

WORTHINGTON INDUSTRIES INC  
Form S-3ASR  
April 07, 2014  
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As filed with the Securities and Exchange Commission on April 7, 2014

Registration No. 333-

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

Form S-3  
REGISTRATION STATEMENT  
*UNDER*  
*THE SECURITIES ACT OF 1933*

WORTHINGTON INDUSTRIES, INC.  
(Exact name of registrant as specified in its charter)

Ohio  
(State or other jurisdiction of  
incorporation or organization)

31-1189815  
(I.R.S. Employer  
Identification Number)

**200 Old Wilson Bridge Road**

**Columbus, Ohio 43085**

**(614) 438-3210**

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

**Dale T. Brinkman, Esq.  
Vice President Administration,**

**General Counsel and Secretary**

**Worthington Industries, Inc.**

**200 Old Wilson Bridge Road**

**Columbus, Ohio 43085**

**(614) 438-3210**

*Copy to:*

**Elizabeth T. Farrar, Esq.**

**Vorys, Sater, Seymour and Pease LLP**

**52 East Gay Street**

**Columbus, Ohio 43215**

**(614) 464-6400**

**(Name, address, including zip code, and telephone number,**

**including area code, of agent for service)**

**Approximate date of commencement of proposed sale to the public:** From time to time after the effective date of this registration statement.

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

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

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

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

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

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

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

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

**CALCULATION OF REGISTRATION FEE**

Title of each class of securities to be registered	Amount to be registered(1)	Proposed maximum offering price per unit (1)	Proposed maximum aggregate offering price (1)	Amount of registration fee (1)
Common Shares, without par value				
Debt Securities				
Total				

(1) An indeterminate number or amount of each identified class of securities to be offered at indeterminate prices is being registered pursuant to this registration statement. In reliance on Rule 456(b) and Rule 457(r) under the Securities Act, the registrant is deferring payment of the registration fee.



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**PROSPECTUS**

**WORTHINGTON INDUSTRIES, INC.**

**Common Shares**

**Debt Securities**

We may offer from time to time, in one or more offerings, common shares, debt securities or any combination thereof. The debt securities will be senior debt securities.

This prospectus describes the general terms of the securities we may offer and the general manner in which we may offer the securities. Each time we offer securities, we will provide a prospectus supplement or other offering material that will describe the specific terms of the securities offered and the specific manner in which we will offer the securities.

This prospectus may not be used to consummate a sale of any securities unless accompanied by a prospectus supplement or other offering material. The prospectus supplement and other offering material may also add, update or change information contained in this prospectus. You should read this prospectus, the applicable prospectus supplement, any other offering material and the additional information described under the heading **Where You Can Find More Information** carefully before you make your investment decision.

Our common shares are listed on the New York Stock Exchange under the symbol **WOR**. On April 4, 2014, the last reported sale price of our common shares was \$38.86 per share. Unless we state otherwise in the applicable prospectus supplement, we will not list any debt securities on any securities exchange.

We may offer and sell the securities directly to purchasers or to or through underwriters, dealers or agents. The applicable prospectus supplement will provide the names of any underwriters, dealers or agents, the specific terms of the plan of distribution, any over-allotment option and any applicable underwriting discounts and commissions.

**Investing in our securities involves risk. See the Risk Factors section on page 5 of this prospectus, as well as the risk factors disclosed in our periodic reports filed with the Securities and Exchange Commission and in the applicable prospectus supplement or other offering material.**

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

The date of this prospectus is April 7, 2014.

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**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission (the SEC ) utilizing a shelf registration process. Under this shelf registration process, we may sell any combination of the securities described in this prospectus in one or more offerings from time to time. This prospectus describes the general terms of the securities we may offer and the general manner in which we may offer the securities. Each time we offer securities, we will provide a prospectus supplement or other offering material that will describe the specific terms of the securities offered and the specific manner in which we will offer the securities. The prospectus supplement or other offering material may also add, update or change information contained in this prospectus. If there is any inconsistency between the information in this prospectus and the applicable prospectus supplement or other offering material, you should rely on the information in the prospectus supplement or other offering material. You should read this prospectus, the applicable prospectus supplement, any free writing prospectus prepared by or on behalf of us and any other offering materials, together with the information described under the heading **Where You Can Find More Information**, before deciding whether to invest in any of the securities offered.

Because we are a well-known seasoned issuer, as defined in Rule 405 under the Securities Act of 1933, as amended (the Securities Act ), we may add to and offer additional securities, including secondary securities, by filing a prospectus supplement or term sheet with the SEC at the time of the offer.

You should rely only on the information contained or incorporated by reference in this prospectus and any prospectus supplement, free writing prospectus or other offering material filed by us with the SEC. We have not authorized anyone to provide you with different or additional information. If anyone provides you with different, additional or inconsistent information, you should not rely on it. This prospectus is not an offer to sell these securities, and it is not soliciting an offer to buy these securities, in any state where the offer or sale is not permitted. You should not assume that the information contained in this prospectus or in any prospectus supplement, free writing prospectus or other offering material is accurate as of any date other than the date of the applicable document or that any information we have incorporated by reference is accurate as of any date other than the date of the document incorporated by reference. Our business, financial condition, results of operations and prospects may have changed since any such date.

