

Kraton Performance Polymers, Inc.

Form S-3ASR

August 25, 2015

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As filed with the Securities and Exchange Commission on August 25, 2015

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-3

REGISTRATION STATEMENT

Under

THE SECURITIES ACT OF 1933

Kraton Performance Polymers, Inc.

(Exact name of registrant as specified in its charter)

Delaware

15710 John F. Kennedy Blvd.

20-0411521

Suite 300

Houston, Texas 77032

(State or other jurisdiction of incorporation or organization)	(281) 504-4700 (Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)	(I.R.S. Employer Identification No.)
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James L. Simmons

General Counsel

Kraton Performance Polymers, Inc.

15710 John F. Kennedy Blvd.

Suite 300

Houston, Texas 77032

Telephone: (281) 504-4700

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

Copy to:

Timothy S. Taylor

Carina L. Antweil

Baker Botts L.L.P.

910 Louisiana Street

One Shell Plaza

Houston, Texas 77002

(713) 229-1234

Exact Name of Additional Registrants*	Jurisdiction of Incorporation/Organization	I.R.S. Employer Identification Number
Kraton Polymers U.S. LLC	Delaware	76-0607595

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Elastomers Holdings LLC	Delaware	76-0656328
Kraton Polymers Capital Corporation	Delaware	52-2270870
Kraton Polymers LLC	Delaware	26-3739386

* Each additional registrant is a wholly-owned direct or indirect subsidiary of Kraton Performance Polymers, Inc. The address, including zip code, and telephone number, including area code, of each of the additional Registrants principal executive offices is c/o Kraton Performance Polymers, Inc., 15710 John F. Kennedy Blvd., Suite 300, Houston, Texas 77032, telephone (281) 504-4700. The primary standard industrial classification code number of each of the additional Registrants is 2821. The name, address, including zip code, and telephone number, including area code, of the agent for service for each of the additional Registrants is 15710 John F. Kennedy Blvd., Suite 300, Houston, Texas 77032, telephone (281) 504-4700.

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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 to be offered pursuant to dividend or interest reinvestment plans, please check the following box: ☐

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

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

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration 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. (Check one):

Large accelerated filer <input checked="" type="checkbox"/>	Accelerated filer <input type="checkbox"/>
Non-accelerated filer <input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company <input type="checkbox"/>

CALCULATION OF REGISTRATION FEE

Title of Each Class of	Amount to be
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Securities to be Registered	Registered/Proposed
	Maximum Offering
	Price Per
	Unit/Proposed
	Maximum
	Aggregate Offering
	Price (1)(2)
Debt Securities	
Preferred Stock, par value \$0.01 per share	
Common Stock, par value \$0.01 per share	
Warrants	
Units	
Guarantees of Debt Securities (3)	
Total	

- (1) An indeterminate number or amount of debt securities, preferred stock, common stock, warrants, units and guarantees of debt securities as may from time to time be issued at indeterminate prices and as may be issuable upon conversion, redemption, exchange, exercise or settlement of any securities registered hereunder, including under any applicable antidilution provisions.
- (2) In reliance on Rule 456(b) and Rule 457(r) under the Securities Act, Kraton Performance Polymers, Inc. hereby defers payment of the registration fee required in connection with this Registration Statement. Accordingly, no filing fee is paid herewith and all registration fees will be paid on a pay as you go basis.
- (3) Kraton Polymers U.S. LLC, Elastomers Holdings LLC, Kraton Polymers Capital Corporation and Kraton Polymers LLC may fully and unconditionally guarantee any series of debt securities of Kraton Performance Polymers, Inc., and Kraton Performance Polymers, Inc., Kraton Polymers U.S. LLC and Elastomers Holdings LLC, may fully and unconditionally guarantee any series of debt securities of Kraton Polymers Capital Corporation and Kraton Polymers LLC. Pursuant to Rule 457(n) no separate fee is payable with respect to the guarantees of the debt securities being registered.

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Prospectus

Kraton Performance Polymers, Inc.

Debt Securities

Preferred Stock

Common Stock

Warrants

Units

Guarantees of Debt Securities

We may offer and sell from time to time securities described in this prospectus. This prospectus provides you with a general description of the securities that may be offered. We will provide the specific terms of these offerings and the securities to be offered in supplements to this prospectus. You should read this prospectus and any prospectus supplement carefully before you invest.

We may offer the securities from time to time in amounts, at prices and on other terms to be determined at the time of offering. We may offer and sell these securities to or through one or more underwriters, dealers, agents, or directly to purchasers, on a continuous or delayed basis.

Our shares of common stock are listed on the New York Stock Exchange under the symbol KRA. On August 24, 2015, the last reported sale price of our common stock on the New York Stock Exchange was \$19.57 per share.

