrevocably
deposited
with
the
applicable
trustee,
in
trust,
funds
in
such
currency
or
currencies,
currency
unit
or
units
or
composite
currency
or
currencies
in
which
such
debt
securities
are
payable,
an
amount
sufficient
to

pay
the
entire
indebtedness
on
such
debt
securities
in
respect
of
principal
and
any
premium
or
make-whole
amount,
and
interest
to
the
date
of
such
deposit
if
such
debt
securities
have
become
due
and
payable
or,
if
they
have
not,
to
the
stated
maturity
or
redemption
date;

we
have
paid
or
caused
to
be
paid
all
other
sums
payable;

and

an
officers'
certificate
and
an
opinion
of
counsel
stating
the
conditions
to
discharging
the
debt
securities
have
been
satisfied
has
been
delivered
to
the
trustee.

Unless
otherwise
indicated in the
applicable
prospectus
supplement, the
indentures
provide that,
upon our
irrevocable
deposit with
the applicable
trustee, in trust,
of an amount,
in such
currency or
currencies,
currency unit
or units or
composite
currency or
currencies in
which such
debt securities
are payable at
stated maturity,
or government
obligations, or
both,
applicable to
such debt
securities,

which through the scheduled payment of principal and interest in accordance with their terms will provide money in an amount sufficient to pay the principal of, and any premium or make-whole amount, and interest on, such debt securities, and any mandatory sinking fund or analogous payments thereon, on the scheduled due dates therefor, the issuing company may elect either:

to defease and be discharged from any and all obligations with respect to such debt securities; or

to be released from its obligations with respect to such

debt securities under the applicable indenture or, if provided in the applicable prospectus supplement, its obligations with respect to any other covenant, and any omission to comply with such obligations shall not constitute an event of default with respect to such debt securities.

Notwithstanding the above, we may not elect to defease and be discharged from the obligation to pay any additional amounts upon the occurrence of particular events of tax, assessment or governmental charge with respect to payments on

such debt securities and the obligations to register the transfer or exchange of such debt securities, to replace temporary or mutilated, destroyed, lost or stolen debt securities, to maintain an office or agency in respect of such debt securities, or to hold monies for payment in trust.

The indentures only permit us to establish the trust described in the paragraph above if, among other things, we have delivered to the applicable trustee an opinion of counsel to the effect that the holders of such debt securities will not recognize income, gain or loss for United States federal income tax purposes as a result of such defeasance or covenant defeasance and will be subject to United States federal income tax on the same amounts, in the same manner and at the same times as would

have been the case if such defeasance or covenant defeasance had not occurred. Such opinion of counsel, in the case of defeasance, will be required to refer to and be based upon a ruling received from or published by the Internal Revenue Service or a change in applicable United States federal income tax law occurring after the date of the indenture. In the event of such defeasance, the holders of such debt securities would be able to look only to such trust fund for payment of principal, any premium or make-whole amount, and interest.

Table of
Contents

When we
use the term
"government
obligations,"
we mean
securities that
are:

direct
obligations
of
the
United
States
or
the
government
that
issued
the
foreign
currency
in
which
the
debt
securities
of
a
particular
series
are
payable,
for
the
payment
of
which
its
full
faith
and
credit
is
pledged;
or

obligations
of
a
person
controlled
or
supervised
by

and
acting
as
an
agency
or
instrumentality
of
the
United
States
or
other
government
that
issued
the
foreign
currency
in
which
the
debt
securities
of
such
series
are
payable,
the
payment
of
which
is
unconditionally
guaranteed
as
a
full
faith
and
credit
obligation
by
the
United
States
or
such
other
government,
which
are
not
callable
or
redeemable
at
the
option
of
the

issuer
thereof
and
shall
also
include
a
depository
receipt
issued
by
a
bank
or
trust
company
as
custodian
with
respect
to
any
such
government
obligation
or
a
specific
payment
of
interest
on
or
principal
of
any
such
government
obligation
held
by
such
custodian
for
the
account
of
the
holder
of
a
depository
receipt.
However,
except
as
required
by
law,
such
custodian
is

not
authorized
to
make
any
deduction
from
the
amount
payable
to
the
holder
of
such
depository
receipt
from
any
amount
received
by
the
custodian
in
respect
of
the
government
obligation
or
the
specific
payment
of
interest
on
or
principal
of
the
government
obligation
evidenced
by
such
depository
receipt.

Unless
otherwise
provided in the
applicable
prospectus
supplement, if
after we have
deposited funds
and/or
government
obligations to
effect
defeasance or

covenant
defeasance
with respect to
debt securities
of any series,
(i) the holder of
a debt security
of such series is
entitled to, and
does, elect
under the terms
of the
applicable
indenture or the
terms of such
debt security to
receive
payment in a
currency,
currency unit
or composite
currency other
than that in
which such
deposit has
been made in
respect of such
debt security,
or (ii) a
conversion
event occurs in
respect of the
currency,
currency unit
or composite
currency in
which such
deposit has
been made, the
indebtedness
represented by
such debt
security will be
deemed to have
been, and will
be, fully
discharged and
satisfied
through the
payment of the
principal of,
and premium
or make-whole
amount, and
interest on,
such debt
security as they
become due out
of the proceeds
yielded by
converting the
amount so

deposited in respect of such debt security into the currency, currency unit or composite currency in which such debt security becomes payable as a result of such election or such cessation of usage based on the applicable market exchange rate.