Unless the context otherwise requires, references to **Worthington**, **the Company**, **we**, **our** and **us** and similar terms mean **Worthington Industries, Inc.** and its subsidiaries.

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**FORWARD-LOOKING STATEMENTS**

Selected statements contained in this prospectus and the documents incorporated by reference herein constitute forward-looking statements as that term is used in the Private Securities Litigation Reform Act of 1995.

Forward-looking statements reflect our current expectations, estimates or projections concerning future results or events. These statements are often identified by the use of forward-looking words or phrases such as believe, expect, anticipate, may, could, intend, estimate, plan, foresee, likely, will, should or other similar words or phrases. Forward-looking statements may include, without limitation, statements relating to:

outlook, strategy or business plans;

future or expected growth, performance, sales, volumes, cash flows, earnings, balance sheet strengths, debt, financial condition or other financial measures;

projected profitability potential, capacity, and working capital needs;

demand trends for us or our markets;

additions to product lines and opportunities to participate in new markets;

pricing trends for raw materials and finished goods and the impact of pricing changes;

anticipated capital expenditures and asset sales;

anticipated improvements and efficiencies in costs, operations, sales, inventory management, sourcing or the supply chain and the results thereof;

the ability to make acquisitions and the projected timing, results, benefits, costs, charges and expenditures related to acquisitions, newly-created joint ventures, headcount reductions and facility dispositions, shutdowns and consolidations;

the alignment of operations with demand;

the ability to operate profitably and generate cash in down markets;



the ability to maintain margins and capture and maintain market share and to develop or take advantage of future opportunities, new products and new markets;

expectations for Company and customer inventories, jobs and orders;

expectations for the economy and markets or improvements therein;

expected benefits from transformation plans, cost reduction efforts and other new initiatives;

expectations for increasing volatility or improving and sustaining earnings, earnings potential, margins or shareholder value;

effects of judicial rulings; and

other non-historical matters.

Because they are based on beliefs, estimates and assumptions, forward-looking statements are inherently subject to risks and uncertainties that could cause actual results to differ materially from those projected. Any number of factors could affect actual results, including, without limitation, those that follow:

the effect of national, regional and worldwide economic conditions generally and within major product markets, including a prolonged or substantial economic downturn;

the effect of legislation or regulations relating to the United States debt and budget, which may be adverse due to its impact on tax increases, governmental spending, customer confidence and spending, and the overall economy;

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the effect of conditions in national and worldwide financial markets;

product demand and pricing;

changes in product mix, product substitution and market acceptance of our products;

fluctuations in the pricing, quality or availability of raw materials (particularly steel), supplies, transportation, utilities and other items required by operations;

effects of facility closures and the consolidation of operations;

the effect of financial difficulties, consolidation and other changes within the steel, automotive, construction and other industries in which we participate;

failure to maintain appropriate levels of inventories;

financial difficulties (including bankruptcy filings) of original equipment manufacturers, end-users and customers, suppliers, joint venture partners and others with whom we do business;

the ability to realize targeted expense reductions from headcount reductions, facility closures and other cost reduction efforts;

the ability to realize other cost savings and operational, sales and sourcing improvements and efficiencies, and other expected benefits from transformation initiatives, on a timely basis;

the overall success of, and the ability to integrate, newly-acquired businesses and joint ventures, and the ability to maintain and develop the customers of newly-acquired businesses and joint ventures and achieve synergies and other expected benefits and cost savings therefrom;

capacity levels and efficiencies, within facilities, within major product markets and within the industry as a whole;

the effect of disruption in the business of suppliers, customers, facilities and shipping operations due to adverse weather, casualty events, equipment breakdowns, acts of war or terrorist activities or other causes;

changes in customer demand, inventories, spending patterns, product choices, and supplier choices;

risks associated with doing business internationally, including economic, political and social instability, foreign currency exposure and the lack of acceptance of our products;

the ability to improve and maintain processes and business practices to keep pace with the economic, competitive and technological environment;

the outcome of adverse claims with respect to workers' compensation, product recalls or product liability, casualty events or other matters;

deviation of actual results from estimates and/or assumptions used by us in the application of our significant accounting policies;

level of imports and import prices in our markets;

the impact of judicial and governmental agency rulings as well as the impact of governmental regulations, both in the United States and abroad, including those adopted by the SEC and other governmental agencies as contemplated by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010;

the effect of changes to healthcare laws in the United States, which may increase our healthcare and other costs and negatively impact our financial results and operations; and

other risks described from time to time in our filings with the SEC or incorporated by reference below under the heading "Risk Factors."

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We note these factors for investors as contemplated by the Private Securities Litigation Reform Act of 1995. It is impossible to predict or identify all potential risk factors. Consequently, you should not consider the foregoing list to be a complete set of all potential risks and uncertainties. Any forward-looking statements included or incorporated by reference in this prospectus are based on current information as of the date of this prospectus or the respective document incorporated herein by reference, and we assume no obligation to correct or update any such statements in the future, except as required by applicable law. All subsequent written and oral forward-looking statements concerning the matters addressed in this prospectus and attributable to us or any person acting on our behalf are qualified by these cautionary statements.