Investing in our securities involves risks. Please carefully review the information under the heading Risk Factors on page 2. In addition, risks associated with any investment in our securities may be described in the applicable prospectus supplement and certain of our filings with the Securities and Exchange Commission, as described in Risk Factors on page 2.

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

The date of this prospectus is August 25, 2015.

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ABOUT THIS PROSPECTUS

This prospectus is part of a shelf registration statement that we have filed with the U.S. Securities and Exchange Commission (the SEC). By using a shelf registration statement, we may offer the securities described in this prospectus in one or more offerings. For further information about the securities and us, you should refer to our registration statement and its exhibits. The registration statement can be obtained from the SEC as described below under the heading **Where You Can Find More Information**.

This prospectus provides you with a general description of the securities we may offer. Each time we use this prospectus to offer securities, we will provide a prospectus supplement and, if applicable, a pricing supplement that will describe the specific terms of the offering. A prospectus supplement and any pricing supplement may include or incorporate by reference a discussion of any risk factors or other special considerations applicable to those securities or to us. The prospectus supplement and any pricing supplement may also add to, update or change the information contained in this prospectus and, accordingly, to the extent inconsistent, the information in this prospectus will be superseded by the information in the prospectus supplement or pricing supplement. Please carefully read this prospectus, the prospectus supplement and any pricing supplement, in addition to the information contained in the documents we refer to under the heading **Where You Can Find More Information**.

You should rely only on the information we have provided or incorporated by reference in this prospectus, the prospectus supplement and any pricing supplement. We have not authorized any person, including any salesman or broker, to provide you with additional or different information. We are not making an offer of these securities in any jurisdiction where the offer is not permitted. You should assume that the information in this prospectus, the accompanying prospectus supplement and any pricing supplement is accurate only as of the date on its cover page and that any information incorporated by reference is accurate only as of the date of the document incorporated by reference.

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ABOUT KRATON PERFORMANCE POLYMERS, INC.

We are a leading global producer of styrenic block copolymers (SBCs) and other engineered polymers. SBCs are highly-engineered synthetic elastomers, which we invented and commercialized 50 years ago that enhance the performance of numerous products by imparting greater flexibility, resilience, strength, durability and processability.

Our polymers are typically formulated or compounded with other products to achieve improved, customer-specific performance characteristics in a variety of applications. We seek to maximize the value of our product portfolio by emphasizing complex or specialized polymers and innovations that yield higher margins than more commoditized products. We refer to these complex or specialized polymers or innovations as being more differentiated.

Our products are found in many everyday applications, including personal care products, such as disposable diapers and the rubberized grips of toothbrushes, razor blades and power tools. Our products are also used to impart tack and shear properties in a wide variety of adhesive products and to impart characteristics such as flexibility and durability in sealants and corrosion resistance in coatings. Our paving and roofing applications provide durability, extending road and roof life.

We also produce Cariflex™ isoprene rubber and isoprene rubber latex. Our Cariflex products are based on synthetic polyisoprene polymer and do not contain natural rubber latex or other natural rubber products making them an ideal substitute for natural rubber latex, particularly in applications with high purity requirements such as medical, healthcare, personal care and food contact. We believe the versatility of Cariflex provides opportunities for new, high margin applications.

We have a portfolio of innovations at various stages of development and commercialization, including

polyvinyl chloride alternatives for wire and cable, and medical applications;

polymers and compounds for soft skin and coated fabric applications for transportation and consumer markets;

highly-modified asphalt (HiMA) for high-performance paving applications;

high melt flow polymers for compounding and adhesives formulations;

NEXAR™ family of membrane polymers for heating, ventilation, air conditioning and breathable fabrics; and

synthetic cement formulations and polymers used for viscosity modification in oilfield applications.

We manufacture our polymers at five manufacturing facilities globally, including our flagship facility in Belpre, Ohio, as well as facilities in Germany, France, Brazil, and Japan. The facility in Japan is operated by an unconsolidated manufacturing joint venture.

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In this prospectus, we refer to Kraton Performance Polymers, Inc., its wholly owned and majority owned subsidiaries and its ownership interests in equity affiliates as Kraton, we or us, unless we specifically state otherwise or the context indicates otherwise.

We are a Delaware corporation. The address of our principal executive offices and our telephone number at that location is:

Kraton Performance Polymers, Inc.

15710 John F. Kennedy Blvd., Suite 300

Houston, Texas 77032

(281) 504-4700

Our internet website address is *www.kraton.com*. Information contained on or accessible from our website or any other website is not incorporated into this prospectus and does not constitute a part of this prospectus.