When we use the term "conversion event," we mean the cessation of use of:

a currency, currency unit or composite currency both by the government of the country that issued such currency and for the settlement of transactions by a central bank or other public institutions of

or
within
the
international
banking
community;

the
European
Currency
Unit
both
within
the
European
Monetary
System
and
for
the
settlement
of
transactions
by
public
institutions
of
or
within
the
European
Communities;
or

any
currency
unit
or
composite
currency
other
than
the
European
Currency
Unit
for
the
purposes
for
which
it
was
established.

Unless
otherwise

provided in the applicable prospectus supplement, all payments of principal of, and any premium or make-whole amount, and interest on, any debt security that is payable in a foreign currency that ceases to be used by its government of issuance shall be made in United States dollars.

In the event that (i) we effect covenant defeasance with respect to any debt securities and (ii) those debt securities are declared due and payable because of the occurrence of any event of default, the amount in the currency, currency unit or composite currency in which such debt securities are payable, and government obligations on deposit with the applicable trustee, will be sufficient to pay amounts due on such debt securities at the time of their stated maturity but may not be sufficient to

pay amounts
due on such
debt securities
at the time of
the acceleration
resulting from
such event of

Table of
Contents

default.
However, the
issuing
company
would remain
liable to make
payments of
any amounts
due at the time
of acceleration.

The
applicable
prospectus
supplement
may further
describe the
provisions, if
any, permitting
such
defeasance or
covenant
defeasance,
including any
modifications
to the
provisions
described
above, with
respect to the
debt securities
of or within a
particular
series.

***Conversion
Rights***

The terms
and conditions,
if any, upon
which the debt
securities are
convertible into
common stock
or other
securities of
ours will be set
forth in the
applicable
prospectus
supplement.
The terms will
include
whether the
debt securities
are convertible
into shares of

common stock
or other
securities of
ours, the
conversion
price, or
manner of
calculation
thereof, the
conversion
period,
provisions as to
whether
conversion will
be at the
issuing
company's
option or the
option of the
holders, the
events
requiring an
adjustment of
the conversion
price and
provisions
affecting
conversion in
the event of the
redemption of
the debt
securities and
any restrictions
on conversion.

***Global
Securities***

The debt
securities of a
series may be
issued in whole
or in part in the
form of one or
more global
securities that
will be
deposited with,
or on behalf of,
a depository
identified in the
applicable
prospectus
supplement
relating to such
series. Global
securities, if
any, issued in
the United
States are
expected to be
deposited with

The Depository Trust Company, or DTC, as depository. We may issue global securities in either registered or bearer form and in either temporary or permanent form. We will describe the specific terms of the depository arrangement with respect to a series of debt securities in the applicable prospectus supplement relating to such series. We expect that unless the applicable prospectus supplement provides otherwise, the following provisions will apply to depository arrangements.

Once a global security is issued, the depository for such global security or its nominee will credit on its book-entry registration and transfer system the respective principal amounts of the individual debt securities represented by such global security to the accounts of participants

that have accounts with such depository. Such accounts shall be designated by the underwriters, dealers or agents with respect to such debt securities or by us if we offer such debt securities directly. Ownership of beneficial interests in such global security will be limited to participants with the depository or persons that may hold interests through those participants.

We expect that, under procedures established by DTC, ownership of beneficial interests in any global security for which DTC is the depository will be shown on, and the transfer of that ownership will be effected only through, records maintained by DTC or its nominee, with respect to beneficial interests of participants with the depository, and records of participants,

with respect to beneficial interests of persons who hold through participants with the depository. Neither we nor the trustee will have any responsibility or liability for any aspect of the records of DTC or for maintaining, supervising or reviewing any records of DTC or any of its participants relating to beneficial ownership interests in the debt securities. The laws of some states require that certain purchasers of securities take physical delivery of such securities in definitive form. Such limits and laws may impair the ability to own, pledge or transfer beneficial interest in a global security.