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**RISK FACTORS**

Investing in our securities involves significant risks. Before you decide to invest in our securities, you should carefully consider and evaluate all of the information included and incorporated by reference in this prospectus, including the risk factors incorporated herein by reference from our most recent Annual Report on Form 10-K, as updated by our subsequent Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and other filings we make with the SEC, and the risk factors contained under the Risk Factors heading in any applicable prospectus supplement. It is possible that our business, financial condition, liquidity or results of operations could be materially adversely affected by any of these risks. See also the discussion under the heading Forward-Looking Statements.

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**THE COMPANY**

Worthington Industries, Inc. is a corporation formed under the laws of the State of Ohio. Founded in 1955, we are primarily a diversified metal manufacturing company, focused on value-added steel processing and manufactured metal products. Our manufactured metal products include: pressure cylinders products such as propane, oxygen, refrigerant and industrial cylinders, hand torches, camping cylinders, scuba tanks, compressed natural gas cylinders, helium balloon kits, and steel and fiberglass tanks and processing equipment for primarily the oil and gas industry; engineered cabs and operator stations and cab components; framing systems for mid-rise buildings; steel pallets and racks; and, through joint ventures, suspension grid systems for concealed and lay-in panel ceilings; laser welded blanks; light gauge steel framing for commercial and residential construction; and current and past model automotive service stampings. We have three reportable business (operating) segments: (1) Steel Processing; (2) Pressure Cylinders and (3) Engineered Cabs. All other operating segments are combined and disclosed in the Other category, which also includes income and expense items not allocated to our operating segments. The Other category includes the Construction Services and Worthington Energy Innovations ( WEI ) operating segments. We also hold equity positions in 12 joint ventures.

Our Steel Processing operating segment consists of the Worthington Steel business unit, and includes: Precision Specialty Metals, Inc., a specialty stainless processor located in Los Angeles, California, Worthington Steelpac Systems, which manufactures recyclable steel packaging solutions for the movement of products, Spartan Steel Coating, LLC, a consolidated joint venture that operates a cold-rolled hot dipped galvanizing line in Monroe, Michigan, and TWB Company, L.L.C., a consolidated joint venture that operates a tailor welded blank business headquartered in Monroe, Michigan. Steel Processing is one of the largest independent intermediate processors of flat-rolled steel in the United States. Our Steel Processing operating segment serves approximately 1,000 customers, principally in the agricultural, appliance, automotive, construction, hardware, HVAC, lawn and garden, leisure and recreation, and office furniture markets.

Our Pressure Cylinders operating segment consists of the Worthington Cylinders business unit and includes: India-based Worthington Nitin Cylinders Limited, a consolidated joint venture that manufactures high-pressure, seamless steel cylinders for compressed natural gas storage in motor vehicles and for industrial gases, and Worthington Aritaş Basınçlı Kaplar Sanayi, a consolidated joint venture located in Istanbul, Turkey that manufactures liquefied natural gas and cryogenic pressure vessels. Our Pressure Cylinders operating segment manufactures and sells filled and unfilled pressure cylinders, tanks, and various accessories and related products for diversified end-use market applications.

Our Engineered Cabs operating segment consists of the Worthington Industries Engineered Cabs business unit ( Engineered Cabs ), which we acquired on December 29, 2011. Engineered Cabs is North America's leading non-captive designer and manufacturer of high-quality, custom-engineered open and enclosed cabs and operator stations and custom fabrications of heavy mobile equipment used primarily in the agricultural, construction, mining, forestry, military, and various other industries.

For additional information concerning our business and our financial results and condition, please refer to the documents incorporated by reference in this prospectus. See Incorporation of Certain Documents by Reference.

Our principal executive offices are located at 200 Old Wilson Bridge Road, Columbus, Ohio 43085, and our telephone number is (614) 438-3210. We maintain a website at [www.worthingtonindustries.com](http://www.worthingtonindustries.com) where general information about us is available. The information on our website is not a part of this prospectus or any applicable prospectus supplement or other offering material.



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**DESCRIPTION OF DEBT SECURITIES**

The debt securities that we may offer by this prospectus consist of unsecured notes, debentures or other evidences of indebtedness of the Company (collectively, the Debt Securities ). The following description of the terms of the Debt Securities sets forth certain general terms and provisions of the Debt Securities to which any prospectus supplement may relate. The particular terms of the Debt Securities offered by any prospectus supplement and the extent, if any, to which such general provisions may apply to the Debt Securities so offered will be described in the prospectus supplement or other offering material relating to such Debt Securities. Accordingly, for a description of the terms of a particular issue of Debt Securities, reference must be made to the prospectus supplement and such other offering material relating thereto and to the following description.

The Debt Securities will be general obligations of the Company and will be senior debt of the Company.