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THE GUARANTORS

Kraton Polymers U.S. LLC, Elastomers Holdings LLC, Kraton Polymers Capital Corporation and Kraton Polymers LLC may fully and unconditionally guarantee any series of debt securities issued by us offered by this prospectus, as set forth in a related prospectus supplement. These subsidiaries are sometimes referred to in this prospectus as the Subsidiary Guarantors. The applicable prospectus supplement will name the Subsidiary Guarantors, if any, for that series of debt securities and will describe the terms of the guarantee by the Subsidiary Guarantors.

Kraton Performance Polymers, Inc., Kraton Polymers U.S. LLC and Elastomers Holdings LLC may fully and unconditionally guarantee any series of debt securities issued by Kraton Polymers Capital Corporation and Kraton Polymers LLC offered by this prospectus, as set forth in a related prospectus supplement.

RISK FACTORS

An investment in our securities involves risks. You should carefully consider all of the information contained in or incorporated by reference in this prospectus and other information that may be incorporated by reference in this prospectus or any prospectus supplement as provided under *Where You Can Find More Information*, including the risks described under *Risk Factors* and *Management's Discussion and Analysis of Financial Condition and Results of Operations* in our Annual Reports on Form 10-K and our Quarterly Reports on Form 10-Q. This prospectus also contains forward-looking statements that involve risks and uncertainties. Please read *Cautionary Statements About Forward-Looking Statements*. Our actual results could differ materially from those anticipated in the forward-looking statements as a result of certain factors, including the risks described elsewhere in this prospectus or any prospectus supplement and in the documents incorporated by reference into this prospectus or any prospectus supplement. If any of these risks occur, our business, financial condition or results of operations could be adversely affected. In that case, the trading price of our common stock or preferred stock or value of our warrants or debt securities could decline and you could lose all or part of your investment. Additional risks not currently known to us or that we currently deem immaterial may also have a material adverse effect on us. When we offer and sell any securities pursuant to a prospectus supplement, we may include additional risk factors relevant to such securities in the prospectus supplement.

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CAUTIONARY STATEMENTS ABOUT FORWARD-LOOKING STATEMENTS

This prospectus, including the information we incorporate by reference, includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the Securities Act), and Section 21E of the Exchange Act. Forward-looking information is based on projections and estimates, not historical information. You can identify our forward looking statements by the use of words like may, may not, believes, do not believe, plans, estimates, intends, expects, do not expect, anticipates, do not anticipate, should, likely, and other similar words that convey the uncertainty of future events or outcomes.

When considering these forward looking statements, you should keep in mind the risk factors and other cautionary statements contained in this prospectus, any prospectus supplement and the documents we incorporate by reference.

Forward-looking information involves risk and uncertainties and reflects our best judgment based on current information. Our forward-looking statements are not guarantees of future performance, and we caution you not to rely unduly on them. We have based many of these forward-looking statements on expectations and assumptions about future events that may prove to be inaccurate. While our management considers these expectations and assumptions to be reasonable, they are inherently subject to significant business, economic, competitive, regulatory and other risks, contingencies and uncertainties, most of which are difficult to predict and many of which are beyond our control. In addition, other known and unknown risks and factors may affect the accuracy of our forward-looking information. Our forward-looking statements speak only as of the date of this prospectus or as of the date they are made, and, except as otherwise required by applicable securities laws, we undertake no obligation to publicly update any of our forward-looking statements regardless of whether factors change as a result of new information, future events or for any other reason.

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Unless we inform you otherwise in the applicable prospectus supplement, we expect to use the net proceeds from the sale of securities for general corporate purposes, which may include:

capital expenditures;

acquisitions;

working capital; and

repayment, refinancing, redemption or repurchases of indebtedness or other securities.

Pending any specific application, we may initially invest funds in short-term marketable securities or apply them to the reduction of short-term indebtedness or outstanding borrowings under our revolving credit facility.

RATIO OF EARNINGS TO FIXED CHARGES

We have presented in the table below our historical consolidated ratio of earnings to fixed charges for the periods shown.

	Six Months Ended June 30,		Years Ended December 31,			
	2015	2014	2013	2012	2011	2010
Ratio of earnings to fixed charges	(0.12)x	1.11x	0.80x	1.02x	3.54x	5.07x

Our earnings were insufficient to cover our fixed charges by approximately \$16.7 million and \$8.7 million for the six months ended June 30, 2015 and the year ended December 31, 2013.

We have computed the ratios of earnings to fixed charges by dividing earnings by fixed charges. For this purpose, earnings consist of earnings before income taxes plus fixed charges, amortization of capitalized interest and any equity distributions less income from equity investees and interest capitalized. Fixed charges consist of interest expensed, interest capitalized, amortization of debt issuance costs, amortization of debt premium and the estimate of interest within our rental expense.