So long as the depository for a global security or its nominee is the registered owner of such global security, such depository or such nominee, as the case may be, will be considered the sole owner or

holder of the
debt securities
represented by
the global
security for all
purposes under
the applicable
indenture.
Except as
described
below or in the
applicable
prospectus
supplement,
owners of
beneficial
interest in a
global security
will not be
entitled to have
any of the
individual debt
securities
represented by
such global
security
registered in
their names,
will not receive
or be entitled to
receive
physical

Table of
Contents

delivery of any such debt securities in definitive form and will not be considered the owners or holders thereof under the applicable indenture. Beneficial owners of debt securities evidenced by a global security will not be considered the owners or holders thereof under the applicable indenture for any purpose, including with respect to the giving of any direction, instructions or approvals to the trustee under the indenture. Accordingly, each person owning a beneficial interest in a global security with respect to which DTC is the depository must rely on the procedures of DTC and, if such person is not a participant with the depository, on the procedures of the participant through which such person owns its interests, to exercise any rights of a holder under

the applicable indenture. We understand that, under existing industry practice, if DTC requests any action of holders or if an owner of a beneficial interest in a global security desires to give or take any action which a holder is entitled to give or take under the applicable indenture, DTC would authorize the participants holding the relevant beneficial interest to give or take such action, and such participants would authorize beneficial owners through such participants to give or take such actions or would otherwise act upon the instructions of beneficial owners holding through them.

Payments of principal of, and any premium or make-whole amount, and interest on, individual debt securities represented by a global security registered in

the name of a depository or its nominee will be made to or at the direction of the depository or its nominee, as the case may be, as the registered owner of the global security under the applicable indenture. Under the terms of the applicable indenture, we and the trustee may treat the persons in whose name debt securities, including a global security, are registered as the owners thereof for the purpose of receiving such payments. Consequently, neither we nor the trustee have or will have any responsibility or liability for the payment of such amounts to beneficial owners of debt securities including principal, any premium or make-whole amount, or interest. We believe, however, that it is currently the policy of DTC to immediately credit the accounts of relevant participants with such payments, in

amounts proportionate to their respective holdings of beneficial interests in the relevant global security as shown on the records of DTC or its nominee. We also expect that payments by participants to owners of beneficial interests in such global security held through such participants will be governed by standing instructions and customary practices, as is the case with securities held for the account of customers in bearer form or registered in street name, and will be the responsibility of such participants. Redemption notices with respect to any debt securities represented by a global security will be sent to the depository or its nominee. If less than all of the debt securities of any series are to be redeemed, we expect the depository to determine the amount of the interest of each participant in such debt securities to be

redeemed to be determined by lot. Neither we, the trustee, any paying agent nor the security registrar for such debt securities will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in the global security for such debt securities or for maintaining any records with respect thereto.

Neither we nor the trustee will be liable for any delay by the holders of a global security or the depository in identifying the beneficial owners of debt securities, and we and the trustee may conclusively rely on, and will be protected in relying on, instructions from the holder of a global security or the depository for all purposes. The rules applicable to DTC and its participants are on file with the SEC.

If a depository for any debt securities is at any time unwilling, unable or ineligible to continue as depository and we do not appoint a successor depository within 90 days, we will issue individual debt securities in exchange for the global security representing such debt securities. In addition, we may at any time and at our sole discretion, subject to any limitations described in the applicable prospectus supplement relating to such debt securities, determine not to have any of such debt securities represented by one or more global securities and in such event will issue individual debt securities in exchange for the global security or securities representing such debt securities. Individual debt securities so issued will be issued in denominations of \$1,000 and integral

multiples of
\$1,000.

26

Table of
Contents

The debt securities of a series may also be issued in whole or in part in the form of one or more bearer global securities that will be deposited with a depository, or with a nominee for such depository, identified in the applicable prospectus supplement. Any such bearer global securities may be issued in temporary or permanent form. The specific terms and procedures, including the specific terms of the depository arrangement, with respect to any portion of a series of debt securities to be represented by one or more bearer global securities will be described in the applicable prospectus supplement.

No Recourse

There is no recourse under any obligation, covenant or agreement in the applicable indenture or with respect to any security

against any of
our or our
successor's
past, present or
future
shareholders,
employees,
officers or
directors.

**DESCRIPTION
OF
WARRANTS**

The
following
description,
together with
the additional
information we
may include in
any applicable
prospectus
supplements,
summarizes the
material terms
and provisions
of the warrants
that we may
offer under this
prospectus and
the related
warrant
agreements and
warrant
certificates.
While the
terms
summarized
below will
apply generally
to any warrants
that we may
offer, we will
describe the
particular terms
of any series of
warrants in
more detail in
the applicable
prospectus
supplement. If
we indicate in
the prospectus
supplement, the
terms of any
warrants
offered under
that prospectus
supplement

may differ from the terms described below. Specific warrant agreements will contain additional important terms and provisions and will be incorporated by reference as an exhibit to the registration statement, which includes this prospectus.

General

We may issue warrants for the purchase of common stock, preferred stock and/or debt securities in one or more series. We may issue warrants independently or together with common stock, preferred stock and/or debt securities, and the warrants may be attached to or separate from these securities.

We will evidence each series of warrants by warrant certificates that we will issue under a separate warrant agreement. We will enter into the warrant agreement with a warrant agent. We will

indicate the name and address of the warrant agent in the applicable prospectus supplement relating to a particular series of warrants.