Debt Securities will be issued under an indenture (the Indenture ) between the Company and U.S. Bank National Association (the Trustee ). The following discussion of certain provisions of the Indenture is a summary only and does not purport to be a complete description of the terms and provisions of the Indenture. The Indenture is incorporated by reference as an exhibit to the registration statement of which this prospectus is a part. The following discussion is qualified in its entirety by reference to the provisions of the Indenture. The Indenture is subject to any amendments or supplements that we may enter into from time to time, as permitted under the Indenture. Except as otherwise defined in this prospectus, capitalized terms used in this prospectus have the meanings given to them in the Indenture.

**General**

The Indenture does not limit the aggregate principal amount of Debt Securities that can be issued thereunder. The Debt Securities may be issued in one or more series as may be authorized from time to time by the Company. You should read the prospectus supplement and any other offering material relating to a particular series of Debt Securities for any or all of the following terms of the series of Debt Securities offered by that prospectus supplement and this prospectus:

the title of the Debt Securities of the series;

any limit on the aggregate principal amount of the Debt Securities of the series that may be authenticated and delivered under the Indenture;

the date or dates on which the principal and premium with respect to the Debt Securities of the series are payable;

the rate or rates (which may be fixed or variable) at which the Debt Securities of the series will bear interest (if any) or the method of determining such rate or rates, the date or dates from which such interest will accrue, the interest payment dates on which such interest will be payable or the method by which such dates will be determined, the record dates for the determination of holders thereof to whom such interest is payable (in the case of Registered Securities), and the basis upon which interest will be calculated if other than that of a 360-day year of twelve 30-day months;



the place or places, if any, in addition to or instead of the corporate trust office of the Trustee where the principal, premium and interest with respect to Debt Securities of the series will be payable;

the price or prices at which, the period or periods within which and the terms and conditions upon which Debt Securities of the series may be redeemed, in whole or in part, at the option of the Company or otherwise;

the obligation, if any, of the Company to redeem, purchase or repay Debt Securities of the series pursuant to any sinking fund or analogous provisions or at the option of a holder thereof and the price or prices at which, the period or periods within which and the terms and conditions upon which Debt Securities of the series will be redeemed, purchased or repaid, in whole or in part, pursuant to such obligations;

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whether the Debt Securities will be convertible into or exchangeable for any other securities and the applicable terms and conditions;

if other than denominations of \$2,000 and any integral multiple of \$1,000 in excess thereof, the denominations in which Debt Securities of the series will be issuable;

if the amount of principal, premium or interest with respect to the Debt Securities of the series may be determined with reference to an index or pursuant to a formula, the manner in which such amounts will be determined;

if the principal amount payable at the stated maturity of the Debt Securities of the series will not be determinable as of any one or more dates prior to such stated maturity, the amount that will be deemed to be such principal amount as of any such date for any purpose, including the principal amount thereof which will be due and payable upon any maturity other than the stated maturity or which will be deemed to be outstanding as of any such date (or, in any such case, the manner in which such deemed principal amount is to be determined), and, if necessary, the manner of determining the equivalent thereof in United States currency;

any changes or additions relating to the discharge, defeasance and covenant defeasance described below under the heading Satisfaction and Discharge of the Indenture; Defeasance;

if other than the coin or currency of the United States, the coin or currency or currencies or units of two or more currencies in which payment of the principal, premium and interest with respect to the Debt Securities of the series will be payable;

if other than the principal amount, the portion of the principal amount of the Debt Securities of the series that will be payable upon declaration of acceleration of maturity or provable in bankruptcy;

the terms, if any, of the transfer, mortgage, pledge or assignment as security for the Debt Securities of the series of any properties, assets, moneys, proceeds, securities or other collateral;

any addition to or change in the Events of Default with respect to the Debt Securities of the series and any change in the right of the Trustee or the holders to declare the principal of and interest on such Debt Securities due and payable;

the terms, if any, of any guarantee of the payment of principal of and interest on the Debt Securities of the series;

the applicability of, and any changes in or additions to, the covenants and definitions set forth in the Indenture or the terms of the Indenture relating to consolidation, merger, sale or conveyance described below under the heading Consolidation, Merger and Sale of Assets;

any trustees, authenticating or paying agents, transfer agents or registrars;

if the Debt Securities of the series will be issued in whole or in part in the form of a Global Security, the terms and conditions, if any, upon which such Global Security may be exchanged in whole or in part for other individual Debt Securities in definitive registered form and the Depositary for such Global Security;

with regard to Debt Securities of the series that do not bear interest, the dates for certain required reports to the Trustee; and

any other terms of the Debt Securities of the series which are not prohibited by the provisions of the Indenture.

The prospectus supplement will also describe any material U.S. federal income tax consequences or other special considerations applicable to the series of Debt Securities to which such prospectus supplement relates, including those applicable to (1) Debt Securities with respect to which payments of principal, premium or interest are determined with reference to an index or formula (including changes in prices of particular securities,

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currencies or commodities), (2) Debt Securities with respect to which principal, premium or interest is payable in a foreign or composite currency, (3) Debt Securities that are issued at a discount below their stated principal amount, bearing no interest or interest at a rate that at the time of issuance is below market rates ( Original Issue Discount Debt Securities ) and (4) variable rate Debt Securities that are exchangeable for fixed rate Debt Securities.