No shares of our preferred stock are currently issued or outstanding, therefore no dividends accrued on any shares of our preferred stock for any period presented. Accordingly, the ratio of earnings to combined fixed charges and preferred stock dividends is the same as the ratio of earnings to fixed charges.

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DESCRIPTION OF DEBT SECURITIES

The debt securities covered by this prospectus will be our general unsecured obligations. We will issue senior debt securities under an indenture to be entered into among us, the possible Subsidiary Guarantors, and a trustee we will name in the prospectus supplement relating to the senior debt securities. Kraton Polymers LLC and Kraton Polymers Capital Corporation will issue senior debt securities under an indenture to be entered into among them as co-issuers, us as guarantor, the possible Subsidiary Guarantors, if any, and a trustee we will name in the prospectus supplement relating to the senior debt securities. We refer to these indentures as the senior indentures. The senior indentures will be substantially identical, except for the issuers of the debt securities under each such indenture. We will issue subordinated debt securities under an indenture to be entered into among us, the possible Subsidiary Guarantors, and a trustee we will name in the prospectus supplement relating to subordinated debt securities. We refer to the senior indentures and the subordinated indenture collectively as the indentures. The senior indenture for the debt securities issued by us and the subordinated indenture will be substantially identical, except for provisions relating to subordination.

We have summarized material provisions of the indentures, the debt securities and the guarantees below. This summary is not complete. We have filed the forms of the indentures with the SEC as exhibits to the registration statement, and you should read the indentures for provisions that may be important to you. Please read **Where You Can Find More Information**.

In this summary description of the debt securities, unless we state otherwise or the context clearly indicates otherwise, all references to **we**, **us**, or **our** refer to Kraton Performance Polymers, Inc. only and not to any of its subsidiaries.

General

None of the indentures limit the amount of debt securities that may be issued under that indenture, and none of the indentures limit the amount of other unsecured debt or securities that we may issue. We may issue debt securities under the indentures from time to time in one or more series, each in an amount authorized prior to issuance.

We are not obligated to issue all debt securities of one series at the same time and, unless otherwise provided in the applicable prospectus supplement, we may reopen a series, without the consent of the holders of the debt securities of that series, for the issuance of additional debt securities of that series. Additional debt securities of a particular series will have the same terms and conditions as outstanding debt securities of such series, except for the date of original issuance and the offering price and, if applicable, the initial interest payment date and initial interest accrual date, and will be consolidated with, and form a single series with, such outstanding debt securities.

The senior debt securities will constitute our senior unsecured indebtedness and will rank equally in right of payment with all of our other unsecured and unsubordinated debt and senior in right of payment to all of our subordinated indebtedness. The senior debt securities will be effectively subordinated to, and thus have a junior position to, our secured indebtedness with respect to the assets securing that indebtedness. The subordinated debt securities will rank junior to all of our senior indebtedness and may rank equally with or senior to other subordinated indebtedness we may issue from time to time.

We conduct our business through our wholly owned subsidiary, Kraton Polymers LLC, and its consolidated subsidiaries. As a result, our operating income and cash flow are generated by our subsidiaries. Cash we obtain from Kraton Polymers LLC and its subsidiaries is the principal source of funds necessary to meet our debt service obligations. Contractual provisions or laws, as well as our subsidiaries' financial condition and operating requirements, may limit our ability to obtain cash from our subsidiaries that we require to pay our debt service obligations, including

payments on the debt securities. In addition, holders of the debt securities will have a junior position to the claims of creditors, including trade creditors and tort claimants, of our subsidiaries to the extent that such subsidiaries do not guarantee such debt securities.

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Neither indenture contains any covenants or other provisions designed to protect holders of the debt securities in the event we participate in a highly leveraged transaction or upon a change of control. The indentures also do not contain provisions that give holders of the debt securities the right to require us to repurchase their securities in the event of a decline in our credit rating for any reason, including as a result of a takeover, recapitalization or similar restructuring or otherwise.