We will describe in the applicable prospectus supplement the terms of the series of warrants, including:

the offering price and aggregate number of warrants offered;

the currency for which the warrants may be purchased;

if applicable, the designation and terms of the securities with which the warrants are

issued
and
the
number
of
warrants
issued
with
each
such
security
or
each
principal
amount
of
such
security;

if
applicable,
the
date
on
and
after
which
the
warrants
and
the
related
securities
will
be
separately
transferable;

in
the
case
of
warrants
to
purchase
debt
securities,
the
principal
amount
of
debt
securities
purchasable
upon
exercise
of
one

warrant
and
the
price
at,
and
currency
in
which,
this
principal
amount
of
debt
securities
may
be
purchased
upon
such
exercise;

in
the
case
of
warrants
to
purchase
common
stock
or
preferred
stock,
the
number
of
shares
of
common
stock
or
preferred
stock,
as
the
case
may
be,
purchasable
upon
the
exercise
of
one
warrant
and
the
price
at

which
these
shares
may
be
purchased
upon
such
exercise;

Table of
Contents

the
effect
of
any
merger,
consolidation,
sale
or
other
disposition
of
our
business
on
the
warrant
agreement
and
the
warrants;

the
terms
of
any
rights
to
redeem
or
call
the
warrants;

any
provisions
for
changes
to
or
adjustments
in
the
exercise
price
or
number
of
securities
issuable
upon
exercise
of
the

warrants;

the
periods
during
which,
and
places
at
which,
the
warrants
are
exercisable;

the
manner
of
exercise;

the
dates
on
which
the
right
to
exercise
the
warrants
will
commence
and
expire;

the
manner
in
which
the
warrant
agreement
and
warrants
may
be
modified;

federal
income
tax

consequences
of
holding
or
exercising
the
warrants;

the
terms
of
the
securities
issuable
upon
exercise
of
the
warrants;
and

any
other
specific
terms,
preferences,
rights
or
limitations
of
or
restrictions
on
the
warrants.

**DESCRIPTION
OF UNITS**

We may issue units comprised of shares of common stock, shares of preferred stock, debt securities and warrants in any combination. We may issue units in such amounts and in as many distinct series as we wish.

This section outlines certain provisions of the units that we may issue. If we issue units, they will be issued under one or more unit agreements to be entered into between us and a bank or other financial institution, as unit agent. The information described in this section may not be complete in all respects and is qualified entirely by reference to the unit agreement with respect to the units of any particular series. The specific terms of any series of units offered will be described in the applicable prospectus supplement. If so described in a particular supplement, the specific terms of any series of units may differ from the general description of terms presented below. We urge you to read any prospectus supplement related to any series of units we may offer, as well as the complete unit agreement and unit certificate that contain the terms of the units. If we

issue units,
forms of unit
agreements and
unit certificates
relating to such
units will be
incorporated by
reference as
exhibits to the
registration
statement,
which includes
this prospectus.

Each unit
that we may
issue will be
issued so that
the holder of
the unit is also
the holder of
each security
included in the
unit. Thus, the
holder of a unit
will have the
rights and
obligations of a
holder of each
included
security. The
unit agreement
under which a
unit is issued
may provide
that the
securities
included in the
unit may not be
held or
transferred
separately, at
any time or at
any time before
a specified
date. The
applicable
prospectus
supplement
may describe:

the
designation
and
terms
of
the
units
and
of
the

securities
comprising
the
units,
including
whether
and
under
what
circumstances
those
securities
may
be
held
or
transferred
separately;

any
provisions
of
the
governing
unit
agreement;

the
price
or
prices
at
which
such
units
will
be
issued;

the
applicable
United
States
federal
income
tax
considerations
relating
to
the
units;

any provisions for the issuance, payment, settlement, transfer or exchange of the units or of the securities comprising the units; and

any other terms of the units and of the securities comprising the units.

Table of
Contents

The provisions described in this section, as well as those described under "Description of Capital Stock," "Description of Debt Securities" and "Description of Warrants" will apply to the securities included in each unit, to the extent relevant and as may be updated in any prospectus supplements.

Issuance in Series

We may issue units in such amounts and in as many distinct series as we wish. This section summarizes terms of the units that apply generally to all series. Most of the financial and other specific terms of your series will be described in the applicable prospectus supplement.

Unit Agreements

We will issue the units under one or more unit agreements to be entered into

between us and a bank or other financial institution, as unit agent. We may add, replace or terminate unit agents from time to time. We will identify the unit agreement under which each series of units will be issued and the unit agent under that agreement in the applicable prospectus supplement.

The following provisions will generally apply to all unit agreements unless otherwise stated in the applicable prospectus supplement:

***Modification
without
Consent***

We and the applicable unit agent may amend any unit or unit agreement without the consent of any holder:

to cure any ambiguity; any provisions of the governing

unit
agreement
that
differ
from
those
described
below;

to
correct
or
supplement
any
defective
or
inconsistent
provision;
or

to
make
any
other
change
that
we
believe
is
necessary
or
desirable
and
will
not
adversely
affect
the
interests
of
the
affected
holders
in
any
material
respect.