Payments of interest on Debt Securities may be made at the option of the Company by check mailed to the registered holders thereof or, if so provided in the applicable prospectus supplement, at the option of a holder by wire transfer to an account designated by such holder.

Unless otherwise provided in the applicable prospectus supplement, Debt Securities may be transferred or exchanged at the office of the Trustee at which its corporate trust business is principally administered in the United States or at the office of the Trustee or the Trustee's agent in New York City at which its corporate agency business is conducted, subject to the limitations provided in the Indenture, without the payment of any service charge, other than any tax or governmental charge payable in connection therewith.

## **Registered Global Securities**

The Debt Securities of a series may be issued in whole or in part in the form of one or more fully registered global securities (a Global Security ) that will be deposited with a depository (the Depository ), or with a nominee for a Depository identified in the prospectus supplement relating to such series. In such case, one or more Global Securities will be issued in a denomination or aggregate denomination equal to the portion of the aggregate principal amount of outstanding registered Debt Securities of the series to be represented by such Global Security or Securities. Unless and until it is exchanged in whole or in part for Debt Securities in definitive registered form, a Global Security may not be registered for transfer or exchange except (1) by the Depository to a nominee of such Depository, (2) by a nominee of such Depository to such Depository or another nominee of such Depository, (3) by such Depository or any such nominee to a successor of such Depository or a nominee of such successor or (4) in any other circumstance described in an applicable prospectus supplement.

The specific terms of the depository arrangement with respect to any portion of a series of Debt Securities to be represented by a Global Security will be described in the prospectus supplement relating to such series. The Company anticipates that the following provisions will apply to all depository arrangements.

Upon the issuance of a Global Security, the Depository for such Global Security will credit, on its book-entry registration and transfer system, the respective principal amounts of the Debt Securities represented by such Global Security to the accounts of Persons that have accounts with such Depository ( participants ). The accounts to be credited will be designated by any underwriters or agents participating in the distribution of such Debt Securities. Ownership of beneficial interests in a Global Security will be limited to participants or Persons that may hold interests through participants. Ownership of beneficial interests in such Global Security will be shown on, and the transfer of that ownership will be effected only through, records maintained by the Depository for such Global Security (with respect to interests of participants) or by participants or Persons that hold interests through participants (with respect to interests of Persons other than participants). 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 such Global Security for all purposes under the Indenture. Except as set forth below, owners of beneficial interests in a Global Security will not be entitled to have the Debt Securities represented by such Global Security registered in their names, will not receive or be entitled to receive physical delivery of such Debt Securities in definitive form and will not be considered the owners or holders thereof under the Indenture.

Principal, premium, if any, and interest payments on Debt Securities represented by a Global Security registered in the name of a Depository or its nominee will be made to such Depository or its nominee, as the case may be, as the registered owner of such Global Security. None of the Company, the Trustee, any registrar, any

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paying agent or any agent of the Company or the Trustee will have any responsibility or liability for (1) any aspect of the records relating to or payments made on account of beneficial ownership interests in such Global Security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests, (2) the payments to the beneficial owners of such Global Security of amounts paid to such Depository or its nominee or (3) any other matter relating to the actions and practices of such Depository, its nominees or any of its direct or indirect participants.

The Company expects that the Depository for any Debt Securities represented by a Global Security, upon receipt of any payment of principal, premium or interest, will credit in accordance with DTC's policies participants' accounts with payments in amounts proportionate to their respective beneficial interests in the principal amount of such Global Security as shown on the records of such Depository. The Company also expects 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 now the case with the securities held for the accounts of customers registered in street names and will be the responsibility of such participants.

If the Depository for any Debt Securities represented by a Global Security is at any time unwilling or unable to continue as Depository and a successor Depository is not appointed by the Company within 90 days, the Company will issue such Debt Securities in definitive form in exchange for such Global Security. In addition, the Company may at any time and in its sole discretion determine not to have any of the Debt Securities of a series represented by one or more Global Securities and, in such event, will issue Debt Securities of such series in definitive form in exchange for all of the Global Security or Securities representing such Debt Securities. In the event that the Company issues Debt Securities in definitive form in exchange for such Global Securities, ownership of beneficial interests in such Debt Securities will be shown on, and the transfer of that ownership will be effected only through, records maintained by (or on behalf of) the Company for such Debt Securities.

## **Certain Covenants**

The Indenture contains certain covenants of the Company, including the following:

the Company will punctually pay or cause to be paid the principal of, and any premium and interest on, the Debt Securities, at the places and times and in the manner provided in the Indenture and in the Debt Securities;

the Company will maintain an office or agency where the Debt Securities may be presented or surrendered for payment, transfer or exchange and where notices and demands to or upon the Company in respect of the Debt Securities and the Indenture may be served;

the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises; provided, however, that the Company will not be required to preserve any such right or franchise if it determines that the preservation thereof is no longer desirable in the conduct of its business and the loss thereof is not materially disadvantageous to the holders of the Debt Securities; and

the Company will cause all properties used or useful in the conduct of the business of the Company or its subsidiaries to be maintained and kept in good condition, repair and working order and will cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the judgment of the Company may be necessary so that the business carried on by the Company and its subsidiaries may be properly and advantageously conducted at all times; provided, however, that the Company and its subsidiaries will not be prevented from discontinuing the operation or maintenance of any of such properties if such discontinuance is, in the judgment of the Company, not materially detrimental to the conduct of the business of the Company and its subsidiaries, taken as a whole, and not materially disadvantageous to the holders of the Debt Securities.