Ranking

On March 27, 2013, we entered into an asset-based revolving credit facility consisting of a \$150.0 million U.S. senior secured revolving credit facility (the "U.S. Facility") and a \$100.0 million Dutch senior secured revolving credit facility (the "Dutch Facility," and together with the U.S. Facility, the "Senior Secured Credit Facilities"). Kraton Polymers U.S. LLC and Kraton Polymers Nederland B.V. are the borrowers under the Senior Secured Credit Facilities, and Kraton Performance Polymers, Inc., Kraton Polymers LLC, Elastomers Holdings LLC and Kraton Polymers Capital Corporation are the guarantors for both the U.S. Facility and the Dutch Facility. In addition, K.P. Global Holdings C.V. and Kraton Polymers Holdings B.V. are guarantors for the Dutch Facility. All secured obligations under the Senior Secured Credit Facilities are secured by specified assets of Kraton Polymers U.S. LLC, Kraton Polymers LLC, Kraton Polymers Capital Corporation, Elastomers Holdings LLC and the other U.S. borrowers and guarantors, and the Dutch Facility secured obligations are further secured, subject to certain exceptions, by specified assets of Kraton Polymers Nederland B.V., including (a) accounts, (b) inventory, (c) chattel paper, instruments, letters of credit, general intangibles (other than intellectual property), as each of the aforementioned relates to accounts or inventory, (d) commodities accounts, deposit accounts and securities accounts, to the extent any proceeds of the collateral described in (a) through (c) above are deposited therein, (e) monies, cash and deposits, including cash collateral to the extent related to the foregoing, and (f) all accessions to, substitutions for, replacements and proceeds of the foregoing.

Unless we inform you otherwise in the applicable prospectus supplement, the senior debt securities will be effectively subordinated to our Senior Secured Credit Facilities. As of June 30, 2015, we had no outstanding indebtedness under our Senior Secured Credit Facilities. In the event of any distribution or payment of our assets in any foreclosure, dissolution, winding-up, liquidation, reorganization or other bankruptcy proceeding, holders of secured indebtedness will have prior claim to our assets that constitute their collateral. Holders of the senior debt securities will participate ratably with all holders of our senior unsecured indebtedness, and potentially with all of our other general creditors, based upon the respective amounts owed to each holder or creditor, in our remaining assets.

The senior debt securities will rank equally with all of our other unsecured and unsubordinated indebtedness and the unsecured and unsubordinated indebtedness of the Subsidiary Guarantors. Kraton Polymers LLC and its wholly-owned financing subsidiary, Kraton Polymers Capital Corporation, issued \$350.0 million aggregate principal amount of 6.75% senior notes that mature on March 1, 2019 pursuant to an indenture, dated February 11, 2011 (with respect to \$250.0 million senior notes) and supplemental indenture thereto dated March 20, 2012 (with respect to \$100.0 million senior notes). The indenture provides that the notes are general unsecured, senior obligations and will be unconditionally guaranteed on a senior unsecured basis. Unless we inform you otherwise in the applicable prospectus supplement, the senior debt securities will rank equally with such notes.

Under the subordinated indenture, payment of the principal of and any premium and interest on the subordinated debt securities will generally be subordinated and junior in right of payment to the prior payment in full of all Senior Debt.

Terms

The prospectus supplement relating to any series of debt securities being offered will include specific terms relating to the offering. These terms will include some or all of the following:

whether the debt securities will be senior or subordinated debt securities;

the title of the debt securities;

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the total principal amount of the debt securities;

the price at which we will issue the debt securities;

whether we will issue the debt securities in individual certificates to each holder or in the form of temporary or permanent global securities held by a depositary on behalf of holders;

the date or dates on which the principal of and any premium on the debt securities will be payable;

any interest rate, the date from which interest will accrue, interest payment dates and record dates for interest payments;

whether and under what circumstances we will pay any additional amounts with respect to the debt securities;

whether debt securities are entitled to any guarantee of any Subsidiary Guarantors and the identity of any such Subsidiary Guarantors for that series and the terms of such guarantee if different than those set forth in the applicable indenture;

the place or places where payments on the debt securities will be payable;

any provisions for optional redemption or early repayment;

any sinking fund or other provisions that would obligate us to redeem, purchase or repay the debt securities;

the denominations in which we will issue the debt securities if other than \$1,000 and integral multiples of \$1,000;

whether payments on the debt securities will be payable in foreign currency or currency unit or another form and whether payments will be payable by reference to any index or formula;

the portion of the principal amount of the debt securities that will be payable if the maturity is accelerated, if other than the entire principal amount;

any additional means of defeasance of the debt securities, any additional conditions or limitations to defeasance of the debt securities or any changes to those conditions or limitations;

any changes or additions to the events of default or covenants described in this prospectus;

any restrictions or other provisions relating to the transfer or exchange of the debt securities;

any terms for the conversion or exchange of the debt securities for other securities;

with respect to the subordinated indenture, any changes to the subordination provisions for the subordinated debt securities; and

any other terms of the debt securities not inconsistent with the applicable indenture.

We may sell the debt securities at a discount, which may be substantial, below their stated principal amount. These debt securities may bear no interest or interest at a rate that at the time of issuance is below market rates. If we sell these debt securities, we will describe in the prospectus supplement any material United States federal income tax consequences and other special considerations.

If we sell any of the debt securities for any foreign currency or currency unit or if payments on the debt securities are payable in any foreign currency or currency unit, we will describe in the applicable prospectus supplement the restrictions, elections, tax consequences, specific terms and other information relating to those debt securities and the foreign currency or currency unit.