We do not
need any
approval to
make changes
that affect only
units to be
issued after the
changes take
effect. We may

also make changes that do not adversely affect a particular unit in any material respect, even if they adversely affect other units in a material respect. In those cases, we do not need to obtain the approval of the holder of the unaffected unit; we need only obtain any required approvals from the holders of the affected units.

***Modification
with
Consent***

We may not amend any particular unit or a unit agreement with respect to any particular unit unless we obtain the consent of the holder of that unit, if the amendment would:

impair any right of the holder to exercise or enforce any right under a security

included
in
the
unit
if
the
terms
of
that
security
require
the
consent
of
the
holder
to
any
changes
that
would
impair
the
exercise
or
enforcement
of
that
right;
or

reduce
the
percentage
of
outstanding
units
or
any
series
or
class
the
consent
of
whose
holders
is
required
to
amend
that
series
or
class,
or
the
applicable
unit
agreement

with
respect
to
that
series
or
class,
as
described
below.

Any other
change to a
particular unit
agreement and
the units issued
under that
agreement
would require
the following
approval:

If
the
change
affects
only
the
units
of
a
particular
series
issued
under
that
agreement,
the
change
must
be
approved
by
the
holders
of
a
majority
of
the
outstanding
units
of
that
series;
or

Table of
Contents

If
the
change
affects
the
units
of
more
than
one
series
issued
under
that
agreement,
it
must
be
approved
by
the
holders
of
a
majority
of
all
outstanding
units
of
all
series
affected
by
the
change,
with
the
units
of
all
the
affected
series
voting
together
as
one
class
for
this
purpose.

These
provisions
regarding
changes with
majority

approval also apply to changes affecting any securities issued under a unit agreement, as the governing document.

In each case, the required approval must be given by written consent.

***Unit
Agreements
Will
Not
Be
Qualified
under
Trust
Indenture
Act***

No unit agreement will be qualified as an indenture, and no unit agent will be required to qualify as a trustee, under the Trust Indenture Act. Therefore, holders of units issued under unit agreements will not have the protections of the Trust Indenture Act with respect to their units.

***Mergers
and
Similar
Transactions
Permitted;
No
Restrictive
Covenants
or***

*Events
of
Default*

The unit agreements will not restrict our ability to merge or consolidate with, or sell our assets to, another corporation or other entity or to engage in any other transactions. If at any time we merge or consolidate with, or sell our assets substantially as an entirety to, another corporation or other entity, the successor entity will succeed to and assume our obligations under the unit agreements. We will then be relieved of any further obligation under these agreements.

The unit agreements will not include any restrictions on our ability to put liens on our assets, nor will they restrict our ability to sell our assets. The unit agreements also will not provide for any events of default or remedies upon the occurrence of any events of default.

***Governing
Law***

The unit agreements and the units will be governed by Delaware law.

***Form,
Exchange
and
Transfer***

We will issue each unit in global i.e., book-entry form only. Units in book-entry form will be represented by a global security registered in the name of a depositary, which will be the holder of all the units represented by the global security. Those who own beneficial interests in a unit will do so through participants in the depositary's system, and the rights of these indirect owners will be governed solely by the applicable procedures of the depositary and its participants. We will describe book-entry securities, and other terms regarding the issuance and registration of the units in the applicable

prospectus
supplement.

Each unit
and all
securities
comprising the
unit will be
issued in the
same form.

If we issue
any units in
registered,
non-global
form, the
following will
apply to them.

The units
will be issued
in the
denominations
stated in the
applicable
prospectus
supplement.
Holders may
exchange their
units for units
of smaller
denominations
or combined
into fewer units
of larger
denominations,
as long as the
total amount is
not changed.

Holders
may
exchange
or
transfer
their
units
at
the
office
of
the
unit
agent.
Holders
may
also
replace
lost,
stolen,

destroyed
or
mutilated
units
at
that
office.
We
may
appoint
another
entity
to
perform
these
functions
or
perform
them
ourselves.

Holders
will
not
be
required
to
pay
a
service
charge
to
transfer
or
exchange
their
units,
but
they
may
be
required
to
pay
for
any
tax
or
other
governmental
charge
associated
with
the
transfer
or
exchange.
The
transfer
or

exchange,
and
any
replacement,
will
be
made
only
if
our
transfer

Table of
Contents

agent
is
satisfied
with
the
holder's
proof
of
legal
ownership.
The
transfer
agent
may
also
require
an
indemnity
before
replacing
any
units.