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Any restrictive covenants of the Company applicable to any series of Debt Securities will be described in the applicable prospectus supplement or other offering material.

## **Events of Default and Remedies**

The following events are defined in the Indenture as Events of Default with respect to a series of Debt Securities:

default in the payment of any installment of interest on any Debt Securities of that series as and when the same become due and payable and continuance of such default for a period of 30 days;

default in the payment of principal or premium with respect to any Debt Securities of that series as and when the same become due and payable, whether at maturity, upon redemption, by declaration, upon required repurchase or otherwise;

default in the payment of any sinking fund payment with respect to any Debt Securities of that series as and when the same become due and payable;

failure on the part of the Company to comply with the provisions of the Indenture relating to consolidations, mergers and sales of assets;

failure on the part of the Company duly to observe or perform any other of the covenants or agreements on the part of the Company in the Debt Securities of that series, in any resolution of the Board of Directors of the Company authorizing the issuance of that series of Debt Securities, in the Indenture with respect to such series or in any supplemental indenture with respect to such series (other than a covenant a default in the performance of which is otherwise specifically dealt with) continuing for a period of 60 days after the date on which written notice specifying such failure and requiring the Company to remedy the same has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the holders of at least 25% in aggregate principal amount of the Debt Securities of that series at the time outstanding;

indebtedness of the Company or any Restricted Subsidiary of the Company is not paid within any applicable grace period after final maturity or is accelerated by the holders thereof because of a default, the total amount of such indebtedness unpaid or accelerated exceeds \$20 million or the United States dollar equivalent thereof at the time and such default remains uncured or such acceleration is not rescinded for 10 days after the date on which written notice specifying such failure and requiring the Company to remedy the same has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the holders of at least 25% in aggregate principal amount of the Debt Securities of that series at the time outstanding;



the Company or any of its Restricted Subsidiaries (1) voluntarily commences any proceeding or files any petition seeking relief under the United States Bankruptcy Code or other federal or state bankruptcy, insolvency or similar law, (2) consents to the institution of, or fails to controvert within the time and in the manner prescribed by law, any such proceeding or the filing of any such petition, (3) applies for or consents to the appointment of a receiver, trustee, custodian, sequestrator or similar official for the Company or any such Restricted Subsidiary or for a substantial part of its property, (4) files an answer admitting the material allegations of a petition filed against it in any such proceeding, (5) makes a general assignment for the benefit of creditors, (6) admits in writing its inability to pay, or fails generally to pay, its debts as they become due, (7) takes corporate action for the purpose of effecting any of the foregoing or (8) takes any comparable action under any foreign laws relating to insolvency;

the entry of an order or decree by a court having competent jurisdiction for (1) relief with respect to the Company or any of its Restricted Subsidiaries or a substantial part of any of their property under the United States Bankruptcy Code or any other federal or state bankruptcy, insolvency or similar law, (2) the appointment of a receiver, trustee, custodian, sequestrator or similar official for the Company or

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any such Restricted Subsidiary or for a substantial part of any of their property (except any decree or order appointing such official of such Restricted Subsidiary pursuant to a plan under which the assets and operations of such Restricted Subsidiary are transferred to or combined with another Restricted Subsidiary or Subsidiaries of the Company or to the Company) or (3) the winding-up or liquidation of the Company or any such Restricted Subsidiary (except any decree or order approving or ordering the winding-up or liquidation of the affairs of a Restricted Subsidiary pursuant to a plan under which the assets and operations of such Restricted Subsidiary are transferred to or combined with one or more other Restricted Subsidiaries or the Company), and such order or decree continues unstayed and in effect for 60 consecutive days, or any similar relief is granted under any foreign laws and the order or decree stays in effect for 60 consecutive days;

any judgment or decree for the payment of money in excess of \$20 million or the United States dollar equivalent thereof at the time is entered against the Company or any Restricted Subsidiary of the Company by a court or courts of competent jurisdiction, which judgment is not covered by insurance, and is not discharged and either (1) an enforcement proceeding has been commenced by any creditor upon such judgment or decree or (2) there is a period of 60 days following the entry of such judgment or decree during which such judgment or decree is not discharged or waived or the execution thereof stayed and, in either case, such default continues for 10 days after the date on which written notice specifying such failure and requiring the Company to remedy the same has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the holders of at least 25% in aggregate principal amount of the Debt Securities of that series at the time outstanding; and

any other Event of Default provided with respect to Debt Securities of that series.

An Event of Default with respect to one series of Debt Securities may not necessarily be an Event of Default for another series.