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Subordination

Under the subordinated indenture, payment of the principal of and any premium and interest on the subordinated debt securities will generally be subordinated and junior in right of payment to the prior payment in full of all Senior Debt. Unless we inform you otherwise in the applicable prospectus supplement, we may not make any payment of principal of or any premium or interest on the subordinated debt securities if:

we fail to pay the principal, interest, premium or any other amounts on any Senior Debt when due; or

we default in performing any other covenant (a covenant default) on any Senior Debt that we have designated if the covenant default allows the holders of that Senior Debt to accelerate the maturity of the Senior Debt they hold.

Unless we inform you otherwise in the applicable prospectus supplement, a covenant default will prevent us from paying the subordinated debt securities only for up to 179 days after holders of the designated Senior Debt give the trustee for the subordinated debt securities notice of the covenant default.

The subordination does not affect our obligation, which is absolute and unconditional, to pay, when due, the principal of and any premium and interest on the subordinated debt securities. In addition, the subordination does not prevent the occurrence of any default under the subordinated indenture.

The subordinated indenture does not limit the amount of Senior Debt that we may incur. As a result of the subordination of the subordinated debt securities, if we become insolvent, holders of subordinated debt securities may receive less on a proportionate basis than other creditors.

Unless we inform you otherwise in the applicable prospectus supplement, Senior Debt will mean all of our indebtedness, including guarantees, unless the indebtedness states that it is not senior to the subordinated debt securities or our other junior debt. Senior Debt with respect to a series of subordinated debt securities could include other series of debt securities issued under the subordinated indenture.

Guarantees

Each of the Subsidiary Guarantors, if any, with respect to a series of senior debt securities will fully and unconditionally guarantee on an unsecured basis the full and prompt payment of the principal of and any premium and interest on the debt securities of that series when and as the payment becomes due and payable, whether at maturity or otherwise. As used in this prospectus, the term Subsidiary Guarantors with respect to a series of debt securities refers to those subsidiaries listed under The Subsidiary Guarantors that guarantee that series of debt securities. The applicable prospectus supplement will name the Subsidiary Guarantors, if any, for that series of debt securities and will describe the terms of the guarantee by the Subsidiary Guarantors if they differ from the terms described in this prospectus. The guarantees provide that in the event of a default in the payment of principal of or any premium or interest on a debt security, the holder of that debt security may institute legal proceedings directly against the Subsidiary Guarantors to enforce the guarantees without first proceeding against us. If senior debt securities are so guaranteed, the guarantees will rank equally with all of the Subsidiary Guarantors other unsecured and unsubordinated debt from time to time outstanding and senior to any subordinated debt of the Subsidiary Guarantors. If subordinated debt securities are so guaranteed, the guarantees will be subordinated to all of the Subsidiary Guarantors other unsecured and unsubordinated debt from time to time outstanding.

The obligations of each Subsidiary Guarantor under its guarantee of the debt securities will be limited to the maximum amount that will not result in the obligations of the Subsidiary Guarantor under the guarantee constituting a fraudulent conveyance or fraudulent transfer under federal or state law, after giving effect to:

all other contingent and fixed liabilities of the Subsidiary Guarantor; and

any collections from or payments made by or on behalf of any other Subsidiary Guarantors in respect of the obligations of the Subsidiary Guarantor under its guarantee.

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The guarantee of any Subsidiary Guarantor may be released under certain circumstances. If we exercise our legal or covenant defeasance option with respect to debt securities of a particular series as described below in Defeasance and Discharge, then any Subsidiary Guarantor will be released with respect to that series. Further, if no default has occurred and is continuing under the applicable indenture, and to the extent not otherwise prohibited by the applicable indenture, a Subsidiary Guarantor will be unconditionally released and discharged from the guarantee:

automatically upon any sale, exchange or transfer, whether by way of merger or otherwise, to any person that is not our affiliate, of all of our equity interests in the Subsidiary Guarantor;

automatically upon the merger of the Subsidiary Guarantor into us or any other Subsidiary Guarantor or the liquidation and dissolution of the Subsidiary Guarantor; or

following delivery of a written notice by us to the trustee, upon the release of all guarantees by the Subsidiary Guarantor of any debt of ours for borrowed money, except for any series of debt securities under the applicable indenture.