If
we
have
the
right
to
redeem,
accelerate
or
settle
any
units
before
their
maturity,
and
we
exercise
our
right
as
to
less
than
all
those
units
or
other
securities,
we
may
block
the
exchange

or
transfer
of
those
units
during
the
period
beginning
15 days
before
the
day
we
mail
the
notice
of
exercise
and
ending
on
the
day
of
that
mailing,
in
order
to
freeze
the
list
of
holders
to
prepare
the
mailing.
We
may
also
refuse
to
register
transfers
of
or
exchange
any
unit
selected
for
early
settlement,
except
that
we
will
continue
to
permit

transfers
and
exchanges
of
the
unsettled
portion
of
any
unit
being
partially
settled.
We
may
also
block
the
transfer
or
exchange
of
any
unit
in
this
manner
if
the
unit
includes
securities
that
are
or
may
be
selected
for
early
settlement.

Only the
depository will
be entitled to
transfer or
exchange a unit
in global form,
since it will be
the sole holder
of the unit.

***Payments
and
Notices***

In making
payments and
giving notices
with respect to
our units, we

will follow the
procedures as
described in the
applicable
prospectus
supplement.

Table of
Contents

**PLAN OF
DISTRIBUTION**

We may
sell securities:

through
underwriters;

through
dealers;

through
agents;

directly
to
purchasers;
or

through
a
combination
of
any
of
these
methods
or
any
other
method
permitted
by
law.

In
addition, we
may issue the
securities as a
dividend or
distribution or
in a
subscription
rights offering
to our existing
security

holders.

We may directly solicit offers to purchase securities, or agents may be designated to solicit such offers. In the prospectus supplement relating to such offering, we will name any agent that could be viewed as an underwriter under the Securities Act and describe any commissions that we must pay to any such agent. Any such agent will be acting on a best efforts basis for the period of its appointment or, if indicated in the applicable prospectus supplement, on a firm commitment basis. This prospectus may be used in connection with any offering of our securities through any of these methods or other methods described in the applicable prospectus supplement.

The distribution of the securities may be effected from time to time in

one or more
transactions:

at
a
fixed
price,
or
prices,
which
may
be
changed
from
time
to
time;

at
market
prices
prevailing
at
the
time
of
sale;

at
prices
related
to
such
prevailing
market
prices;
or

at
negotiated
prices.

Each
prospectus
supplement
will describe
the method of
distribution of
the securities
and any
applicable
restrictions.

The prospectus supplement with respect to the securities of a particular series will describe the terms of the offering of the securities, including the following:

the name of the agent or any underwriters;

the public offering or purchase price;

any discounts and commissions to be allowed or paid to the agent or underwriters;

all other items constituting underwriting compensation;

any
discounts
and
commissions
to
be
allowed
or
paid
to
dealers;
and

any
exchanges
on
which
the
securities
will
be
listed.

If any underwriters or agents are used in the sale of the securities in respect of which this prospectus is delivered, we will enter into an underwriting agreement, sales agreement or other agreement with them at the time of sale to them, and we will set forth in the prospectus supplement relating to such offering the names of the underwriters or agents and the terms of the related agreement with them.

In connection with the offering of securities, we

may grant to
the
underwriters an
option to
purchase
additional
securities to
with an
additional
underwriting
commission, as
may be set
forth in the

Table of
Contents

accompanying
prospectus
supplement. If
we grant any
such option, the
terms of such
option will be
set forth in the
prospectus
supplement for
such securities.

If a dealer
is used in the
sale of the
securities in
respect of
which the
prospectus is
delivered, we
will sell such
securities to the
dealer, as
principal. The
dealer, who
may be deemed
to be an
"underwriter"
as that term is
defined in the
Securities Act,
may then resell
such securities
to the public at
varying prices
to be
determined by
such dealer at
the time of
resale.

If we offer
securities in a
subscription
rights offering
to our existing
security
holders, we
may enter into
a standby
underwriting
agreement with
dealers, acting
as standby
underwriters.
We may pay
the standby
underwriters a

commitment
fee for the
securities they
commit to
purchase on a
standby basis.
If we do not
enter into a
standby
underwriting
arrangement,
we may retain a
dealer-manager
to manage a
subscription
rights offering
for us.

Agents,
underwriters,
dealers and
other persons
may be entitled
under
agreements
which they
may enter into
with us to
indemnification
by us against
certain civil
liabilities,
including
liabilities under
the Securities
Act, and may
be customers
of, engage in
transactions
with or perform
services for us
in the ordinary
course of
business.

If so
indicated in the
applicable
prospectus
supplement, we
will authorize
underwriters or
other persons
acting as our
agents to solicit
offers by
certain
institutions to
purchase
securities from
us pursuant to
delayed

delivery contracts providing for payment and delivery on the date stated in the prospectus supplement. Each contract will be for an amount not less than, and the aggregate amount of securities sold pursuant to such contracts shall not be less nor more than, the respective amounts stated in the prospectus supplement. Institutions with whom the contracts, when authorized, may be made include commercial and savings banks, insurance companies, pension funds, investment companies, educational and charitable institutions and other institutions, but shall in all cases be subject to our approval. Delayed delivery contracts will not be subject to any conditions except that:

the purchase by an institution of

the securities covered under that contract shall not at the time of delivery be prohibited under the laws of the jurisdiction to which that institution is subject; and

if the securities are also being sold to underwriters acting as principals for their own account, the underwriters shall have purchased such securities not sold for delayed delivery. The underwriters and

other
persons
acting
as
our
agents
will
not
have
any
responsibility
in
respect
of
the
validity
or
performance
of
delayed
delivery
contracts.