If an Event of Default described in the first, second, third, fourth, fifth, sixth, ninth or tenth bullet points above occurs and is continuing with respect to any series of Debt Securities, unless the principal and interest with respect to all the Debt Securities of such series have already become due and payable, either the Trustee or the holders of not less than 25% in aggregate principal amount of the Debt Securities of such series then outstanding may declare the principal of (or, if Original Issue Discount Debt Securities, such portion of the principal amount as may be specified in such series) and interest on all the Debt Securities of such series due and payable immediately. If an Event of Default described in the seventh or eighth bullet points above occurs, unless the principal and interest with respect to all the Debt Securities of the series have become due and payable, the principal of (or, if any series are Original Issue Discount Debt Securities, such portion of the principal amount as may be specified in such series) and interest on all Debt Securities of all series then outstanding will become and be immediately due and payable without any declaration or other act on the part of the Trustee or any holder of Debt Securities.

If an Event of Default occurs and is continuing, the Trustee will be entitled and empowered to institute any action or proceeding for the collection of the sums so due and unpaid or to enforce the performance of any provision of the Debt Securities of the affected series or the Indenture, to prosecute any such action or proceeding to judgment or final decree and to enforce any such judgment or final decree against the Company or any other obligor on the Debt Securities of such series. In addition, if there are any pending proceedings for the bankruptcy or reorganization of the Company or any other obligor on the Debt Securities, or if a receiver, trustee or similar official has been appointed for its property, the Trustee will be entitled and empowered to file and prove a claim for the whole amount of principal, premium and interest (or, in the case of Original Issue Discount Debt Securities, such portion of the principal amount as may be specified in the terms of such series) owing and unpaid with respect to the Debt Securities. No holder of

any Debt Security of any series will have any right to institute any action or proceeding upon or under or with respect to the Indenture, for the appointment of a receiver or trustee or for any other remedy, unless (1) such holder previously has given to the Trustee written

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notice of an Event of Default with respect to Debt Securities of that series and of the continuance thereof, (2) the holders of not less than 25% in aggregate principal amount of the outstanding Debt Securities of that series have made written request to the Trustee to institute such action or proceeding with respect to such Event of Default and have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses, and liabilities to be incurred therein or thereby and (3) the Trustee, for 60 days after its receipt of such notice, request and offer of indemnity, has failed to institute such action or proceeding and no direction inconsistent with such written request has been given to the Trustee pursuant to the provisions of the Indenture.

Prior to the acceleration of the maturity of the Debt Securities of any series, the holders of a majority in aggregate principal amount of the Debt Securities of that series at the time outstanding may, on behalf of the holders of all Debt Securities of that series, waive any past default or Event of Default and its consequences for that series, except (1) a default in the payment of the principal, premium or interest with respect to such Debt Securities or (2) a default with respect to a provision of the Indenture that cannot be amended without the consent of each holder affected thereby. In case of any such waiver, such default will cease to exist, any Event of Default arising therefrom will be deemed to have been cured for all purposes and the Company, the Trustee and the holders of the Debt Securities of that series will be restored to their former positions and rights under the Indenture.

The Trustee is required to give, within 90 days after the occurrence of a default known to it with respect to a series of Debt Securities, to the holders of the Debt Securities of such series notice of all defaults with respect to such series known to it, unless such defaults have been cured or waived before the giving of such notice; provided, however, that except in the case of default in the payment of principal, premium or interest with respect to the Debt Securities of such series or in the making of any sinking fund or purchase payment with respect to the Debt Securities of such series, the Trustee will be protected in withholding such notice if it in good faith determines that the withholding of such notice is in the interest of the holders of such Debt Securities.

## **Modification of the Indenture**

The Company and the Trustee may enter into supplemental indentures without the consent of the holders of Debt Securities issued under the Indenture for one or more of the following purposes:

to evidence the succession of another person to the Company pursuant to the provisions of the Indenture relating to consolidations, mergers and sales of assets and the assumption by such successor of the covenants, agreements and obligations of the Company in the Indenture and in the Debt Securities;

to surrender any right or power conferred upon the Company by the Indenture, to add to the covenants of the Company such further covenants, restrictions, conditions or provisions for the protection of the holders of all or any series of Debt Securities as the Board of Directors of the Company shall consider to be for the protection of the holders of such Debt Securities and to make the occurrence, or the occurrence and continuance, of a default in any of such additional covenants, restrictions, conditions or provisions a default or an Event of Default under the Indenture (provided, however, that with respect to any such additional covenant, restriction, condition or provision, such supplemental indenture may provide for a period of grace after default, which may be shorter or longer than that allowed in the case of other defaults, may provide for an immediate enforcement upon such default, may limit the remedies available to the Trustee upon such default or may limit the right of holders of a majority in aggregate principal amount of any or all series of Debt Securities to waive such default);

to cure any ambiguity or to correct or supplement any provision contained in the Indenture, in any supplemental indenture or in any Debt Securities that may be defective or inconsistent with any other provision contained therein, to convey, transfer, assign, mortgage or pledge any property to or with the Trustee or to make such other provisions in regard to matters or questions arising under the Indenture as do not adversely affect the interests of any holders of Debt Securities of any series;