Consolidation, Merger and Sales of Assets

The indentures generally permit a consolidation or merger involving us or the Subsidiary Guarantors. They also permit the Subsidiary Guarantors or us to sell, lease, convey, assign, transfer or otherwise dispose of all or substantially all of our assets. We and the Subsidiary Guarantors have agreed, however, that we will not consolidate with or merge into any entity or sell, lease, convey, assign, transfer or dispose of all or substantially all of our assets to any entity unless:

- (1) either

we or a Subsidiary Guarantor, as the case may be, are the continuing entity; or

the resulting entity is organized under the laws of the United States, any state thereof or the District of Columbia, and, in the case of us, expressly assumes by supplemental indenture the due and punctual payment of the principal of, premium (if any) and interest on and any additional amounts with respect to the debt securities and the performance of our covenants and obligations under the applicable indenture and the debt securities, or, in the case of such Subsidiary Guarantor, the performance of the guarantee and such Subsidiary Guarantor's covenants and obligations under the applicable indenture and the debt securities; and

- (2) immediately after giving effect to the transaction or series of transactions, no default or event of default under the applicable indenture has occurred and is continuing or would result from the transaction(s).

This covenant will not apply to any merger of another entity into us. Upon any transaction of the type described in and effected in accordance with this section, the resulting entity will succeed to and be substituted for us and may exercise all of our rights and powers under the applicable indenture and the debt securities with the same effect as if the

resulting entity had been named as us in the applicable indenture. In the case of any asset transfer or disposition other than a lease, when the resulting entity assumes all of our obligations and covenants under the applicable indenture and the debt securities, we will be relieved of all such obligations.

Events of Default

Unless we inform you otherwise in the applicable prospectus supplement, the following are events of default with respect to a series of debt securities:

our failure to pay interest on any debt security of that series for 30 days when due;

our failure to pay principal of or any premium on any debt security of that series when due;

our failure to deposit any sinking fund payment relating to any debt security of that series for 30 days when due;

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our failure to comply with any covenant or agreement in that series of debt securities or the applicable indenture (other than an agreement or covenant that has been included in the indenture solely for the benefit of other series of debt securities) for 90 days after written notice by the trustee or by the holders of at least 25% in principal amount of the outstanding debt securities issued under that indenture that are affected by that failure;

specified events involving bankruptcy, insolvency or reorganization of us or a Subsidiary Guarantor with respect to that series of debt securities that is a significant subsidiary (as defined in Regulation S-X promulgated by the SEC, as in effect on the date of the applicable indenture) of us;

if applicable, specified events involving the guarantees; and

any other event of default provided for that series of debt securities.

A default under one series of debt securities will not necessarily be a default under any other series. If a default or event of default for any series of debt securities occurs, is continuing and is known to the trustee, the trustee will notify the holders of applicable debt securities within 90 days after it occurs. The trustee may withhold notice to the holders of the debt securities of any default or event of default, except in any payment on the debt securities, if the trustee in good faith determines that withholding notice is in the interests of the holders of those debt securities.

If an event of default for any series of debt securities occurs and is continuing, the trustee or the holders of at least 25% in principal amount of the outstanding debt securities of the series affected by the default (or, in some cases, 25% in principal amount of all debt securities issued under the applicable indenture that are affected, voting as one class) may declare the principal of and all accrued and unpaid interest on those debt securities to be due and payable immediately. If an event of default relating to certain events of bankruptcy, insolvency or reorganization of us or a Subsidiary Guarantor that is a significant subsidiary occurs, the principal of and accrued and unpaid interest on all the debt securities of that series will become immediately due and payable without any action on the part of the trustee or any holder. At any time after a declaration of acceleration has been made, the holders of a majority in principal amount of the outstanding debt securities of the series affected by the default (or, in some cases, of all debt securities issued under the applicable indenture that are affected, voting as one class) may in some cases rescind this accelerated payment requirement and its consequences.

A holder of a debt security of any series issued under an indenture may pursue any remedy under that indenture only if:

the holder gives the trustee written notice of a continuing event of default with respect to that series of debt securities;

the holders of at least 25% in principal amount of the outstanding debt securities of that series make a written request to the trustee to pursue the remedy;

the holders offer to the trustee indemnity satisfactory to the trustee against any loss, liability or expense;

the trustee does not comply with the request within 60 days after receipt of the request and offer of indemnity; and

during that 60-day period, the holders of a majority in principal amount of the debt securities of that series do not give the trustee a direction inconsistent with the request.

This provision does not, however, affect the right of a holder of a debt security to sue for enforcement of any overdue payment.

In most cases, the trustee will be under no obligation to exercise any of its rights or powers under the applicable indenture at the request or direction of any of the holders unless those holders have offered to the

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trustee indemnity satisfactory to it. Subject to this provision for indemnification, the holders of a majority in principal amount of the outstanding debt securities of a series (or of all debt securities issued under the applicable indenture that are affected, voting as one class) generally may direct the time, method and place of:

conducting any proceeding for any remedy available to the trustee; or

exercising any trust or power conferred on the trustee relating to or arising as a result of an event of default. If an event of default occurs and is continuing, the trustee will be required to use the degree of care and skill of a prudent person in the conduct of his own affairs.