Offered securities may also be offered and sold, if so indicated in the prospectus supplement, in connection with a remarketing upon their purchase, in accordance with a redemption or repayment pursuant to their terms, or otherwise, by one or more remarketing firms, acting as principals for their own accounts or as agents for us. Any remarketing firm will be identified and the terms of its agreement, if any, with us and its compensation will be described in the applicable prospectus

supplement.
Remarketing
firms may be
deemed to be
underwriters in
connection
with their
remarketing of
offered
securities.

Certain
agents,
underwriters
and dealers,
and their
associates and
affiliates, may
be customers
of, have
borrowing
relationships
with, engage in
other
transactions
with, or
perform
services,
including
investment
banking
services, for us
or one or more
of our
respective
affiliates in the
ordinary course
of business.

In order to
facilitate the
offering of the
securities, any
underwriters
may engage in
transactions
that stabilize,
maintain or
otherwise
affect the price
of the securities
or any other
securities the
prices of which
may be used to
determine
payments on
such securities.
Specifically,
any
underwriters
may over allot

in connection
with the
offering,
creating a short
position for
their own
accounts. In
addition,

33

Table of
Contents

to cover
overallotments
or to stabilize
the price of the
securities or of
any such other
securities, the
underwriters
may bid for,
and purchase,
the securities or
any such other
securities in the
open market.
Finally, in any
offering of the
securities
through a
syndicate of
underwriters,
the
underwriting
syndicate may
reclaim selling
concessions
allowed to an
underwriter or
a dealer for
distributing the
securities in the
offering if the
syndicate
repurchases
previously
distributed
securities in
transactions to
cover syndicate
short positions,
in stabilization
transactions or
otherwise. Any
of these
activities may
stabilize or
maintain the
market price of
the securities
above
independent
market levels.
Any such
underwriters
are not required
to engage in
these activities
and may end
any of these
activities at any

time.

We may engage in at the market offerings into an existing trading market in accordance with Rule 415(a)(4) under the Securities Act. In addition, we may enter into derivative transactions with third parties, or sell securities not covered by this prospectus to third parties in privately negotiated transactions. If the applicable prospectus supplement so indicates, in connection with those derivatives, the third parties may sell securities covered by this prospectus and the applicable prospectus supplement, including in short sale transactions. If so, the third party may use securities pledged by us or borrowed from us or others to settle those sales or to close out any related open borrowings of stock, and may use securities received from us in settlement of those derivatives to close out any

related open borrowings of stock. The third party in such sale transactions will be an underwriter and, if not identified in this prospectus, will be named in the applicable prospectus supplement (or a post-effective amendment). In addition, we may otherwise loan or pledge securities to a financial institution or other third party that in turn may sell the securities short using this prospectus and an applicable prospectus supplement. Such financial institution or other third party may transfer its economic short position to investors in our securities or in connection with a concurrent offering of other securities.

Under Rule 15c6-1 of the Exchange Act, trades in the secondary market generally are required to settle in three business days, unless the parties to any such trade expressly agree

otherwise. The applicable prospectus supplement may provide that the original issue date for your securities may be more than three scheduled business days after the trade date for your securities.

Accordingly, in such a case, if you wish to trade securities on any date prior to the third business day before the original issue date for your securities, you will be required, by virtue of the fact that your securities initially are expected to settle in more than three scheduled business days after the trade date for your securities, to make alternative settlement arrangements to prevent a failed settlement.

The securities may be new issues of securities and may have no established trading market. The securities may or may not be listed on a national securities exchange. We can make no

assurance as to the liquidity of or the existence of trading markets for any of the securities.

In compliance with the guidelines of the Financial Industry Regulatory Authority, Inc., or FINRA, the aggregate maximum discount, commission or agency fees or other items constituting underwriting compensation to be received by any FINRA member or independent broker-dealer will not exceed 8% of the proceeds from any offering pursuant to this prospectus and any applicable prospectus supplement.

The specific terms of any lock-up provisions in respect of any given offering will be described in the applicable prospectus supplement

The underwriters, dealers and agents may engage in transactions with us, or perform

services for us,
in the ordinary
course of
business for
which they
receive
compensation.

The
anticipated date
of delivery of
offered
securities will
be set forth in
the applicable
prospectus
supplement
relating to each
offer.

Table of
Contents

**LEGAL
MATTERS**

Certain legal matters in connection with this offering will be passed upon for us by Goodwin Procter LLP, Boston, Massachusetts. Any underwriters will also be advised about the validity of the securities and other legal matters by their own counsel, which will be named in the prospectus supplement.