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to modify or amend the Indenture in such a manner as to permit the qualification of the Indenture or any supplemental indenture under the Trust Indenture Act as then in effect;

to add or change any of the provisions of the Indenture that would change or eliminate any restrictions on the payment of principal, premium or interest with respect to the Debt Securities so long as any such action does not adversely affect the interests of the holders of Debt Securities in any material respect or permit or facilitate the issuance of Debt Securities of any series in uncertificated form;

to evidence the succession of another corporation to the Company and the assumption by any such successor of the covenants of the Company in the Indenture and in the Debt Securities;

to add guarantees with respect to the Debt Securities or to secure the Debt Securities;

to add to, change or eliminate any of the provisions of the Indenture with respect to one or more series of Debt Securities of any series, so long as any such addition, change or elimination not otherwise permitted under the Indenture (1) neither applies to any Debt Security of any series created prior to the execution of such supplemental indenture and entitled to the benefit of such provision nor modifies the rights of the holders of any such Debt Security with respect to such provision or (2) becomes effective only when there is no such Debt Security outstanding;

to evidence and provide for the acceptance of appointment by a successor or separate Trustee with respect to the Debt Securities of one or more series and to add to or change any of the provisions of the Indenture as shall be necessary to provide for or facilitate the administration of the Indenture by more than one Trustee; and

to establish the form or terms of Debt Securities of any series, as described under the heading **General** above.

With the consent of the holders of a majority in aggregate principal amount of the outstanding Debt Securities of each series affected thereby, the Company and the Trustee may from time to time and at any time enter into a supplemental indenture for the purpose of adding any provisions to, changing in any manner or eliminating any of the provisions of the Indenture or of any supplemental indenture or modifying in any manner the rights of the holder of the Debt Securities of such series; provided, however, that without the consent of the holders of each Debt Security so affected, no such supplemental indenture may (1) reduce the percentage in principal amount of Debt Securities of any series whose holders must consent to an amendment, (2) reduce the rate of or extend the time for payment of interest on any Debt Security, (3) reduce the principal of or extend the stated maturity of any Debt Security, (4) reduce the premium payable upon the redemption of any Debt Security or change the time at which any Debt Security may or must be redeemed, (5) make any Debt Security payable in a currency other than that stated in the Debt Security, (6) release any security that may have been granted with respect to the Debt Securities or (7) make any change in certain provisions of the Indenture relating to waivers of defaults or modifications of the Indenture with the consent of holders of the Debt Securities.

**Consolidation, Merger and Sale of Assets**

The Company may not consolidate with or merge with or into any person, or convey, transfer or lease all or substantially all of its assets, unless the following conditions have been satisfied:

either (1) the Company is the continuing person in the case of a merger or (2) the resulting, surviving or transferee person, if other than the Company (the Successor Company ), is a corporation organized and existing under the laws of the United States, any State thereof or the District of Columbia and expressly assumes all of the obligations of the Company under the Debt Securities and the Indenture;

immediately after giving effect to such transaction (and treating any indebtedness that becomes an obligation of the Successor Company or any subsidiary of the Company as a result of such transaction as having been incurred by the Successor Company or such subsidiary at the time of such transaction), no default or Event of Default would occur or be continuing; and

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the Company has delivered to the Trustee an officers certificate and an opinion of counsel, each stating that such consolidation, merger, or transfer complies with the Indenture.

If the Successor Company expressly assumes all of the obligations of the Company under the Debt Securities and the Indenture, the Company will be released from such obligations.

**Satisfaction and Discharge of the Indenture; Defeasance**

The Indenture will generally cease to be of any further effect with respect to a series of Debt Securities if (1) the Company has delivered to the Trustee for cancellation all Debt Securities of such series (with certain limited exceptions) or (2) all Debt Securities of such series not theretofore delivered to the Trustee for cancellation have become due and payable, or are by their terms to become due and payable within one year or are to be called for redemption within one year, and the Company has deposited with the Trustee as trust funds the entire amount in the currency in which the Debt Securities are denominated sufficient to pay at maturity or upon redemption all such Debt Securities, including principal and premium, if any, and interest due or to become due on such date of maturity or redemption date, as the case may be, and if, in either case, the Company also pays or causes to be paid all other sums payable under the Indenture by the Company.

In addition, the Company has a legal defeasance option (pursuant to which it may terminate, with respect to the Debt Securities of a particular series, all of its obligations under such Debt Securities and the Indenture with respect to such Debt Securities) and a covenant defeasance option (pursuant to which it may terminate, with respect to the Debt Securities of a particular series, its obligations with respect to such Debt Securities under certain specified covenants contained in the Indenture or supplemental indenture). If the Company exercises its legal defeasance option with respect to a series of Debt Securities, payment of such Debt Securities may not be accelerated because of an Event of Default. If the Company exercises its covenant defeasance option with respect to a series of Debt Securities, payment of such Debt Securities may not be accelerated because of an Event of Default related to the specified covenants.

The Company may exercise its legal defeasance option or its covenant defeasance option with respect to the Debt Securities of a series only if:

the Company irrevocably deposits in trust with the Trustee cash or U.S. Government Obligations for the payment of principal, premium and interest with respect to such Debt Securities to maturity or redemption, as the case may be;