The indentures require us to furnish to the trustee annually a statement as to our performance of certain of our obligations under the indentures and as to any default in performance.

Modification and Waiver

We and the trustee may supplement or amend each indenture with the consent of the holders of at least a majority in principal amount of the outstanding debt securities of all series issued under that indenture that are affected by the amendment or supplement (voting as one class). Without the consent of the holder of each debt security affected, however, no modification may:

reduce the amount of debt securities whose holders must consent to an amendment, supplement or waiver;

reduce the rate of or change the time for payment of interest on the debt security;

reduce the principal of the debt security or change its stated maturity;

reduce any premium payable on the redemption of the debt security or change the time at which the debt security may or must be redeemed;

change any obligation to pay additional amounts on the debt security;

make payments on the debt security payable in currency other than as originally stated in the debt security;

impair the holder's right to institute suit for the enforcement of any payment on or with respect to the debt security;

make any change in the percentage of principal amount of debt securities necessary to waive compliance with certain provisions of the indenture or to make any change in the provision related to modification;

with respect to the subordinated indenture, modify the provisions relating to the subordination of any subordinated debt security in a manner adverse to the holder of that security;

waive a continuing default or event of default regarding any payment on the debt securities;

except as specifically provided in the indenture, release any Subsidiary Guarantor or modify the related Guarantee in any manner materially adverse to the holders of debt securities under that indenture; or

if applicable, make any change that materially and adversely affects the right to convert any debt security. We and the trustee may supplement or amend each indenture or waive any provision of that indenture without the consent of any holders of debt securities issued under that indenture in certain circumstances, including:

to cure any ambiguity, omission, defect or inconsistency;

to provide for the assumption of our obligations under the indenture by a successor upon any merger, consolidation or asset transfer permitted under the indenture;

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to provide for uncertificated debt securities in addition to or in place of certificated debt securities or to provide for bearer debt securities;

to provide any security for, or to add any guarantees of or obligors on, any series of debt securities;

to comply with any requirement to effect or maintain the qualification of that indenture under the Trust Indenture Act of 1939, as amended;

to add covenants that would benefit the holders of any debt securities or to surrender any rights we have under the indenture;

to add events of default with respect to any series of debt securities;

to make any change that does not adversely affect any outstanding debt securities of any series issued under that indenture in any material respect;

to establish the form or terms of any debt securities and to accept the appointment of a successor trustee, each as permitted under the indenture;

to supplement any of the provisions of that indenture to the extent necessary to permit or facilitate the defeasance and discharge of any series of debt securities; and

to provide for the appointment of a successor trustee or to provide for or facilitate the administration of the trusts under that indenture by more than one trustee.

The holders of a majority in principal amount of the outstanding debt securities of any series (or, in some cases, of all debt securities issued under the applicable indenture that are affected, voting as one class) may waive any existing or past default or event of default with respect to those debt securities. Those holders may not, however, waive any default or event of default in any payment on any debt security or compliance with a provision that cannot be amended or supplemented without the consent of each holder affected.

Defeasance and Discharge

Defeasance. When we use the term defeasance, we mean discharge from some or all of our obligations under an indenture. If we deposit with the trustee under an indenture any combination of money or government securities sufficient to make payments on the debt securities of a series issued under that indenture on the dates those payments are due, then, at our option, either of the following will occur:

we and the Subsidiary Guarantors, if applicable, will be discharged from our obligations with respect to the debt securities of that series (legal defeasance); or

we and the Subsidiary Guarantors, if applicable, will no longer have any obligation to comply with specified restrictive covenants with respect to the debt securities of that series, the covenant described under

Consolidation, Merger and Sales of Assets and other specified covenants under the applicable indenture, and the related events of default will no longer apply (covenant defeasance).

If a series of debt securities is defeased, the holders of the debt securities of that series will not be entitled to the benefits of the applicable indenture, except for obligations to register the transfer or exchange of debt securities, replace stolen, lost or mutilated debt securities or maintain paying agencies and hold money for payment in trust. In the case of covenant defeasance, our obligation to pay principal, premium and interest on the debt securities, and if applicable, the Subsidiary Guarantors guarantees of the payments, will also survive.

Unless we inform you otherwise in the applicable prospectus supplement, we will be required to deliver to the trustee an opinion of counsel that the deposit and related defeasance would not cause the holders of the debt securities to recognize income, gain or loss for U.S. federal income tax purposes and that the holders would be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if the deposit and related defeasance had not occurred. If we elect legal defeasance, that opinion of counsel must be based upon a ruling from the United States Internal Revenue Service or a change in law to that effect.

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Under current U.S. federal income tax law, legal defeas