EXPERTS

The financial statements of Esperion Therapeutics, Inc. incorporated by reference in Esperion Therapeutics, Inc.'s Annual Report (Form 10-K) for the year ended December 31, 2014 have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their report thereon, included therein, and

incorporated herein by reference. Such financial statements are incorporated herein by reference in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

**WHERE
YOU CAN
FIND MORE
INFORMATION**

We are subject to the information requirements of the Exchange Act and, in accordance therewith, file annual, quarterly and special reports, proxy statements and other information with the SEC. You may read and copy any document we file at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. You may call the SEC at 1-800-SEC-0330 for further information on the operation of the Public Reference Room. These documents also may be accessed

through the
SEC's
electronic data
gathering,
analysis and
retrieval
system, or
EDGAR, via
electronic
means,
including the
SEC's home
page on the
Internet
(www.sec.gov).

We have
the authority to
designate and
issue more than
one class or
series of stock
having various
preferences,
conversion and
other rights,
voting powers,
restrictions,
limitations as
to dividends,
qualifications,
and terms and
conditions of
redemption.
See
"Description of
Capital Stock."
We will furnish
a full statement
of the relative
rights and
preferences of
each class or
series of our
stock which
has been so
designated and
any restrictions
on the
ownership or
transfer of our
stock to any
shareholder
upon request
and without
charge. Written
requests for
such copies
should be
directed to
Esperion
Therapeutics, Inc.,

3891 Ranchero
Drive,
Suite 150, Ann
Arbor,
Michigan,
Attention: Vice
President,
Finance, or by
telephone
request to
(734) 887-3903.
Our website is
located at
www.esperion.com.
Information
contained on
our website is
not
incorporated by
reference into
this prospectus
and, therefore,
is not part of
this prospectus
or any
accompanying
prospectus
supplement.

**INCORPORATION
BY
REFERENCE**

The SEC
allows us to
incorporate by
reference the
information
and reports we
file with it,
which means
that we can
disclose
important
information to
you by
referring you to
these
documents.
The
information
incorporated by
reference is an
important part
of this
prospectus, and
information
that we file
later with the
SEC will

automatically
update and
supersede the
information
already
incorporated by
reference. We
are
incorporating
by reference
the documents
listed below,
which we have
already filed
with the SEC,
and any future
filings we
make with the
SEC under
Sections 13(a),
13(c), 14 or
15(d) of the
Exchange Act,
including all
filings made
after the date of
the filing of
this registration
statement and
prior to the
effectiveness of
this registration
statement,
except as to
any portion of
any future
report or
document that
is not deemed
filed under
such
provisions,
until we sell all
of the
securities:

Annual
Report
on
Form 10-K
for
the
year
ended
December 31,
2014;

The
information

specifically
incorporated
by
reference
into
our
Annual
Report
on
Form 10-K
for
the
year
ended
December 31,
2014
from
our
definitive
proxy
statement
on
Schedule 14A

Table of
Contents

(other than information furnished rather than filed), which was filed with the SEC on April 1, 2015;

Quarterly Reports on Form 10-Q filed with the SEC for the quarters ended March 31, 2015, June 30, 2015 and September 30, 2015;

Current Reports on Form 8-K filed with the SEC on February 2, 2015, March 17, 2015, March 19, 2015, May 20, 2015, June 15,

2015,
July 7,
2015,
July 28,
2015,
August 17,
2015,
September 28,
2015
and
December 3,
2015
(except
for
information
contained
therein
which
is
furnished
rather
than
filed);
and

The
description
of
our
common
stock
contained
in
our
registration
statement
on
Form 8-A,
which
was
filed
with
the
SEC
on
June 25,
2013,
including
any
amendment
or
report
filed
for
the
purpose
of
updating
such
description.

Upon request, we will provide, without charge, to each person, including any beneficial owner, to whom a copy of this prospectus is delivered, a copy of the documents incorporated by reference into this prospectus but not delivered with the prospectus. You may request a copy of these filings, and any exhibits we have specifically incorporated by reference as an exhibit in this prospectus, at no cost by writing or telephoning us at the following address:

Esperion
Therapeutics, Inc.,
3891 Ranchero
Drive,
Suite 150, Ann
Arbor,
Michigan,
Attention: Vice
President,
Finance, or by
telephone
request to
(734) 887-3903.

This prospectus is part of a registration statement we filed with the SEC. We have incorporated exhibits into this registration statement. You

should read the exhibits carefully for provisions that may be important to you.

You should rely only on the information incorporated by reference or provided in this prospectus or any prospectus supplement. We have not authorized anyone to provide you with different information. We are not making an offer of these securities in any state where the offer is not permitted. You should not assume that the information in this prospectus or in the documents incorporated by reference is accurate as of any date other than the date on the front of this prospectus or those documents.

Table of
Contents

\$150,000,000

**Common
Stock**
—

**Prospectus
Supplement
dated
August ,
2017**
—
